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PAGES
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federal register

Book 1 of 2 Books
Friday, May 30, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.; Pittsburgh, Pa.; and St. Louis, Mo.**, see announcement in the **Reader Aids** section at the end of this issue.

36563 **Grant Programs—Social Programs** Justice/NIJ requests draft proposals for grants in field of probation and alternatives; apply by 7–25–80

36469 **Grant Programs—Education** ED invites applications for Territorial Teacher Training Assistance Program; apply by 7–14–80

36521 **Grant Programs—Environmental Protection** EPA announces availability of Innovative and Alternative Technology Assessment Manual for municipal wastewater treatment facilities

36810 **Grant Programs—Energy** HHS/SSA issues interim final regulations setting forth requirements for States assisting eligible low income households to offset rising costs; effective 5–30–80; comments by 6–30–80 (Part IV of this issue)

36844 **Calendar of Federal Regulations** The U.S. Regulatory Council publishes catalog of regulations under development (Part VI of this issue)

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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36443 **Medicare** HHS/HCFA proposes to reorganize and revise existing regulations for hospital insurance; comments by 7–29–80

36417 **Food Grades and Standards** USDA/FSQS announces options for possible changes in food grading policy; comments by 8–28–80, hearings on 7–1, 7–16, and 8–7–80

36386 **Medical Research** HHS/FDA provides for the protection of prisoners when used as Human Subjects in Biomedical and Behavioral Research; effective 5–30–81

36394 **Mortgage Insurance** HUD/FHC creates separate maximum interest rate for construction financing of multifamily housing; effective 5–30–80

36393 **Mortgage Insurance—Home Improvement** HUD/FHC decreases FHA maximum interest rate on insured home mortgage loans and establishes separate rate ceiling for those obtained by operative builders; effective 5–15–80

36392 **Mortgage Insurance—Home Improvement** HUD/FHC decreases FHA maximum allowable finance charge on property improvement and mobile home loans; effective 5–19–80

36840 **Mortgages** HUD/FHC modifies graduated payment program; effective 6–30–80; comments by 7–29–80 (Part V of this issue)

36371 **Mortgages** FHLBB issues amendment regarding sale of, participation in mortgages; effective 5–29–80

36395 **Nursing Homes and Intermediate Care Facilities** HUD/FHC defines mortgage insurance eligibility requirements; effective 6–30–80

36400 **Lobbying** HHS/Sec'y issues rule prohibiting use of HHS funds to influence legislation or appropriations; effective 5–30–80

36440, 36442 **Improving Government Regulations** GSA, DOD issue Semiannual Agenda of Regulations

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36784 **Part III, DOE**
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; National Aeronautics and Space Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the NASA High School Students Summer Research Apprenticeship Program are excepted under Schedule A because it is impracticable to examine for them.

EFFECTIVE DATE: April 14, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

On position content: John Pennington, NASA, 202–755–3340.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3148(f) is added as set out below:

§ 213.3148 National Aeronautics and Space Administration.

* * * * *

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp. p. 218)

[FR Doc. 80–16509 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service: Department of the Air Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service fifteen positions of Criminal Investigator and Intelligence Research Specialist, GS–11 through GS–14, in the Air Force Office of Special Investigations, Department of the Air Force, because it is impracticable to hold competitive examination for these positions. This amendment increases the numerical limitations and changes the grade level coverage of these positions which were previously excepted under this Schedule A authority.

EFFECTIVE DATE: April 15, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

On position content: Joseph M. Young, Department of the Air Force, 202–694–2739.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3109(f)(1) is revised as set out below:

§ 213.3109 Department of the Air Force.

* * * * *

(f) Air Force Office of Special Investigations.

(1) Fifteen positions of Criminal Investigator and Intelligence Research Specialist, GS–11 through GS–14, for employment not to exceed April 30, 1984, on projects concerned with the security of national defense activities and materials.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp. p. 218)

[FR Doc. 80–16510 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Entire Executive Civil Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Schedule A authority for positions as needed not in excess of GS–13, whose incumbents will implement the Young Adult Conservation Corps program, is amended to include those positions that are to be paid out of funds allocated under other appropriated funds receiving direct benefits. This Schedule A exception is still appropriate because it continues to be impracticable to examine for these positions.

EFFECTIVE DATE: February 6, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

On position content: Bernie Akin, U.S. Department of Agriculture, 202–235–8037.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3102(hh) is revised to read as follows:

§ 213.3102 Entire Executive Civil Service.

* * * * *

(hh) Positions as needed not in excess of GS–13, whose incumbents will implement the Young Adult Conservation Corps program and are to be paid out of funds allocated under title VIII of the Comprehensive Employment and Training Act of 1973, as amended, or other appropriated funds receiving direct benefits. Employment under this authority is not to exceed September 30, 1982.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 80–16511 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service: Department of the Air Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment removes the numerical limitation of Instructors of Music (Choirmasters) on the staff of the U.S. Air Force Academy, Colorado, which are currently excepted from the competitive service because it is

impracticable to examine for these positions.

EFFECTIVE DATE: April 2, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

On position content: Joseph M. Young, Department of the Air Force, 202–694–2739.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3109(d)(1) is revised as set out below:

§ 213.3109 Department of the Air Force.

* * * * *

(d) *U.S. Air Force Academy, Colorado.*

(1) Positions of Cadet Hostesses, Instructors in Physical Education, and Instructors in Music (Choirmasters).

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 80-16512 Filed 5-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service: Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This transfers the organizational coverage of two previously authorized excepted employment authorities which were for the Social Security Administration to the Office of the Secretary. One authority excepts from the competitive service 195 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees; provided that new appointments shall be limited to Cuban refugees. The other authority excepts from the competitive service 64 positions directly concerned with the Indochinese Refugee Program Staff; employment under this authority may not exceed September 30, 1981. These exceptions are granted because it is impractical to competitively examine for these positions.

EFFECTIVE DATE: February 21, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

On position content: Edward Hicks, Department of Health, Education, and Welfare, 202–472–3776.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3116 (d)(4) and (d)(5) are revoked, and paragraphs (k)(2) and (k)(3) are added to read as follows:

§ 213.3116 Department of Health, Education, and Welfare.

* * * * *

(d) *Social Security Administration*

* * * * *

(4) [Revoked.]

(5) [Revoked.]

* * * * *

(k) *Office of the Secretary.* * * *

(2) Not to exceed 195 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees: *Provided,* That new appointments shall be limited to Cuban refugees.

(3) Not to exceed 4 positions on the Indochinese Refugee Program Staff. Service under this authority may not exceed September 30, 1981.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958, Comp. p. 218)

[FR Doc. 80-16513 Filed 5-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare; Public Health Service

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: Hospital Administration Resident positions at grade GS–9 in the National Institutes of Health's Clinical Center in Bethesda, Maryland, are excepted under Schedule A because it is impracticable to examine for them. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, Office of Personnel Management, 202–632–4533.

Accordingly, 5 CFR 213.3116(b)(12) is added as set out below:

§ 213.3116 Department of Health, Education, and Welfare.

* * * * *

(b) Public Health Service. * * *

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 80-16514 Filed 5-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revokes the Schedule A authority for positions of Student Dietitian and Resident Physician at Freedman's Hospital because the authority is no longer used.

EFFECTIVE DATE: February 5, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3116(b) is amended as follows:

§ 213.3116 Department of Health, Education, and Welfare.

* * * * *

(b) *Public Health Service.* * * *

(7) [Revoked.]

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 80-16515 Filed 5-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment extends through June 30, 1981, the Schedule A exception of 30 positions at GS–15 and below on the staff of the White House Conference on Families. Schedule A exception is still appropriate because it continues to be impracticable to examine for these positions.

EFFECTIVE DATE: February 4, 1980.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–6000.
On position content: Ed Hicks, Department of Health, Education, and Welfare, 202–472–3776.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3116(e)(2) is revised to read as follows:

§ 213.3116 Department of Health, Education, and Welfare.

* * * * *

(e) *General.* * * *

(2) Thirty positions at GS–15 and below for employment not to exceed June 30, 1981, on the staff of the White House Conference on Families.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

[FR Doc. 80–16516 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Change in Current Regional Address

AGENCY: The Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Final rule.

SUMMARY: This rule amends Appendix A, paragraph (d)(3) (45 FR 3522) of the final rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 45 FR 3482, to establish a new address and telephone numbers for the Authority's Washington, D.C. Regional Office, pending its move to a permanent location.

EFFECTIVE DATE: June 2, 1980.

FOR FURTHER INFORMATION CONTACT: D. Randall Frye, Assistant General Counsel (202)–632–6284.

SUPPLEMENTARY INFORMATION: Effective January 17, 1980, the Authority, General Counsel and Panel published, at 45 FR 3482, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code. These rules and regulations are required by Title VII of Civil Service Reform Act of 1978.

Appendix A, paragraph (d) of the rules and regulations (45 FR 3522) sets forth the current office addresses and telephone numbers of the Regional Directors of the Authority. The Authority's Washington, D.C. Regional Office has changed its address and telephone numbers presently noted in paragraph (d)(3) of Appendix A.

Accordingly, Appendix A, paragraph (d)(3) of the Authority, General Counsel, and Panel rules and regulations (45 FR 3482) is amended, in part, to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(3) *Washington Regional Office*—1133 15th Street, NW., Suite 300, Washington, D.C. 20005. Telephone: FTS—653–8452. Commercial—(202)–653–8452.

* * * * *

(5 U.S.C. 7134)

Dated: May 27, 1980.

Federal Labor Relations Authority.

Ronald W. Haughton,

Chairman.

Henry B. Frazier III,

Member.

Leon B. Applewhaite,

Member.

H. Stephan Gordon,

General Counsel.

[FR Doc. 80–16501 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–19–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 254]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period June 1–7, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 1, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 31, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on May 27, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.554 Lemon Regulation 254.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period June 1, 1980, through June 7, 1980, is established at 305,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 28, 1980.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-16724 Filed 5-29-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 915 and 944

[Florida Avocado Regulation 22; Avocado Import Regulation 28]

Avocados Grown in South Florida; Fruits; Import Regulations; Grade and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations specify minimum grade and maturity requirements for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States, for the 1980–81 marketing season through April 30, 1981. Such action is necessary to assure the shipment of ample supplies of mature avocados of acceptable quality in the interest of growers and consumers.

EFFECTIVE DATES: § 915.322 Florida Avocado Regulation 22 effective May 30, 1980; § 944.20 Avocado Import Regulation 28 effective June 2, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* The Florida avocado regulation is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The avocado import regulation is issued under § 8e (7 U.S.C. 608e–1) of this act. The grade and maturity requirements applicable to Florida avocado shipments were recommended by the Avocado Administrative Committee, which locally administers this marketing order program. Notice of these proposed regulations was published in the **Federal Register** (45 FR 29843; 33643), on May 6, 1980. No comments were received during the 15 days provided in the notice.

These grade and maturity requirements reflect the Department's appraisal of the need for regulating avocados during the 1980–81 season, based on the available supply and market demand conditions. Shipments of 1980–81 season fresh Florida avocados are expected to amount to a record 1,250,000 bushels, compared with 1,016,862 shipped in 1979–80, 894,375 in 1978–79, and 411,024 in 1977–78. Shipment of this season's avocado crop is expected to begin with light shipments of early varieties in late May, but volume shipments will not begin until late June or early July. California is currently producing an avocado crop estimated at 2,636,000 bushels for the season ending October 31. Relatively small quantities of avocados were imported into the U.S. last season, with the majority from the Dominican Republic.

These regulations establish U.S. No. 3 as the minimum grade, and prescribe minimum weights or diameters by specified dates as the maturity requirements for the various varieties of avocados. Minimum weights or diameters and picking dates are used as indicators during harvest to determine which avocados are sufficiently mature to complete the ripening process. Skin color would also be authorized as a method of determining maturity, for those varieties which turn red or purple when mature. The requirements are designed to assure that the various varieties of avocados will be of suitable quality and maturity so they provide consumer satisfaction, which is essential for the successful marketing of the crop. They are also designed to provide the trade and consumers with an adequate supply of mature avocados of acceptable quality, in the interest of producers and consumers pursuant to the declared policy of the act.

The avocado import regulation is issued under section 8e of the act, which requires that when specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that the following grade and maturity requirements are necessary to establish and maintain orderly marketing conditions, that they are in accordance with the provisions of this marketing agreement and order, and that they will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of these regulations until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making them effective as specified in that (1) shipment of the current crop of avocados grown in South Florida is expected to begin on or about May 26, 1980, and these regulatory provisions should be applicable, insofar as practicable, to all such shipments, as well as to imported avocados, in order to effectuate the declared policy of the act; (2) the Florida avocado regulation was recommended by the committee following discussion at a public meeting on April 2, 1980; (3) Florida avocado handlers have been apprised of these regulatory provisions for 1980–81 season shipments of Florida avocados; (4) notice of these proposed regulations was published in the **Federal Register** (45 FR 29843; 33643) on May 6, 1980, and no comments were received during the 15 days provided; (5) the regulatory provisions for Florida avocados and imported avocados are the same as those in the notice; (6) the import requirements are mandatory under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and they should become effective at nearly the same time as is reasonably practicable as the domestic requirements; (7) the import regulation imposes the same grade and comparable maturity requirements on imports of avocados as are being made applicable to the shipment of avocados grown in Florida under Florida Avocado Regulation 22; and (8) three days notice thereof, the minimum prescribed by section 8e, is provided with respect to this import regulation.

This final rule has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant". An Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Telephone: 202–447–5975.

Therefore, new §§ 915.322 and 944.20 are added to read as follows: (§§ 915.322 and 944.20 expire April 30, 1981, and will not be published in the annual Code of Federal Regulations).

§ 915.322 Florida Avocado Regulation 22.

(a)(1) During the period May 30, 1980, through April 30, 1981, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided,* That avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305, as amended (7 CFR Part 915), for the handling of avocados between

the production area and any point outside thereof;

(2) On and after the effective date of this regulation, except as otherwise provided in subparagraphs (8) and (9) of this paragraph, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, and thereafter each such variety shall be handled only in conformance with subparagraphs (3), (4), (5), (6), and (7) hereof;

(3) From the date listed for the respective variety in Column 2 of Table I to the date listed for the respective variety in Column 4 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 3 of such table or is of at least the diameter specified for such variety in said Column 3;

(4) From the date listed for the respective variety in Column 4 of Table I to the date listed for the respective variety in Column 6 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 5 of such table or is of at least the diameter specified for such variety in said Column 5;

(5) From the date listed for the respective variety in Column 6 of Table I to the date listed for the respective variety in Column 8 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 7 of such table or is at least the diameter specified for such variety in said Column 7;

(6) Except as otherwise provided in subparagraphs (8) and (9) of this paragraph, varieties of the West Indian type of avocados not listed in Table I shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to June 30, 1980.

(ii) From June 30, 1980, through July 27, 1980, the individual fruit in each lot of such avocados shall weigh at least 18 ounces.

(iii) From July 28, 1980, through August 31, 1980, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iv) From September 1, 1980, through September 28, 1980, individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(7) Except as otherwise provided in subparagraphs (8) and (9) of this paragraph, varieties of avocados not covered by subparagraphs (2) through (6) hereof shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to September 15, 1980.

(ii) From September 15, 1980, through October 12, 1980, the individual fruit in each lot of such avocados shall weigh at least 15 ounces.

(iii) From October 13, 1980, through December 14, 1980, the individual fruit in each lot of such avocados shall weigh at least 13 ounces.

(8) Notwithstanding the provisions of subparagraphs (2) through (7) hereof regarding the minimum weight or diameter for individual fruit, up to 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided,* That such avocados weigh not more than two ounces less than the applicable specified weight for the particular variety as prescribed in Columns 3, 5, or 7 of Table I or in subparagraphs (6), and (7) of this paragraph. Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(9) The provisions of subparagraphs (2) through (8) of this paragraph shall not apply to any variety, except the Linda variety, of avocados which, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color normal for that fruit when mature.

Table I

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Kosel	May 26, 1980	16 oz	June 9, 1980	13 oz	June 23, 1980		
Arue	May 26, 1980	16 oz	June 9, 1980	14 oz, 3 3/16 in	July 14, 1980		
Roland 2-2	June 9, 1980	22 oz	June 23, 1980	20 oz	July 14, 1980		
J. M. Poropat	June 16, 1980	20 oz	June 23, 1980	18 oz	July 14, 1980	16 oz	July 28, 1980.
Fuchs	June 16, 1980	14 oz, 3 3/16 in	June 30, 1980	12 oz, 3 3/16 in	July 14, 1980		
Dr. DuPuis #2	June 16, 1980	16 oz, 3 3/16 in	June 30, 1980	14 oz, 3 3/16 in	July 14, 1980	12 oz, 3 3/16 in	July 28, 1980.
K-5	June 23, 1980	18 oz, 3 3/16 in	July 7, 1980	14 oz, 3 3/16 in	July 21, 1980		
Hardee	June 30, 1980	16 oz, 3 3/16 in	July 7, 1980	14 oz, 2 13/16 in	July 28, 1980		
Pollock	June 30, 1980	18 oz, 3 1/16 in	July 14, 1980	16 oz, 3 3/16 in	July 28, 1980	14 oz, 3 3/16 in	Aug. 11, 1980.
Simmonds	June 30, 1980	16 oz, 3 3/16 in	July 14, 1980	14 oz, 3 3/16 in	July 28, 1980	12 oz, 3 3/16 in	Aug. 11, 1980.
Nadir	June 30, 1980	14 oz, 3 3/16 in	July 7, 1980	12 oz, 3 3/16 in	July 14, 1980	10 oz, 2 13/16 in	July 28, 1980.
Katherine	June 30, 1980	16 oz	July 14, 1980	14 oz	July 28, 1980		
Haile	June 30, 1980	20 oz	July 14, 1980	16 oz	July 21, 1980	14 oz	Aug. 11, 1980.
Donnie	July 7, 1980	16 oz, 3 3/16 in	July 21, 1980	14 oz, 3 3/16 in	Aug. 18, 1980		
Ruehle	July 14, 1980	18 oz, 3 1/16 in	July 21, 1980	16 oz, 3 3/16 in	July 28, 1980	14 oz, 3 3/16 in	
Ruehle					Aug. 11, 1980	12 oz, 3 3/16 in	Aug. 25, 1980.
Dawn	July 14, 1980	12 oz, 3 3/16 in	July 28, 1980	10 oz, 3 3/16 in	Aug. 11, 1980		
Webb-2	July 14, 1980	18 oz	July 28, 1980	16 oz	Aug. 11, 1980		
Cash	July 14, 1980	16 oz	Sept. 29, 1980				
Alpha	July 21, 1980	16 oz, 3 3/16 in	Aug. 11, 1980				
Biondo	July 21, 1980	13 oz	Aug. 25, 1980				
Peterson	July 21, 1980	14 oz, 3 3/16 in	Aug. 4, 1980	10 oz, 3 3/16 in	Aug. 18, 1980		
232	July 28, 1980	14 oz	Aug. 11, 1980	12 oz	Aug. 25, 1980		
Gretchen	July 28, 1980	14 oz	Aug. 11, 1980	12 oz	Aug. 25, 1980		
Trapp	July 28, 1980	14 oz, 3 15/16 in	Aug. 11, 1980	12 oz, 3 3/16 in	Aug. 25, 1980		
B&B	July 28, 1980	16 oz, 3 3/16 in	Sept. 1, 1980				
Pinelli	July 28, 1980	18 oz, 3 13/16 in	Aug. 11, 1980	16 oz, 3 15/16 in	Aug. 25, 1980		
Miguel	July 28, 1980	22 oz, 3 13/16 in	Aug. 11, 1980	20 oz, 3 13/16 in	Aug. 25, 1980	18 oz, 3 15/16 in	Sept. 8, 1980.
Nesbitt	July 28, 1980	22 oz, 3 13/16 in	Aug. 11, 1980	18 oz, 3 3/16 in	Aug. 18, 1980	16 oz, 3 3/16 in	Sept. 1, 1980.
Chapple	July 28, 1980	18 oz	Aug. 25, 1980				
Waldin	Aug. 11, 1980	16 oz, 3 3/16 in	Aug. 25, 1980	14 oz, 3 3/16 in	Sept. 8, 1980	12 oz, 3 3/16 in	Sept. 22, 1980.
Millie-D	Aug. 11, 1980	18 oz	Sept. 8, 1980				

Table I—Continued

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Shula	Aug. 11, 1980	22 oz	Sept. 1, 1980				
Tonnage	Aug. 11, 1980	16 oz, 3 9/16 in	Aug. 25, 1980	14 oz, 3 9/16 in	Sept. 1, 1980	12 oz, 3 9/16 in	Sept. 8, 1980.
Beta	Aug. 11, 1980	18 oz, 3 9/16 in	Aug. 18, 1980	16 oz, 3 9/16 in	Sept. 8, 1980		
K-9	Aug. 11, 1980	16 oz	Sept. 1, 1980				
Gorham	Aug. 11, 1980	29 oz, 4 5/16 in	Aug. 25, 1980	27 oz, 4 5/16 in	Sept. 8, 1980		
Tower-2	Aug. 11, 1980	14 oz, 3 9/16 in	Aug. 25, 1980	12 oz, 3 9/16 in	Sept 15, 1980		
The Franvee	Aug. 18, 1980	23 oz	Sept. 15, 1980				
Lisa	Aug. 18, 1980	12 oz, 3 9/16 in	Aug. 25, 1980	11 oz, 3 9/16 in	Sept 1, 1980		
Fairchild	Aug. 25, 1980	16 oz, 3 19/16 in	Sept. 8, 1980	14 oz, 3 7/16 in	Sept 22, 1980	12 oz, 3 9/16 in	Sept. 29, 1980.
Nirody	Aug. 25, 1980	18 oz, 3 15/16 in	Sept. 8, 1980	16 oz, 3 13/16 in	Sept. 22, 1980		
Loretta	Aug. 25, 1980	28 oz, 4 1/16 in	Oct. 6, 1980				
Catalina	Aug. 25, 1980	24 oz	Sept. 8, 1980	22 oz	Sept. 29, 1980		
Booth 8	Sept. 8, 1980	16 oz, 3 9/16 in	Sept. 29, 1980	14 oz, 3 9/16 in	Oct. 13, 1980	10 oz, 3 1/16 in	Oct. 27, 1980.
Black Prince	Sept. 8, 1980	23 oz, 3 11/16 in	Sept. 22, 1980	16 oz, 3 9/16 in	Oct. 13, 1980		
Blair	Sept. 8, 1980	16 oz, 3 9/16 in	Sept. 22, 1980	14 oz, 3 9/16 in	Oct. 13, 1980		
Booth 7	Sept. 8, 1980	18 oz, 3 13/16 in	Sept 22, 1980	16 oz, 3 15/16 in	Oct. 6, 1980	14 oz, 3 9/16 in	Oct. 20, 1980.
Csonka	Sept. 15, 1980	22 oz	Oct. 13, 1980				
Brooks 1978	Sept. 15, 1980	12 oz	Sept. 22, 1980	10 oz	Sept. 29, 1980	8 oz	Oct. 20, 1980.
Booth 5	Sept. 15, 1980	14 oz, 3 9/16 in	Sept 29, 1980	12 oz, 3 9/16 in	Oct. 13, 1980		
Marcus	Sept. 15, 1980	32 oz, 4 13/16 in	Sept. 29, 1980	24 oz, 4 5/16 in	Nov. 10, 1980		
Collinson	Sept. 22, 1980	16 oz, 3 19/16 in	Oct. 20, 1980				
Chica	Sept. 22, 1980	12 oz, 3 1/16 in	Oct. 6, 1980	10 oz, 3 1/16 in	Oct. 20, 1980		
Rue	Sept. 22, 1980	30 oz, 4 3/16 in	Sept. 29, 1980	24 oz, 3 15/16 in	Oct. 13, 1980	18 oz, 3 9/16 in	Oct. 27, 1980.
Hickson	Sept. 22, 1980	12 oz, 3 1/16 in	Oct. 6, 1980	10 oz, 3 1/16 in	Oct. 20, 1980		
Simpson	Sept. 29, 1980	16 oz, 3 9/16 in	Oct. 20, 1980				
Vaca	Sept. 29, 1980	16 oz, 3 9/16 in	Oct. 20, 1980				
Sherman	Sept. 29, 1980	16 oz	Oct. 13, 1980	14 oz	Oct. 27, 1980	10 oz	Nov. 17, 1980.
Choquette	Sept. 29, 1980	24 oz, 4 1/16 in	Oct. 13, 1980	20 oz, 3 11/16 in	Oct. 27, 1980	16 oz, 3 9/16 in	Nov. 10, 1980.
Booth 10	Oct. 6, 1980	16 oz, 3 19/16 in	Nov. 3, 1980				
Avon	Oct. 6, 1980	15 oz, 3 11/16 in	Oct. 27, 1980				
Booth 11	Oct. 6, 1980	16 oz, 3 12/16 in	Oct. 27, 1980				
Leona	Oct. 6, 1980	18 oz, 3 19/16 in	Oct. 20, 1980				
Winslowson	Oct. 6, 1980	18 oz, 3 14/16 in	Oct. 27, 1980				
Nelson	Oct. 6, 1980	14 oz, 3 9/16 in	Oct. 20, 1980	12 oz, 3 9/16 in	Nov. 3, 1980	10 oz, 3 1/16 in	Nov. 24, 1980.
Hall	Oct. 6, 1980	26 oz, 3 11/16 in	Oct. 20, 1980	20 oz, 3 9/16 in	Nov. 3, 1980	18 oz, 3 9/16 in	Nov. 17, 1980.
Lula	Oct. 13, 1980	18 oz, 3 11/16 in	Oct. 27, 1980	14 oz, 3 9/16 in	Nov. 10, 1980	12 oz, 3 9/16 in	Nov. 24, 1980.
Herman	Oct. 13, 1980	16 oz, 3 9/16 in	Oct. 27, 1980	14 oz, 3 9/16 in	Nov. 10, 1980		
Murphy	Oct. 13, 1980	16 oz	Oct. 27, 1980	14 oz	Nov. 10, 1980	11 oz	Dec.1, 1980.
Ajax (B-7)	Oct. 20, 1980	18 oz, 3 14/16 in	Nov. 10, 1980				
Booth 3	Oct. 20, 1980	16 oz, 3 9/16 in	Oct. 27, 1980	14 oz, 3 9/16 in	Nov. 10, 1980		
Taylor	Oct. 20, 1980	14 oz, 3 9/16 in	Nov. 3, 1980	12 oz, 3 9/16 in	Nov. 17, 1980		
Dunedin	Nov. 3, 1980	16 oz, 3 19/16 in	Nov. 17, 1980	14 oz, 3 9/16 in	Dec. 1, 1980	10 oz, 3 1/16 in	Dec. 22, 1980.
Byars	Nov. 10, 1980	16 oz, 3 14/16 in	Dec. 1, 1980				
Monroe	Nov. 10, 1980	24 oz, 4 1/16 in	Nov. 24, 1980	20 oz, 3 14/16 in	Dec. 8, 1980	16 oz, 3 9/16 in	Dec. 22, 1980.
Linda	Nov. 10, 1980	18 oz, 3 15/16 in	Dec. 1, 1980				
Nabal	Nov. 10, 1980	14 oz, 3 9/16 in	Dec. 1, 1980				
Booth 1	Nov. 17, 1980	16 oz, 3 13/16 in	Dec. 1, 1980	12 oz, 3 9/16 in	Dec. 15, 1980		
Zio	Nov. 24, 1980	12 oz, 3 1/16 in	Dec. 8, 1980	10 oz, 2 15/16 in	Dec. 22, 1980		
Wagner	Dec. 1, 1980	12 oz, 3 9/16 in	Dec. 15, 1980	10 oz, 3 1/16 in	Dec. 29, 1980		
Schmidt	Dec. 1, 1980	16 oz	Dec. 29, 1980				
Meya	Dec. 22, 1980	13 oz, 3 9/16 in	Jan. 5, 1981	11 oz, 3 9/16 in	Jan. 19, 1981		
Brookslate	Dec. 29, 1980	14 oz, 3 9/16 in	Jan. 19, 1981	12 oz, 3 9/16 in	Feb. 2, 1981	10 oz	Feb. 16, 1981.
Itzamna	Feb.9, 1981	12 oz	Feb. 16, 1981				

(b) Terms used in the amended marketing order, when used herein, have the same meaning as is given to the respective term in said marketing order; the term "diameter" shall mean the greatest dimension measured at right angles to a straight line from the stem to the blossom end of the fruit; and the term "U.S. No. 3" shall have the same meaning as set forth in the United States standards for Florida Avocados (7 CFR 2851.3050–2851.3069).

(c) The provisions of this regulation shall become effective May 30, 1980.

§ 944.20 Avocado Import Regulation 28.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any avocados is prohibited during the period June 2, 1980, through April 30, 1981, unless such avocados meet the following minimum grade and maturity requirements:

(1) All avocados imported during the period June 2, 1980, through April 30, 1981, shall grade not less than U.S. No. 3.

(2) Avocados of the Pollock variety shall not be imported (i) prior to June 30, 1980; (ii) from June 30, 1980, through July 13, 1980, unless the individual fruit in each lot of such avocados weighs at least 18 ounces or measures at least 3 11/16 inches in diameter; (iii) from July 14, 1980, through July 27, 1980, unless the individual fruit in each lot of such avocados weighs at least 16 ounces or measures at least 3 7/16 inches in diameter; and (iv) from July 28, 1980, through August 10, 1980, unless the individual fruit in each lot of such avocados weighs at least 14 ounces or measures at least 3 9/16 inches in diameter.

(3) Avocados of the Catalina variety shall not be imported (i) prior to August 25, 1980, (ii) from August 25, 1980, through September 7, 1980, unless the individual fruit in each lot of such avocados weighs at least 24 ounces; and (iii) from September 8, 1980, through September 28, 1980, unless the individual fruit in each lot of such avocados weighs at least 22 ounces.

(4) Avocados of the Trapp variety shall not be imported (i) prior to July 28, 1980; (ii) from July 28, 1980, through August 10, 1980, unless the individual fruit in each lot of such avocados weighs at least 14 ounces or measures at least 3 19/16 inches in diameter; and (iii) from August 11, 1980, through August 24, 1980, unless the individual fruit in each lot of such avocados weighs at least 12 ounces or measures at least 3 7/16 inches in diameter.

(5) Avocados of any variety other than Pollock, Catalina, and Trapp varieties, of the West Indian varieties not listed elsewhere in this regulation, shall not be imported (i) prior to June 30,

1980; (ii) from June 30, 1980, through July 27, 1980, unless the individual fruit in each lot of such avocados weighs at least 18 ounces; (iii) from July 28, 1980, through August 31, 1980, unless the individual fruit in each lot of such avocados weighs at least 16 ounces; (iv) from September 1, 1980, through September 28, 1980, unless the individual fruit in each lot of such avocados weighs at least 14 ounces: *Provided,* That any lot of such avocados may be imported without regard to the date or minimum weight requirements of this paragraph if such avocados, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color normal for that fruit when mature.

(6) Avocados of any variety of the Guatemalan type, including hybrid type seedlings, unidentified Guatemalan and hybrid varieties, and Guatemalan and hybrid varieties not listed elsewhere in the regulation shall not be imported (i) prior to September 15, 1980; (ii) from September 15, 1980, through October 12, 1980, unless the individual fruit in each lot of such avocados weighs at least 15 ounces; and (iii) from October 13, 1980, through December 14, 1980, unless the individual fruit in each lot of such avocados weighs at least 13 ounces.

(7) Notwithstanding the provisions of subparagraphs (2) through (6) of this paragraph regarding the minimum weight or diameter for individual fruit, not to exceed 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified and be less than the specified diameter: *Provided,* That such avocados weigh not over 2 ounces less than the applicable specified weight for the particular variety specified in such subparagraphs. Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Certification (7 CFR 944.400).

(c) Notwithstanding any other provisions of this regulation, any importation of avocados which, in the aggregate, does not exceed 55 pounds may be imported without regard to the restrictions specified herein.

(d) It is hereby found that the application of the maturity restrictions being imposed, pursuant to Order No. 915 (7 CFR Part 915), upon avocados grown in south Florida to imported avocados, other than of the Pollick, Catalina, and Trapp varieties is not practicable because of variations in characteristics between the domestic and imported avocados; and the maturity restrictions applicable to imported avocados other than of the Pollock, Catalina, and Trapp varieties are comparable to those imposed upon the domestic commodity. The quality restrictions for all imported avocados and the maturity restrictions for imported avocados of the Pollock, Catalina, and Trapp varieties are the same as those being imposed upon the domestic commodity.

(e) No provisions of this section shall supersede the restrictions or prohibitions on avocados under the Plant Quarantine Act of 1912.

(f) Nothing contained in this section shall be deemed to preclude any importer from reconditioning, prior to importation, any shipment of avocados for the purpose of making it eligible for importation.

(g) The terms relating to grade, as used herein, shall have the same meaning as when used in the United States Standards for Florida Avocados (7 CFR 2851.3050–2851.3069). "Diameter" shall mean the greatest dimension measured at right angles to a straight line from the stem to the blossom end of the fruit. "Importation" means release from custody of the United States Customs Service.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 23, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80–16370 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 953

Irish Potatoes Grown in the Southeastern States; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of potatoes grown in designated counties of Virginia and North Carolina to be inspected and meet minimum grade and size requirements. The regulation is needed to promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: June 5, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter (202) 447–2615.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR Part 953), regulate the handling of potatoes grown in designated counties of Virginia and North Carolina. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Southeastern Potato Committee, established under the order, is responsible for its local administration.

Notice of rulemaking was published in the May 6, 1980, **Federal Register** (45 FR 29846). The notice afforded interested persons through May 21, 1980, to file written comments on the proposal. None was filed.

This regulation is based upon recommendations made by the committee at its public meeting in Norfolk, Virginia, on April 10, 1980.

These grade and size requirements are the same as those issued for the production area during past seasons. They are necessary to prevent potatoes of low quality or undesirable sizes from being distributed to fresh market outlets. The requirements will benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Exceptions are provided when certain of these requirements would be inappropriate or unreasonable.

Shipments to certain special purpose outlets need not meet the grade, size, and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Shipments for use as livestock feed are exempt because requirements for this outlet differ from those for fresh market. Since no purpose would be served by regulating potatoes used for charity, such shipments also are exempt. Also, potatoes for most processing uses

are exempt under the legislative authority for this part.

Again this season the minimum quantity exempt from inspection requirements is five hundredweight. This should relieve any burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

After consideration of all relevant matters, including the proposal in the notice, it is found that the following handling regulation will tend to effectuate the declared policy of the act by setting the minimum grade, size and inspection requirements which the Secretary has found should be maintained for orderly marketing.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date of June 5, 1980, (2) to maximize benefits to producers, the regulation should apply to as many shipments as possible during the marketing season, and (3) handlers under this part should be able to complete by June 5, 1980, all preparations to comply with the regulation, which is similar to those of previous marketing seasons.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." A Final Impact Analysis has been prepared and is available upon request from Charles W. Porter (202) 447–2615.

Section 953.319 (44 FR 29642, May 21, 1979) is hereby terminated and § 953.320 is added. The regulation is as follows:

§ 953.320 Handling regulation.

During the period June 5 through July 31, 1980, no person shall ship any potatoes produced in the production area unless such potatoes meet the requirements of paragraphs (a) and (b) of this section or unless such potatoes are handled in accordance with paragraphs (c) and (d), or (e) of this section.

(a) *Minimum grade and size requirements.* All varieties U.S. No. 2, or better grade, 1½ inches (38.1 mm) minimum diameter.

(b) *Inspection.* Except as provided in paragraphs (c) and (e) of this section, no handler shall ship any potatoes unless the Federal-State Inspection Service has issued an inspection certificate covering them and the certificate is valid at the time of shipment.

(c) *Special purpose shipments.* The grade, size, and inspection requirements set forth in paragraphs (a) and (b) of this section shall not apply to potatoes shipped for canning, freezing, "other processing" as defined under paragraph (f) of this section, livestock feed, or charity, except that the handler of the potatoes shall comply with the safeguard requirements of paragraph (d) of this section.

(d) *Safeguards.* Each handler shipping potatoes for canning, freezing, "other processing," livestock feed, or charity in accordance with paragraph (c) of this section shall:

(1) Notify the committee about the potatoes intended for such a special purpose by applying on a committee form for a Certificate of Privilege;

(2) Obtain an approved Certificate of Privilege;

(3) Prepare on a committee form a special purpose shipment report for each such shipment; and

(4) Forward copies of each special purpose shipment report to the committee office and to the receiver with instructions that each receiver sign and return a copy to the committee office. Failure of the handler or receiver to report all such shipments by promptly signing and returning each special purpose shipment report to the committee office shall be cause for suspension of the Certificate of Privilege allowing such special purpose shipments.

(e) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed five hundredweight of potatoes any day without regard to the inspection requirements of this part, but this exception shall not apply to any portion of a shipment that exceeds five hundredweight of potatoes.

(f) *Definitions.* The term "U.S. No. 2" means the same as when used in the U.S. Standards for Grades of Potatoes as amended (7 CFR 2851.1540–2851.1566), including the tolerances set forth in it. The term "other processing" means the same as when used in the act as amended, in which it is specified as the preparation of potatoes for market involving the application of heat or cold to such an extent that the natural form or stability of the potatoes is substantially changed. This includes use of potatoes for dehydration, chips, shoestrings, starch, and flour. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section have the same meanings as when used in Marketing Agreement No. 104 and this part, both as amended.

(g) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the round white type imported during the effective period of this section shall meet the grade, size, quality, and maturity requirements specified in paragraph (a) of this section.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674))

Dated May 23, 1980, to become effective June 5, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-16432 Filed 5-29-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1036

[Milk Order No. 36; Docket No. AO-179-A44]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changing present order provisions is based on industry proposals which were considered at a public hearing held August 14–16, 1979. The amendments change the funding rate for the advertising and promotion program from a fixed 5 cents per hundredweight to 0.75 percent of the producers' pay price in the market. Producers who do not want to participate in the program would submit one refund request per year instead of one for each calendar quarter. Refunds would be made on a monthly basis rather than quarterly. Another amendment would eliminate the channeling of a handler's payments to individual producers through the market administrator's office if the handler is not delinquent with respect to any payment obligation under the order. Also, the late payment charge on any overdue payment obligation of a handler would be due to the administrative expense fund. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

EFFECTIVE DATE: The order provisions set forth herein shall become effective July 1, 1980, except that the provisions amending § 1036.120 and the new paragraphs (e) and (f) of § 1036.121 shall become effective on June 1, 1980.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: issued July 20, 1979; published July 26, 1979 (44 FR 43735). Recommended Decision: issued March 14, 1980; published March 20, 1980 (45 FR 18013). Extension of Time for Filing Exceptions: issued April 4, 1980; published April 9, 1980 (45 FR 24167). Final Decision: issued May 5, 1980; published May 9, 1980 (45 FR 30638).

FINDINGS AND DETERMINATIONS: The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennyslvania marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order partially effective not later than June 1, 1980. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Program Operations, was issued March 14, 1980, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued May 5, 1980. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order partially effective not later than June 1, 1980, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interest of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the order except for the advertising and promotion program, is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(4) The issuance of the order amending the order relative to provisions of the advertising and promotion program is approved or favored by a least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1036.31, the introductory text of paragraph (a) is revised to read as follows:

§ 1036.31 Payroll reports.

(a) On or before the 18th day after the end of each month, each handler who pays producers pursuant to § 1036.73(a) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

* * * * *

2. In § 1036.32, the introductory text of paragraph (a) and the introductory text of paragraph (c) are revised to read as follows:

§ 1036.32 Other reports.

(a) On or before the 22nd day of each month each delinquent handler pursuant to § 1036.73(c) shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

* * * * *

(c) On or before the 8th day after the end of each month, each delinquent handler (pursuant to § 1036.73(c)), shall report to the market administrator the following information with respect to receipts of milk during such month.

* * * * *

3. Section 1036.61 is revised to read as follows:

§ 1036.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports prescribed by § 1036.30 for the month and who were not in default of payments to the market administrator pursuant to § 1036.71 for the preceding month;

(b) Deduct the amount of the plus location adjustments and add the amount of the minus location adjustments which are applicable pursuant to § 1036.75;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price".

(f) For the months of January through March and August, subtract from the weighted average price computed in paragraph (e) of this section the withholding rate for the Advertising and Promotion program as computed in § 1036.121(e). The result shall be the "uniform price" for the applicable month.

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(h) From the remaining amount in paragraph (g) of this section subtract for each of the months of April through July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (d)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(i) To the remaining amount in paragraph (g) of this section add for each of the months of September, October and November one-fourth of the total amount subtracted pursuant to paragraph (h) of this section and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(j) Divide the resulting sum by the hundredweight of producer milk included in these computations;

(k) Subtract the withholding rate for the Advertising and Promotion program as computed in § 1036.121(e); and

(l) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers for the applicable month.

4. In § 1036.70, paragraph (a) is revised to read as follows:

§ 1036.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "Producer-settlement fund", into which he shall deposit the payments made by handlers pursuant to §§ 1036.71, 1036.76 and 1036.77 and from which he shall make all payments pursuant to §§ 1036.72, 1036.73 and 1036.77.

* * * * *

5. In § 1036.71, paragraphs (a), (b), (c) and (d) are revised to read as follows:

§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler operating a pool plant shall pay to the market administrator on or before the day prior to the last day of each month an amount determined by multiplying the Class III price for the preceding month (adjusted by the butterfat differential, if the handler so elects) by the following receipts during the first 15 days of such month:

(1) Producer milk from producers whose payments are authorized to be collected by a cooperative association;

(2) Bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association; and

(3) Milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant.

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1036.60(a) as adjusted by the butterfat differential specified in § 1036.74 and pursuant to § 1036.60(b) through (e), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments to be made pursuant to § 1036.73(a) and (c) for producer milk received during such month; and

(3) The value at the weighted average price applicable at the location of the plants from which received with respect to other source milk for which a value is computed pursuant to § 1036.60(e).

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1036.42 by the applicable class price, as adjusted by the butterfat differential specified in § 1036.74, less any payment made by the handler pursuant to paragraphs (a) (2) and (3) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1036.73(b).

* * * * *

6. Add a new § 1036.72 to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value at the uniform price, as adjusted pursuant to § 1036.75 of such handler's receipts or producer milk.

7. In § 1036.73, paragraphs (a) through (d) are revised to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, each handler shall make payment to each producer (whose payments are not authorized to be collected by a cooperative association) as follows:

(1) On or before the last day of the month, to each producer who has not discontinued delivery of to such handler, not less than the amount determined by multiplying the pounds of producer milk received from such producer during the first 15 days of the month by the Class III price for the preceding month, less proper deductions authorized by the producer; and

(2) On or before the 18th day after the end of the month, to each producer not less than the amount determined by multiplying the pounds of producer milk

received from such producer during the month by the uniform price as adjusted pursuant to §§ 1036.74 and 1036.75, less the following amounts;

(i) The payment made pursuant to paragraph (a)(1) of this section for such month;

(ii) Proper deductions authorized by the producer;

(iii) Any marketing service deduction pursuant to § 1036.86; and

(iv) If before such date the handler has not received full payment from the market administrator pursuant to § 1036.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this section following the date on which the remaining payment is received from the market administrator.

(b) Subject to paragraphs (e) and (f) of this section, the market administrator shall pay to each cooperative association:

(1) On or before the last day of each month for milk for which payment pursuant to § 1036.71(a) has been received by the market administrator; and

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be at the applicable uniform price for the month, subject to the following adjustments:

(i) Any applicable adjustments pursuant to §§ 1036.74 and 1036.75; and

(ii) Less the payments made pursuant to paragraph (b)(1) of this section.

(c) Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to make payments directly to producers for its receipts of producer milk pursuant to paragraph (a) of this section. Any such payments due producers (except any amount due pursuant to § 1036.72) shall be made to the market administrator on or before the day prior to the dates specified in paragraph (a) of this section. The market administrator shall, in turn, pay such producers the amounts so received from the handler plus any amounts due such producers pursuant to § 1036.72. This payment arrangement shall be followed until the handler has met all prescribed payment obligations for three consecutive months.

(d) In making payments to producers pursuant to paragraphs (a) and (c) of this section each producer shall be furnished the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

* * * * *

§ 1036.76 [Amended]

8. In § 1036.76(b)(4), the words "plus 5 cents" are deleted.

9. Section 1036.78 is revised to read as follows:

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.73, 1036.76, 1036.77, 1036.85, and 1036.86 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

§ 1036.85 [Amended]

10. In the introductory text of § 1036.85, the term "16th" is changed to "17th".

11. Section 1036.86 is revised to read as follows:

§ 1036.86 Deductions for marketing services.

(a) Except as set forth in paragraphs (b) and (c) of this section, each handler or the market administrator in making payments to producers pursuant to § 1036.73 (a) and (c) shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk of such producer (except a handler's own-farm production) and shall pay such deductions to the market administrator not later than the 17th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section and for whom the cooperative is not authorized to collect payment for milk, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers, and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

(c) In the case of producers for whom a cooperative association is not performing the services set forth in paragraph (a) but for whom the cooperative association is collecting payment for milk pursuant to § 1036.73(b) the market administrator shall make the deduction and perform the services specified in paragraph (a) of this section.

§ 1036.120 [Amended]

12. In § 1036.120, paragraphs (b), (c) and (d) are revised to read as follows:

* * * * *

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of June, September, December, March for milk to be marketed from the first of the immediately following month through the following June 30th.

(c) A dairy farmer who first acquires producer status under this part may, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld for the period through the following June 30th and if producer status is first acquired in June such producer shall be eligible for a refund on all marketings during June and the following 12-month period. Eligibility for refund under this paragraph shall not apply to a person who was a producer under a Federal order under which the same refund notification period applied and such person did not appropriately submit a refund application during such period.

(d) A producer who has appropriately filed request for refund of advertising and promotion program assessments on his marketings of milk under another Federal order shall be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk under this order against which an assessment is withheld until the opportunity exists for such producer to request a refund pursuant to paragraph (b) of this section.

13. In § 1036.121, the introductory text of paragraph (b) and paragraph (b)(2) and (3) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1036.121 Duties of the market administrator.

* * * * *

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1036.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

* * * * *

(e) As soon as possible after April of each year, compute the rate of withholding by multiplying the simple average of the uniform prices for the 12-month period ending April 30 by 0.0075 and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with July of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674

Effective date: The order provisions set forth herein shall become effective July 1, 1980, except that the provisions amending § 1036.120 and the new paragraphs (e) and (f) of § 1036.121 shall become effective on June 1, 1980.

Signed at Waashington, D.C., on May 27, 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing Services.

[FR Doc. 80-16524 Filed 5-29-80; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations to permit cattle from brucellosis certified free provinces of Canada to enter the United States on a similar basis as now provided for cattle from Canadian brucellosis certified free herds. The effect of this action is to allow cattle originating from provinces certified by Canadian Health of Animals authorities as free of brucellosis to enter the United States under less restrictive brucellosis requirements than are now presently provided.

EFFECTIVE DATE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, MD 20782 (310) 436–8170. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Program Services Staff, Room 870, Federal Building, Hyattsville, MD 20782; 301–436–8695.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant". On Tuesday, January 15, 1980, there was published in the **Federal Register** (45 FR 2849–2852) a proposed amendment to the regulations (Title 9, Code of Federal Regulations, Part 92) concerning the importation of cattle from provinces certified by the Canadian authorities as free of brucellosis.

A 30 day comment period was provided for receipt of comments which expired February 14, 1980. A total of two comments were received by the Department both of which endorsed the proposal. After due consideration of the two comments received, the Department has decided to publish the regulations as a final rule essentially as proposed, except to correct typographical errors, make minor editorial changes and to correct an inadvertent omission of part of redesignated § 92.20(c)(3). In the supplementary information of the proposal, the Department stated that present § 92.20(c)(2) would be redesignated § 92.20(c)(3). This paragraph was redesignated as indicated in the supplementary information. However, the Department inadvertently omitted the words "showing them to be such range cattle of the beef breeds and that they have been tested for brucellosis with negative results within 30 days preceding their offer for entry" from the test of redesignated § 92.20(c)(3) published in the **Federal Register** on January 15, 1980. This final rule corrects this error by placing the inadvertently omitted words into redesignated § 92.20(c)(3).

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended in the following respects:

1. In § 92.1, paragraph (r) is amended and paragraphs (v) and (w) are added to read:

§ 92.1 Definitions.

* * * * *

(r) *Brucellosis certified free herd.* A herd in which all eligible cattle in the herd were negative to brucellosis tests under the Canadian requirements and which is officially certified by the Canadian Government as a brucellosis free listed herd.

* * * * *

(v) *Brucellosis certified free provinces of Canada.* New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland (including Labrador), and British Columbia, known in Canada as brucellosis accredited free provinces.

(w) *Herd.* Any group of animals maintained on common ground for any purpose, or two or more groups of animals of the same species under common ownership or supervision, which are geographically separated, but among which there is an interchange or movement of animals without regard to health status.

2. In § 92.20(c) the first sentence of subparagraph (1) is deleted and the following inserted in lieu thereof:

§ 92.20 Cattle from Canada.

* * * * *

(c) * * *

(1) Cattle from herds designated as brucellosis certified free herds by the Canadian Government must comply with the provisions of this paragraph, paragraph (c)(2), paragraph (c)(4), or paragraph (c)(6) of this section to be imported into the United States. To comply with the provisions of this paragraph, such cattle must be

accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government.

* * * * *

3. In § 92.20(c), the reference to "paragraph (c)(2)" in the last sentence of subparagraph (c)(1) is changed to "paragraph (c)(3)."

4. In § 92.20(c) present subparagraphs (2), (3), (4), (5), and (6), are redesignated subparagraphs (3), (4), (5), (6), and (7), respectively, and a new subparagraph (2) is added to read:

* * * * *

(c) * * *

(2) Cattle from brucellosis certified free provinces of Canada must comply with the provisions of this paragraph, paragraph (c)(1), paragraph (c)(3), paragraph (c)(4), or paragraph (c)(6) of this section to be imported into the United States. To comply with the provisions of this paragraph, such cattle must be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government. The certificate shall show that the cattle originated from brucellosis certified free province of Canada, that the cattle imported have been tested for brucellosis with negative results within 30 days prior to their date of entry, and that the cattle originated from a herd that has been maintained as a herd unit for at least 1 year prior to their exportation. A herd unit is a herd in which all the cattle were born and raised within the herd or were moved directly from another herd located within the brucellosis certified free provinces of Canada, or were moved directly from a brucellosis certified free herd in accordance with Canadian requirements for movement into brucellosis certified free provinces of Canada. If any cattle in any herd show a positive reaction to a brucellosis agglutination test at any time, cattle from the herd shall not be imported into the United States unless, after such test, the cattle to be imported and the herd are negative to a brucellosis agglutination test and the cattle to be imported are accompanied by a certificate in accordance with this paragraph or the herd is designated by the Canadian Government as a brucellosis certified free herd. Cattle to be imported into the United States from brucellosis certified free provinces of Canada shall be (A) shipped entirely within the boundaries of the brucellosis certified free provinces of Canada from the farm of origin directly to the United States ports of entry of Houlton, Maine, Blaine, Sumas, Lyndon, and Oroville, Washington, and Eastport, Idaho; or (B) such cattle shall be shipped in a vehicle sealed with Canadian Government seals. If the cattle to be imported are shipped in sealed vehicles, the seal numbers shall be recorded on the certificate, and the seals may only be broken by a United States port veterinarian at the United States port of entry.

* * * * *

5. In § 92.20(c), the first sentence of redesignated subparagraph (3) is deleted and the following inserted in lieu thereof.

* * * * *

(c) * * *

(3) Cattle of the beef breeds raised under range conditions in the western provinces of Canada must comply with the provisions of this paragraph, paragraph (c)(2), paragraph (c)(4), or paragraph (c)(6) of this section to be imported into the United States. To comply with the provisions of this paragraph, such cattle must be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government showing them to be such range cattle of the beef breeds and that they have been tested for brucellosis with negative results within 30 days preceding their offer for entry.

6. In § 92.20(c), the first sentence of redesignated subparagraph (4) is deleted and the following inserted in lieu thereof.

* * * * *

(c) * * *

(4) All cattle imported from Canada must comply with the provisions of this paragraph, paragraph (c)(1), paragraph (c)(2), paragraph (c)(3), or paragraph (c)(6) of this section to be imported into the United States. To comply with the provisions of this paragraph, cattle must be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government showing that the cattle originated from a herd which is officially certified by the Canadian Government as a brucellosis qualified for export herd.

7. In § 92.20(c), the reference to "paragraphs (c)(1), (2), and (3)(i)", in the last sentence of redesignated subparagraph (4)(i) are changed to "paragraphs (c)(1), (3), and (4)(i)".

8. In § 92.20(c), the references to "paragraph (c)(3)(i)" in redesignated subparagraph (4)(ii) are changed to "paragraph (c)(4)(i)".

9. In § 92.20(c), the reference to "paragraph (c)(5)" in redesignated subparagraph (5) is changed to "paragraph (c)(6)".

10. In § 92.20(c), the reference to "paragraphs (c)(1), (2), and (3)(i)" in the first sentence of redesignated subparagraph (6) is changed to "paragraphs (c)(1), (2), (3), and (4)(i)".

11. In § 92.20(c), redesignated subparagraph (7) is amended to read:

* * * * *

(c) * * *

(7) All cattle to be imported from Canada which originate from a brucellosis certified free herd, a brucellosis certified free province of Canada or a brucellosis-qualified for export herd shall move directly to the United States port of entry without contact with cattle which are not from a brucellosis certified free herd or a brucellosis certified free province of Canada or a brucellosis-qualified for export herd.

* * * * *

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (21 U.S.C. 111, 134a, 134b, 134c, and 134f); 37 FR 28464, 28477, 38 FR 19141)

Done at Washington, D.C., this 21st day of May 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-16462 Filed 5-29-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

[Docket No. ERA-R-80-13]

General Allocation and Price Rules; Normal Business Practices Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the Normal Business Practices Rule in § 210.62(a) of the General Allocation and Price Rules in light of a regulation adopted by the Federal Reserve Board. This amendment provides that the rule prohibiting suppliers from imposing more stringent credit terms or payment schedules on purchasers than those in effect during the base period (for seasonal credit) or on May 15, 1973 (for other credit terms) shall not apply to the extent that the Federal Reserve Board provides for different terms of credit pursuant to its authority to regulate extensions of credit under the Credit Control Act of 1969.

EFFECTIVE DATE: April 2, 1980.

FOR FURTHER INFORMATION CONTACT:

William F. Funk or Sue D. Sheridan, Office of General Counsel, Department of Energy, 1000

Independence Avenue, S.W., Room 6A–127, Washington, D.C. 20585 (202) 252–6754.
William Webb, Office of Public Information, Department of Energy 2000 M Street, N.W., Room B–110, Washington, D.C. 20461 (202) 653–4055.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendment Adopted
III. Procedural Requirements

I. Background

Section 210.62(a) of the Department of Energy's General Allocation and Price Rules (10 CFR 210.1 *et seq.*), titled "Normal Business Practices", among other things currently states that suppliers of petroleum products are prohibited from imposing more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser during the base period (for seasonal credit) or on May 15, 1973 (for other credit terms).

On March 14, 1980, the Federal Reserve Board (Board) adopted a consumer credit restraint program that requires certain creditors to maintain a special deposit in a Federal Reserve bank if their consumer credit increases above a certain amount. The intent of this program was to create a financial incentive for these creditors to restrain their credit extensions. Gasoline company credit cards were specifically mentioned by the Board in its release.

The Normal Business Practices rule, while not prohibiting the deposit required by the Board if suppliers' credit increased above the trigger amount, did prohibit suppliers subject to the rule from imposing more stringent credit terms to avoid the increased level of credit and consequently the need to make the deposit. Moreover, several States have laws establishing lengthy notice requirements before changes in credit terms or credit cards can be made.

Because DOE's rule and the State notice laws frustrated achievement of the goals of the March 14, 1980 regulation, the Board amended its regulations on April 2, 1980 to authorize three types of changes in credit terms by open-end consumer creditors "notwithstanding the provision of any other law." As reflected in the Board's preamble to this amendment, the Department of Energy interprets this amendment adopted pursuant to the Credit Control Act (12 U.S.C. 1091–1909) as implemented by Executive Order 12201, to supersede the Normal Business Practices rule to the extent the amendment is legally inconsistent with the rule.

On April 14, 1980 the Board made a change to its April 2 amendment, expanding its coverage to closed-end open accounts maintained by consumer creditors.

II. Amendment Adopted

As explained above, the Department of Energy interprets the Board's action as superseding the prohibition on stricter credit terms contained in § 210.62(a), to the extent that they are inconsistent. In order to reflect this interpretation in our regulations, we are adopting, effective April 2, 1980 an interpretative amendment to that section.

This amendment makes clear that the prohibition on stricter credit terms does not apply to those certain stricter credit terms expressly authorized by the Board. Stricter credit terms not authorized by the Board would still be prohibited by the Normal Business Practices rule. Moreover, other aspects of the Normal Business Practices rule, such as the requirement that credit terms are part of the May 15, 1973 price charged to a class of purchaser, remain in full effect.

We also intend to issue a notice of proposed rulemaking proposing further changes to the Normal Business Practices Rule. In particular, we are considering proposing a rule that would eliminate ERA's role in regulating retail credit practices. We believe it is appropriate to propose this action in view of the President's credit control initiatives designed to restrain the growth of consumer credit, and in view of our stated intention to decontrol motor gasoline as soon as market conditions allow. The Emergency Petroleum Allocation Act of 1973, as amended (EPAA), the statutory basis for controls, expires in September 1981. The proposed changes, therefore, may be viewed as an appropriate step towards the eventual elimination of controls on gasoline.

III. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of section 404(a) of the Department of Energy Act, we have referred this rule to the Federal Energy Regulatory Commission (FERC) for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. Following an opportunity to review this rule, the FERC has declined to determine that it may significantly affect any of its functions.

B. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. 93–275 as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment.

A copy of this rule was sent to the EPA Administrator. The Administrator commented that he does not foresee these actions having an unfavorable effect on the quality of the environment as related to the duties and responsibilities of the EPA.

C. National Environmental Policy Act

It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), (42 U.S.C. 4321 *et seq.* Pub. L. 91–190 as amended), and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

D. Section 501 of the DOE Act

Under section 501(c) of the DOE Act we are not bound by the prior notice and hearing requirements of subsections (b), (c) and (d) with respect to a rule upon our determination that no substantial issue of fact or law exists and that the rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Where no such substantial issue or impact is foreseen, the proposed rule may be promulgated in accordance with section 553 of Title 5, United States Code.

This amendment to § 210.62(a) raises no substantial issues of fact or law. Nor is the amendment likely to have a substantial impact on the Nation's economy, since it serves only to clarify the relationship that already exists between regulations adopted by the Federal Reserve Board and the § 210.62(a) of DOE's rules. Therefore, the amendment shall be promulgated in accordance with section 553 of Title 5, United States Code.

E. Section 553 of the Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act requires generally that a notice of proposed rulemaking be published in the **Federal Register**. In addition, section 553(d) requires generally that rules be published for at least 30 days prior to their effective date. The Act provides however, that these sections do not apply to interpretative rules. As noted previously, the amendment to § 210.62(a) is being adopted in order to clarify the impact of the Federal Reserve Board's recently adopted consumer credit regulations on the DOE Normal Business Practices rule. As such, this rule is interpretative in nature and is therefore exempt from the requirements of sections 553(b) and (d).

F. Executive Order 12044

Executive Order 12044 (43 FR 12661, March 23, 1978) requires the agencies subject to it to publish all proposed "significant" regulations for public comment for a minimum of 60 days. Section 2(e) of the Executive Order directs the agencies to establish criteria to identify which regulations are significant. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). The DOE procedures define "insignificant" regulations as those which are not expected to affect important policy concerns or to engage much public interest.

The amendment to § 210.62(a) is being adopted solely to clarify the relationship between the Federal Reserve Board's consumer credit regulations and the DOE Normal Business Practices rule. We do not expect this interpretative rule to engage much public interest.

We find, therefore, that this amendment to § 210.62(a) does not invoke the 60 day advance public comment requirement of Executive Order 12044.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we hereby amend Part 210 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., May 23, 1980.

Douglas G. Robinson,

Acting Administrator, Economic Regulatory Administration.

Section 210.62(a) is amended to read as follows:

§ 210.62 Normal business practices.

(a) Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter. "Summer fill" programs and other "dating" or seasonal credit programs are among the normal business practices which must be maintained by a supplier under this paragraph, if that supplier had such programs in effect during the base period. Credit terms other than those associated with seasonal credit programs are included as a part of the May 15, 1973 price charged to a class of purchaser under Part 212 of this Chapter. Nothing in this paragraph shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payments for allocated products, as customarily associated with that class of purchaser during the base period (for seasonal credit), or on May 15, 1973 (for other credit terms). However, except as otherwise expressly authorized by the Federal Reserve Board, no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser during the base period (for seasonal credit), or on May 15, 1973 (for other credit terms).

* * * * *

[FR Doc. 80-16486 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 526, 531, 544, 545, 561, and 563

[No. 80-328]

Federal Savings and Loan Associations and Institutions Amendments Concerning Borrowing

Dated: May 22, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The amendments liberalize and simplify limitations on borrowing by Federal savings and loan associations and institutions insured by the Federal Savings and Loan Insurance Corporation. The amendments are intended to provide greater authority and flexibility to borrow and issue securities, while continuing to assure that borrowing activity does not adversely affect the safety and soundness of insured institutions.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION, CONTACT: Dale Riordan, Director, Office of Policy and Economic Research (202–377–6750), Richard G. Marcis, Chief Economist (202–377–6752), Douglas P. Faucette, Senior Associate General Counsel (202–377–6410) or John R. Hall, Attorney (202–377–6466), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 79–541, dated October 25, 1979, the Federal Home Loan Bank Board proposed a revision of the regulations applicable to borrowing by Federal savings and loan associations and institutions insured by the Federal Savings and Loan Insurance Corporation.

Summary of the Proposal

The following changes were proposed: (1) Section 563.8 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.8) would be amended to authorize an insured institution to borrow in an amount up to 50 percent of its assets. Under existing regulations an insured institution's total borrowing may not exceed 50 percent of the total of its shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates ("savings").

(2) Total outside borrowing, i.e., borrowing from sources other than a Federal Home Loan Bank or state-chartered central reserve institution, by an insured institution would be authorized in an amount up to 20 percent of assets. Under existing regulations, general outside borrowing is limited to 10 percent of savings, with additional outside borrowing in the form of mortgage-backed bonds that meet the requirements of § 563.8–2 ("conforming mortgage-backed bonds") permitted in an amount up to an additional 5 percent of savings.

(3) The proposal specifically solicited comments on whether reverse repurchase agreements used for arbitraging purposes should be treated as borrowings.

(4) Section 563.8–2 would be deleted, thereby removing the distinction between "conforming" and "non-conforming" mortgage-backed bonds.

Also the definition of mortgage-backed bonds in § 561.24a would be deleted.

(5) In place of present limitations on issuance of mortgage-backed bonds, and in view of the proposed general expansion of authority to engage in secured borrowing and the need to protect the interest of the Federal Savings and Loan Insurance Corporation ("the Corporation"), the proposed amendments included a new limitation providing that no more than 20 percent of an insured institution's assets may be pledged as security for its outside borrowings. The proposed amendments did not, however, include a limit on collateralization of individual issues, because the Board believes market forces would impose such limits.

(6) In order to ensure that savings institutions observe prudent standards in incurring liabilities, an additional restriction regarding "bunching" of maturities was proposed. Present § 526.10 of the Regulations for the Federal Home Loan Bank System (12 CFR 526.10) provides that no more than 30 percent of a member institution's total savings accounts may mature in any consecutive three months. It was proposed to modify that limitation to include outside borrowing in the 30 percent limitation.

(7) Under proposed § 563.8, if a sale of mortgages or participations therein includes an agreement that the seller will repurchase mortgages after a specified period, the transactions would be considered a borrowing for purposes of borrowing and collateral limitations provided only outstanding current loans were to be repurchased and no substitution of collateral were required.

(8) The following requirements presently included in § 563.8–2 and applicable to conforming mortgage-backed bonds would be included in revised § 563.8 and given more general applicability as follows: (a) For any outside borrowing with an original maturity in excess of one year which is secured by mortgage loans, the obligation would be required to provide for the Corporation to receive notification of default and an opportunity to repurchase or otherwise acquire any collateral that is sold or otherwise disposed of; (b) Each security, regardless of maturity, evidencing outside borrowing would be required to contain a notice that the security is neither a savings account nor insured by the Corporation; and (c) For any outside borrowing with an original maturity in excess of one year, an insured institution would be required to file with the Supervisory Agent a notice of intent to issue.

The notification to the Supervisory Agent would be required to include all information presently required to be provided with a notice of intent to issue a conforming mortgage-backed bond under § 563.8–2. The information includes the principal amount of the debt to be issued, interest rate range, price range, maturity, minimum denomination, prepayment provisions, description of collateral if any, trustee provisions if any, and events and remedies of default. In addition, approval of any provisions of the obligation which restrict, conditionally or otherwise, the operations of the institution would be required.

The proposed procedure for Supervisory Agent review would be similar to the procedure provided in § 563.8–2 with the following changes: (a) the Supervisory Agent would have ten, rather than five, business after notice is filed to object to issuance of the securities; and (2) The basis for objection would be that the Supervisory Agent finds that terms or covenants of the proposed issue place unreasonable burdens on, or convey to the security holder undue control over, the operation of the association. As in present § 563.8–2, if issuance is deemed unobjectionable, the insured institution would have 120 days to issue its securities. If objection is taken by the Supervisory Agent, the matter would be promptly submitted to the Corporation for decision.

(9) The following requirements that are now applicable to issuance of mortgage-backed bonds were proposed to be deleted: (1) Issuing institutions must have scheduled items not exceeding 2.5 percent of specified assets; (2) All appraised losses must be offset by specified loss reserves; (3) The institution's income for its last three fiscal years must be at least double its total debts servicing requirement for bonds issued under § 563.8–2; (4) The minimum maturity of such bonds must be at least 5 years; (5) The maximum required principal repayment may not be more than 20 percent per year; and (6) The mortgage pool must meet certain requirements regarding its composition.

(10) The requirement in present § 563.8 that no insured institution may issue a secured borrowing with an original stated maturity in excess of one year unless the institution meets the net worth requirements of § 563.13(b) would be retained.

(11) Subject to specified exceptions, the proposed minimum authorized denomination of securities evidencing outside borrowings would be $100,000. That minimum is consistent with the present minimum applicable to conforming mortgage-backed bonds. The following exceptions to that minimum were proposed: (1) Subordinated debentures issued under § 563.8–1 would be required to conform to the requirement of that section, i.e., a minimum denomination of $50,000; (2) Securities issued in a private placement to institutional investors and securities constituting evidence of a borrowing from a commercial bank would not be subject to minimum denomination requirements; and (3) A minimum denomination of $10,000 would apply to securities that are not offered or sold at any office of the insured institution or its affiliates or through general advertising, and to securities that may be sold only after purchasers have been furnished an offering circular that is in compliance with the regulations.

(12) Consistent with the present requirement in § 563.8–2 applicable to issuance of mortgage-backed bonds, the proposal would require that no statement made in connection with the offer, sale, or issuance of a security be false, misleading, or lacking any material fact.

(13) Additional requirements would be applicable to offering circulars for securities with $10,000 minimum denominations. First, each offering circular would be required to be submitted to the Board's Office of General Counsel for review and declared effective before it could be furnished to purchasers. Second, each offering circular would be required to be in a form satisfactory to the Corporation and, at minimum, contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1 and Item 7 of Form PS as prescribed in Part 563b of the Rules and Regulations for Insurance of Accounts. Third, each offering circular would be required to include the insured institution's latest audited annual statement of condition, audited statements of operation for each of its last three years, and its latest unaudited statements of condition and operation on a comparative basis. Financial statements would be required to be prepared in accordance with part 563c of the Rules and Regulations for Insurance of Accounts.

(14) Sections 544.2 and 545.24 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 544.2 and 545.24) would be revised to give Federal associations flexibility to borrow and issue securities as provided in §§ 563.7–2 and 563.8 for state-chartered insured institutions.

(15) Section 563.8–1 would be amended to authorize insured institutions to issue subordinated debt

securities under that section without prior approval of the Corporation, provided such approval is subsequently granted. Eligibility requirements would be required to be met on the date of approval. Under the definition of "net worth" in § 561.13(b), subordinated debt securities may be used to meet up to 20 percent of the annual closing net worth requirment in § 563.13(b), provided the securities are issued in accordance with § 563.8–1.

(16) Additional changes to § 563.8–1 would make requirements applicable to issuance of subordinated debt securities consistent with proposed requirements applicable generally to issuance of securities. Under present § 563.8–1 subordinated debt securities may be offered only in negotiated transactions and only if disclosure is provided as described therein. Under the proposed amendments, offering and disclosure would be required to be made in accordance with requirements of § 563.8. Special disclosure requirements applicable to offerings to noninstitutional investors would be deleted. Further, exceptions to minimum denomination requirements in § 563.8 would also be applicable to subordinated debt securities.

(17) Section 563.4 would be amended to exclude securities issued under § 563.8 from the requirement that all securities issued by an insured institution shall be made transferable only on the books of the insured institution.

(18) Section 563.6 would be amended to exclude securities issued in conformity with § 563.8 from the general prohibition of issuance of demand securities by insured institutions. Such a limitation applicable to securities issued under § 563.8 would unnecessarily encumber the borrowing activity of insured institutions.

(19) A conforming change would be made to § 563.3–3(i) to reflect the proposed rewording of the second sentence of § 563.8.

Fifty-seven comments were received on the proposal, and on the basis of those comments and other information available to it, the Board has determined to adopt the proposed revision with changes discussed below.

Summary of Major Comments

Comments recommending changes to the proposed revision are summarized below. Numbers following each heading refer to the proposed changes described above in the summary of the proposal.

A. Limitation on total borrowing (1)

Four commenters stated that the proposal to limit total borrowings to an amount equal to 50 percent of assets is too restrictive. They stated that all limits on the amount of total borrowings should be removed or at least increased to 65–70 percent of assets. They believe that unrestricted access to borrowings is essential for good cash flow management, and one commenter argued that, in an era of money market rate savings accounts, access to large borrowings reduces inherent interest rate risks.

Commenters stated that, because the policies of the Federal Home Loan Banks ("Banks") prohibit their making advances up to the maximum limit, the proposed 50 percent of assets limit on borrowings is actually lower than it appears. One commenter urged that the Board clarify that it would be appropriate for FHLBanks to make advances in excess of the 50 percent limit in case of supervisory problems or unusual disintermediation.

Board response. The Board believes the proposed 50 percent of assets limitation on total borrowings should not be further increased at this time, and the 50 percent limit is adopted as proposed. Institutions' current lending activity is well below the existing 50 percent of savings limitation. Any additional increase in the total borrowing limit should be considered on the basis of experience with the new limit.

B. Limitation on outside borrowing (2)

Nine commenters opposed the proposed 20 percent of assets limitation on outside borrowing and recommended that it be removed. Three commenters aserted that the Bank System does not have the capacity to make up the 30 percent difference between the proposed outside borrowing limit and the proposed total borrowing limit. They also asserted under that current Board policy Banks may not make advances available when an institution's level of liquidity is high, and under that policy, institutions would be unable to take full advantage of interest rate cycles. One commenter recommended reversal of the FHLBank policy prohibiting the use of advances to pay off outside borrowings. Commenters favored increased management flexibility and one commenter recommended removal of all limits on unsecured borrowings.

Board response. The Board has determined to delete the limitation on outside borrowing. Under the final regulation, all borrowing is subject to the 50 percent of assets limit on total borrowing, but institutions now have complete flexibility to determine the source of their borrowed funds. The Board believes this change will permit institutions to manage their liabilities according to their particular circumstances without unnecessary regulatory interference.

In view of this increased authority, the Board has determined to amend its Statement of Policy regarding advances by Federal Home Loan Banks to their members (§ 531.1 of the Regulations for the Federal Home Loan Bank System). The amendment clarifies Board policy with respect to advances made to members that have maturing outside borrowings. Under Board policy, a Federal Home Loan Bank must review with particular care applications for such advances. If, in the Bank's judgment, advances will be used to replace such borrowings, the advances may be granted, provided they are made pursuant to a firm commitment that the member has purchased for a nonrefundable fee prior to incurring the outside borrowings, and the advances are priced at least at a rate consistent with the cost of refinancing the borowings in the market. Before granting a firm commitment to make advances, a Bank must determine that the member has exercised prudence in its borrowing, particularly with respect to cash flow management and bunching of maturities.

The Board believes that, in exercising flexible liability management, an institution should make a careful cash flow projection, demonstrating the institution's ability to meet debt payments at maturity, with a margin for safety. If the institution intends to rely on Federal Home Loan Bank advances to refinance any part of maturing debt, arrangements should be made with the institution's Federal Home Loan Bank in accordance with § 531.1.

C. Maximum amount of assets pledged as collateral. (5)

Twenty-one commenters stated that the proposal to limit total collateral for outside borrowings to 20 percent of assets is unnecessarily restrictive. They noted that no such limitation is currently applicable to issuance of mortgage-backed bonds and that such debt, in order to be marketable, must be collateralized at a rate greater than one-to-one. Thus 20 percent of an institution's assets would be insufficient collateral for the issuance of mortgage-backed bonds in an amount equalling 20 percent of assets. Commenters also noted that, since institutions prefer to use loans with low interest rates to secure borrowings and higher rate mortgages for sale, the book value of pledged mortgages generally exceeds market value. Thus, agreements requiring collateral amounts based on market value will require additional over-collateralization.

Seven commenters stated that for securities to receive favorable market

ratings collateral in amounts equalling 150–200 percent of debt is required. They note that, if interest rates rise, the market value of mortgages pledged as collateral falls, and additional collateral must be replaced as the principal amounts of the mortgages in the pool are paid down. Commenters raised the question of whether the proposed limit would affect collateral maintenance provisions in outstanding mortage-backed bonds.

Commenters noted that unsecured borrowings are more expensive than secured borrowings and may be impractical for smaller institutions.

Fourteen commenters recommended deletion of the 20 percent of assets collateral limit. Other commenters recommended that the maximum amount be increased to 30–50 percent.

Four commenters recommended that the limitation on pledged assets apply only to the issuance of a debt instrument, and not to subsequent maintenance of collateral.

Board response. The Board believes that total collateralization for outside borrowing should be limited and that the limit should provide sufficient flexibility for institutions wishing to increase lending activity, while continuing to encourage borrowing on an unsecured basis. The Board believes that, with elimination of the present regulatory limitations on additions and substitutions to a collateral pool securing mortgage-backed bonds and the use of more frequent collateral valuation dates, overcollateralization ratios in excess of 150 percent will no longer be required. However, the Board recognizes that the proposed 20 percent of assets limit could restrict the borrowing activity of a limited number of institutions, and therefore has determined to increase the limit to 25 percent of assets.

Any institution that now has pledged collateral for outstanding issues in excess of the 25 percent limit or that may exceed the limit in the future because of existing collateral maintenance requirements or requirements contained in agreements which are substantially completed prior to adoption of these amendments shall not be deemed in violation of the regulation as a result of those obligations. However, collateral pledged under such outstanding obligations shall be counted against the 25 percent limit in determining whether the institution may issue additional secured borrowings under the revised regulations.

In determining whether an issuance is substantially complete for the purpose of applying the foregoing "grandfather" principle, it is necessary, among other things, that a final agreement was executed within thirty days of adoption of the final regulation, an offering of the issuance was commenced prior to such enactment and the principal terms of the agreement, except as to price, were substantially the same as the terms approved by the board of directors of the subject association prior to the actual offering and execution of the agreement. Further, any mortgage-backed bond exempted from the 25 percent collateralization limit under the "grandfather" principle will be subject to the restrictions prescribed in paragraph (b) of § 563.8–2 as in effect prior to adoption of these amendments.

The Board notes, however, that any institution desiring a waiver of collateral replacement limits may apply for waiver under paragraph (g) of former § 563.8–2. The Board recognizes that, in the current economic climate, collateral replacement limits may be burdensome for certain institutions, and therefore, for institutions whose financial condition warrants such action, the Board will grant exceptions on a liberal basis.

In adopting the 25 percent limit on collateral that may be pledged to secure outside borrowings, the Board considered carefully whether the limitation should apply only at the time debt is incurred, or whether the limit should also restrict institutions in pledging additional collateral to secure outstanding debt. The Board determined that the limitation should apply to all assets pledged to secure borrowings. However, the Board will monitor carefully the effects of the limitation. If, and when, the pledged assets of a significant number of institutions approach the limit, the Board would consider whether a modification of the limitation may be warranted, based upon the additional experience developed with the use of the rule adopted today.

D. Bunching of maturities. (6)

Thirty-one commenters objected to the proposal to permit no more than 30 percent of total savings accounts and borrowings to mature in a 3-month period. Eleven commenters stated that the present requirement that not more than 30 percent of an institution's savings accounts mature in a 3-month period is too restrictive, in view of the increased number of 6-month money market certificates. Twelve commenters recommended that borrowings not be added to the present bunching limits and five commenters urged that all bunching limits be deleted. Three commenters recommended that cash management be maintained through the normal supervisory process, and that limits apply only if problems arise. One commenter suggested that a cash flow plan be provided to the Supervisory Agent when a notice of intent to issue securities with terms in excess of one year is submitted.

Commenters recommend that large borrowings, particularly mortgage-backed bonds that contain "put" and "call" options be given special treatment with respect to any limitation on bunching of maturities.

One commenter stated that careful planning of cash flow is more important than meeting a "numbers test" set by the Board.

Commenters recommended exclusion of short term debt from the proposed limit or an increase in the proposed limit by 5–15 percent. Other commenters recommended the bunching of maturities of debt, money market certificates, variable ceiling accounts, and jumbo accounts be limited separately. One commenter suggested shortening the present 3-month period on which bunching limitations are based.

Board response. The Board has determined to delete the present limitation on the distribution of maturities of certificate accounts (12 CFR 526.10) and to adopt a new limitation (12 CFR 563.8–3) with respect to the distribution of maturities of all types of liabilities. The new regulation is intended to ensure that each insured institution develops and pursues an effective program of overall liability management with appropriate cash-flow provisions that reflect its actual liabilities structure.

Such a program cannot rely totally on adherence to specific regulatory limitations. There should be strong emphasis on careful planning to provide funds for all types of liabilities, including Bank advances, other borrowings, and off balance sheet liabilities, such as loan commitments, as well as certificate maturities and expected savings outflows.

The program should ensure that the planned results are consistent with the institution's lending objectives, anticipated earnings performance, market area economics, cash-flow forecasts and other budget considerations. It should address advertising for savings funds and include planning for borrowings.

Under new § 563.8–3, if accepting additional certificate savings, or borrowing funds, or making additional investment or loan commitments will cause the aggregate of such liabilities of an insured institution maturing in any three-month period, less the amount of the institution's liquid assets, to exceed

30 percent of the institution's assets at the time the additional liability is incurred, the institution must submit to the Board's Principal Supervisory Agent notice, including a description of the institution's program of liability management (including underlying assumptions and supporting documents), sufficient to demonstrate the soundness of the institution's cash flow planning.

The Board believes such notification will provide early warning in cases where an insured institution has an uneven distribution of maturities of liabilities and inadequate provision for funding maturing liabilities. The notification requirement is also intended to encourage insured institutions to maintain sufficient cash-flow data and formulate adequate systems of liabilities management.

Under new § 563.8–3, an insured institution's aggregate liabilities maturing in a 3-month period, less the amount of its liquid assets, may not exceed 40 percent of its total assets, unless the institution obtains Corporation approval prior to incurring such liabilities. The Board presumes that such a heavy concentration of maturities in a quarter represents unsound liabilities management, and therefore no insured institution should incur such liabilities unless it is prepared to demonstrate to the Board the soundness of its cash-flow projections and its overall liabilities management system.

E. Sale of a mortgage pool with an obligation to repurchase loans outstanding at the end of a specified period. (7)

Six commenters stated that, if the sale of a mortgage pool provides for the selling institution to repurchase all current outstanding mortgages at the end of a specified period of time, it is unreasonable to require that the full amount of the potential repurchase obligation be counted as a borrowing, since the amount of the loans that will remain in the pool at the end of the specified period can be projected. The commenters recommended alternative limitations that would subject only a portion of the amount of the potential amount of the repurchase obligation to borrowing limitations.

One commenter recommended that the regulation specifically state that the existence of a call option in a sales agreement does not make any part of the sale a borrowing. One commenter recommended that no borrowing limitation apply to sales that include an agreement to repurchase loans after more than six years. Two commenters recommended that provisions for voluntary substitution be clearly excepted from borrowing limitations. Three commenters recommended that the regulation clearly indicate that only the amount which is subject to the repurchase obligation will be subject to borrowing limits.

Four commenters recommended that the regulations authorize sales agreements that require the selling institution to repurchase, at the end of a specified period, all loans, including loans that qualify as scheduled items. They argued that the anticipated number of scheduled items that will remain in a loan pool after a period of 6–8 years is minimal. Two commenters recommended that repurchase of scheduled items be permitted in amounts up to at least 5 percent of the pool.

Board response. The Board believes that borrowing and collateral limits should not apply to a sale of a mortgage pool that provides that the selling institution will repurchase all mortgages outstanding in the pool after a specified period, provided the repurchase price is the market value of the mortgages at the time of repurchase. Such an agreement involves a commitment to purchase mortgages, and the Board notes that an institution incurring such an obligation must manage its cash flow to assure that it will be prepared to meet its commitment. The Board believes, however, that a sales agreement that requires repurchase at par of current and outstanding mortgages after a specified period should be subject to borrowing limits and collateral limits to the extent of the total outstanding obligation to repurchase. An agreement that requires repurchase at par of mortgages that would be classified as scheduled items would, in the Board's view, be a sale with recourse and therefore prohibited.

F. Reverse repurchase agreements. (3)

Twenty-four commenters recommended excluding from borrowing limits reverse repurchase agreements that are used for arbitraging purposes. Commenters argued that such transactions are not really borrowings but simply the use of paid assets to earn additional income through money market spreads. They note that, at the end of the transaction, the original fully paid assets are automatically returned to the institution.

Six commenters recommended that the term "used for arbitraging purposes" be defined. One commenter recommended that the regulation require that the transactions be "matched date to date."

Board response. The Board believes that reverse repurchase agreements that are used only for arbitraging purposes should not be considered borrowings for purposes of limitations on borrowing and collateral.

Such agreements must consist of the following: (1) an institution sells security A from its portfolio with an agreement to repurchase security A on date X; (2) with the proceeds of the sale of security A the institution purchases security B, which matures on date X; (3) the return on security B for the period to maturity (date X) exceeds the net cost to the institution incurred in the sale and repurchase of security A; and (4) security A and security B qualify as short term liquid assets under § 523.10 of the Regulations for the Federal Home Loan Bank System.

G. Filing of notice of intent to engage in outside borrowings. (8)

Seven commenters objected to the proposed provision that the Supervisory Agent will have ten days to object to the issue of any outside borrowing instruments with a maturity over one year. They argue that any delay in the process of issuing securities can be costly to issuing institutions. Commenters noted that the present regulations allow only 5 days for supervisory objection to the issuance of mortgage-backed bonds. One commenter stated that seven days would provide sufficient time for review. Three commenters recommended that the notification requirement continue to apply only to mortgage-backed bonds.

One commenter recommended that the regulations clarify that a Supervisory Agent may approve the issuance before the end of the prescribed ten day period. Another commenter recommended that the regulations require the FSLIC to decide within 15 days after referral from the Supervisory Agent whether issuance will be permitted. This requirement would permit the issuing institution to begin correcting any problems as soon as possible. Three commenters believe that inclusion of the anticipated interest rate range and price of a proposed debt issue would adversely affect management's ability to negotiate with underwriters.

Board response. The Board has determined that the proposed requirement that a notice of intent to issue securities be submitted to the Supervisory Agent is unnecessary for institutions for which net worth meets the requirements of § 563.13(b) of the Regulations for Insurance of Accounts, and the ratio of scheduled items to specified assets does not exceed 2.5 percent.

However, the Board believes that such early notice is desirable for issues proposed by institutions not meeting those requirements. The proposed ten-

day period for review should provide a reasonable time for analysis of the proposals that are submitted, without unduly delaying issuance of the securities. The information required to be provided is essentially the same as presently required with respect to conforming mortgage-backed bonds and is, in the Board's view, reasonable.

H. Offering circular. (13)

1. Thirteen commenters objected to the requirement that offering circulars for proposed debt issues be submitted for the approval of the Board's Office of General Counsel prior to their use. Commenters argued that submitting offering circulars as proposed would be unwieldy and of no practical benefit. Four commenters stated that the lack of an SEC reporting requirement is one of the advantages for savings and loans issuing mortgage-backed bonds. Commenters state that bunching of issues is common and, therefore, approval of offering circulars will result in costly delays to the issuing institution or in a significant increase in Board staff assigned to the approval process. Two commenters stated that issuers, underwriters, and their respective counsel have been and remain intensely aware of their disclosure obligations. They state that no need for new disclosure requirements has been shown. Six commenters recommended that the time period for considering approval of an offering circular be limited.

Board response. The Board believes that, because of the exemption of insured institutions from SEC reporting requirements, and the Board's general supervisory authority with respect to savings and loans, it has an obligation to assure that public offering circulars are sufficient to fully inform the investing public. The Board believes that as the borrowing authority of insured institutions is increased and more institutions engage in this activity, disclosure should be required by regulation, and the Board should have an opportunity to assure that disclosure is adequate.

With respect to the time required for review of offering circulars, the Board understands that the SEC has an internal guideline of 30 days in which to send out the first letter commenting on a proposed offering circular. If additional information is required, and submitted promptly, issuance of the security may follow shortly thereafter.

The Board believes that its review of most offering circulars will be completed within 10 days and in all except that most difficult cases, review will be completed within 20 days.

2. Eight commenters objected to including in the regulations requirements as to content of offering circulars, or they stated that no Corporation approval of offering circulars is necessary. Commenters urged that the content of offering circulars be left to the discretion of the issuer, underwriters, and their respective attorneys.

Commenters stated that the proposed requirement that offering circulars contain information comparable to the information required under the Securities Act of 1933, General Form of Registration S–1 and Item 7 of Form PS in the Board's regulations is more burdensome for the issuer than forms currently in use for mortgage-backed bonds. Four commenters stated that most issuers currently provide information equivalent to that required by General Form S–7.

Board response. The Board believes that information comparable to that required by General Form of Registration S–1 provides appropriate disclosure, and is generally required. However the final amendments provide that information comparable to that required by Form S–7 will be sufficient, provided the issuing institution meets the requirements for use of that form prescribed by the SEC.

3. Three commenters stated that financial statements should be in compliance with GAAP rather than § 563c.1 of the Board's insurance regulations. One commenter suggested that, in the alternative, the requirements of § 563c.1 should be subject to waiver by the Supervisory Agent. One commenter recommended that the need for interim financial statements be determined by the issuer, underwriters, and their counsel. One commenter stated that inclusion of comparative balance sheets in offering circulars is a new and unnecessary requirement. That commenter also recommended that the offering circular include audited statements of operation for each of the last five years, rather than three years as proposed.

Board response. The Board's accounting requirements were established to provide a uniform standard for financial statements issued by insured institutions. The Board believes those requirements provide appropriate information that should be furnished to potential investors in insured institutions' securities. The Board believes specific requirements will better assure full disclosure than a reference to GAAP or reliance on agreements made with respect to individual issues.

There is no objection to including information for periods longer than those specified in the regulations.

4. One commenter recommended that the regulations clarify that no filing of an offering circular is required for private placement of mortgage-backed bonds.

Board response. While requirements for filing offering circulars clearly apply only to public offerings, the final regulations have been changed to provide additional clarification of this issue.

I. Subordinated debt. (15)

1. Several commenters apparently assumed that no subordinated debt instruments may be issued except in compliance with § 563.8–1, and that provision for subsequent approval under that section would be unreasonable. They note that no significant changes to an instrument could be made after issuance.

Board response. Subordinated debt that is issued in compliance with § 563.8–1 and approved by the Corporation may be counted as part of net worth. Subordinated debt that does not comply with § 563.8–1 or is not approved by the Board may not be counted toward net worth requirements.

2. One commenter recommended that subordinated debt be excluded from the requirement that all securities be transferable only on the books of the institution.

Board response. The final regulations clarify that subordinated debt is excluded from that requirement.

The Board notes that certain limitations and requirements regarding issuance of subordinated debt securities included in the existing regulation were inadvertently omitted from the proposal. No change was intended with respect to those paragraphs and the omitted language is included in the final regulation.

J. Minimum denominations of securities. (11)

1. One commenter recommended that no minimum denomination be specified for securities evidencing outside borrowings, and another commenter stated that a $10,000 minimum would be most generally acceptable in the market place.

Board response. A $10,000 minimum denomination is permitted under the regulations if disclosure requirements are met. While lower denominations may be considered on the basis of experience with the revised regulations, the Board believes the proposed minimums should be retained at this time.

2. Commenters recommended that the types of institutions to which debt

instruments may be issued without regard to minimum denomination requirements include the following: eleemosynary institutions, Keogh plans, other savings and loans, foreign banks, foreign insurance companies, and trust companies.

Board response. The definition of "institutional investor" is amended in the final regulations. The definition is consistent with the definition in the regulations of the Securities and Exchange Commission (17 CFR 230.242(a)(1)) that provide exemption from registration for certain small issues of securities issued to certain investors.

3. One commenter recommended that a partial redemption that lowers the face amount of an instrument to an amount less than a prescribed minimum should not be deemed to violate the regulation.

Board response. Such a partial redemption would not violate the minimum denomination requirement.

K. Requirement that an institution meet the net worth requirement of § 563.13(b) before issuing an outside borrowing with an original maturity in excess of one year. (10)

Two commenters recommended deletion of the minimum net worth requirement. They stated that the price of a debt issue should be based on an institution's net worth. They also stated that it is unreasonable to limit thinly capitalized institutions to short term borrowings.

Board response. Institutions may submit application for an exception to requirements applicable to long-term debt issues, and the application serves to notify the Board when institutions with inadequate net worth intend to incur long-term obligations.

L. One commenter stated that it would be unreasonable to require that, in connection with a public offering, an issuing institution assure that purchasers of securities have been furnished an offering circular. That commenter recommended that the regulation provide instead that public offerings must be made through brokers or dealers who are members in good standing of the National Association of Securities Dealers or through brokers or dealers with their principal place of business located outside the United States, its territories, or possessions and not regulated under the Securities Exchange Act of 1934 who agree to make no sales within the United States, its territories, or possessions or to persons who are nationals thereof or residents therein.

Board response. The Board does not believe that a requirement that offerings be made through registered brokers and dealers would impose an obligation that purchasers receive proper disclosure.

M. Bank policy.

One commenter recommended revision of the Bank policy that requires institutions to begin repaying advances when borrowings exceed 20 percent of savings. Another noted that policy often requires outside borrowings to replace rather than supplement Bank advances.

Board response. The Board believes Federal Home Loan Banks will consider the implications of the revised regulations with respect to their policies on advances.

In view of the current economic trend toward a more favorable borrowing climate, the Board believes that it is in the public interest to implement these liberalized borrowing regulations as soon as possible, and the Board has therefore determined that publication of the amendments for the time specified in 12 CFR 508.14 and 5 U.S.C. § 553(d) prior to their effective date is contrary to the public interest and that the amendments shall become effective as herein set forth.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 526 and 531 of the Regulations for the Federal Home Loan Bank System (12 CFR Parts 526 and 531), Parts 544 and 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Parts 544 and 545), and Part 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Part 563), as follows:

Federal Home Loan Bank System

PART 526—LIMITATIONS ON RATE OF RETURN

1. Delete § 526.10 as follows:

§ 526.10 [Deleted effective May 30, 1980]

2. Add paragraph (f) to § 531.1 to read as follows:

PART 531—STATEMENTS OF POLICY

§ 531.1 Policy on advances

* * * * *

(f) A Bank shall review with particular care advances applications from members that have maturing borrowings from sources other than the Bank. Advances that, in the Bank's judgment, will be used to replace such maturing borrowings may be granted, provided the advances are made pursuant to a firm commitment to make such advances that the member has purchased from the Bank for a nonrefundable fee prior to incurring such borrowings, and the advances are priced at least at a rate consistent with the cost of refinancing the borrowings in the market. Before granting such a firm commitment, a Bank shall determine that the member has exercised prudence in its borrowing, particularly with respect to cash flow management and bunching of maturities.

Federal Savings and Loan System

PART 544—CHARTER AND BYLAWS

3. Amend paragraph (d) of § 544.2 to read as follows:

§ 544.2 Amendment of charter.

* * * * *

(d) *Borrowing powers.* Revise section 9 to read as follows:

9. *Power to borrow.* The association may borrow money in an aggregate amount not exceeding one-half of its assets. Notwithstanding the foregoing limitation, the association may, with prior approval by the Board, borrow from a Federal Home Loan Bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

* * * * *

PART 545—OPERATIONS

4. Amend § 545.24 to read as follows:

§ 545.24 Borrowing, issuing obligations, and giving security.

An association may borrow as its charter permits and may issue notes, bonds, debentures, or other obligations, or other securities provided such borrowing or issuance is in compliance with § 563.8 of this chapter or is approved in writing by the Board. An association may give security as authorized by its charter or by Board approval, except it may not give security for any of its savings accounts representing share interests in the association unless authorized by regulation.

Federal Savings and Loan Insurance Corporation

PART 561—DEFINITIONS

5. Delete § 561.24a as follows:

§ 561.24a [Deleted effective May 30, 1980]

PART 563—OPERATIONS

6. Amend the first sentence of paragraph (i)(1) of § 563.3–3 to read as follows:

§ 563.3–3 Marketable fixed-rate, fixed-term accounts.

* * * * *

(i) *Applicability of other provisions.* (1) Sections 563.2, 563.3, 563.3–1, 563.3–2, 563.4, and 563.8 and the provisions of § 563.17–1(c)(5) do not apply to savings accounts in compliance with § 545.1–4 of this chapter or this section, and such savings accounts are not borrowings within the meaning of § 563.8(b).* * *

* * * * *

7. Amend § 563.4 to read as follows:

§ 563.4 Transfer of securities.

Except as to securities issued in conformity with § 563.8 and 563.8–1 of this Part, all securities issued by an insured institution shall be made transferable only on the institution's books.

8. Amend § 563.6 to read as follows:

§ 563.6 Demand securities.

No insured institution may issue any demand securities or advertise or represent that it will pay holders of its securities on demand, except that this section does not apply to (a) securities issued in conformity with § 563.8 of this Part, (b) checking accounts as defined in § 561.11a of this subchapter, (c) tax and loan accounts, and (d) note accounts.

9. Revise § 563.8 to read as follows:

§ 563.8 Borrowing limitations.

(a) *General.* (1) Except as the Corporation may otherwise permit by advice in writing, an insured institution shall borrow only in accordance with the provisions of this section.

(2) As used in this section, the term "outside borrowing" means a borrowing from other than a Federal Home Loan Bank or state-chartered central reserve institution.

(b) *Amount limitation.* (1) No insured institution shall borrow in excess of the amount authorized by the law under which such insured institution operates and such borrowings, in the aggregate, shall not exceed 50 percent of assets.

(2) No violation of this paragraph (b) shall be found if the limits are exceeded because of a subsequent reduction in assets.

(c) *Limitations on secured borrowings.* (1) For an outside borrowing with an original maturity in excess of one year, an insured institution must meet the net worth requirements of § 563.13(b) of this Part after giving effect to the issuance of such borrowing and the repayment of any such borrowings being refunded out of the proceeds.

(2) For an outside borrowing with an original maturity in excess of one year that is secured by mortgage loans, the terms of such borrowing shall provide that the Corporation receive prompt written notification of any default on the obligation and, before a sale or other disposition of any portion of the collateral, that the Corporation shall have thirty days after written receipt of notice of such proposed sale or other disposition to exercise a right to repurchase such collateral at the price to be paid at such sale or to acquire such collateral at the value to be assigned to it in such other disposition.

(3)(i) Subject to the exceptions in subdivisions (ii) and (iii), the aggregate book value of all collateral securing outside borrowings may not exceed 25 percent of the institution's assets.

(ii) Borrowings issued under § 563.8–2 of this subchapter, prior to May 30, 1980, and other mortgage-backed bonds issued prior to that date shall not be subject to the limitation in subdivision (i) and shall continue to be subject to the requirements and limitations in effect at the time of issuance.

(iii) Secured borrowings substantially completed prior to May 30, 1980, shall not be subject to the limitation in subdivision (i), provided they conform to requirements and limitations with respect to collateral that were in effect prior to that date.

(iv) All collateral pledged to secure borrowings that are exempted, under subdivisions (ii) or (iii), from the limitation in subdivision (i) shall count against that limitation for the purpose of determining whether additional collateral may be pledged to secure borrowings that were not issued or substantially completed prior to May 30, 1980.

(d) *Required statement for all securities evidencing outside borrowings.* Each security shall bear on its face, in a prominent place, the following legend: "This security is not a savings account or a deposit and it is not insured by the Federal Savings and Loan Insurance Corporation".

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the insured institution meets the net worth requirement of § 563.13(b) and, at the close of its most recent semi-annual period, it had a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets not in excess of 2.5 percent, it shall, at least ten business days prior to issuance, file with the Supervisory Agent a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the terms of the security, including:

(i) principal amount of the securities;

(ii) anticipated interest rate range and price range at which the securities are to be sold;

(iii) minimum denomination;

(iv) stated and average effective maturity;

(v) mandatory and optional prepayment provisions;

(vi) description, amount, and maintenance of collateral if any;

(vii) trustee provisions if any;

(viii) events of default and remedies of default; and

(ix) any provisions which restrict, conditionally or otherwise, the operations of the institution.

(2) The Supervisory Agent shall have ten (10) business days after receipt of such filing to object to the issuance of such securities. The Supervisory Agent shall object if in his/her judgment the terms or covenants of the proposed issue place unreasonable burdens on, or convey to the security holders undue control over, the operations of the association. If no objection is taken, the insured institution shall have one hundred twenty (120) calendar days within which to issue such securities. If objection is taken, the Supervisory Agent shall promptly cause the question of such issuance to be submitted to the Corporation for decision.

(f) *Minimum denominations of securities evidencing outside borrowings.* (1) *General rule.* The minimum denomination of the security shall be $100,000.

(2) *Exceptions.* (i) There is no minimum denomination for securities:

(*a*) issued in a private placement to institutional investors; or

(*b*) constituting evidence of a borrowing from a commercial bank.

(ii) the minimum denomination may be $10,000, if the securities are not offered or sold at any office of the institution or any of its affiliates, and

(*a*) they are not sold to more than 35 persons or offered by any advertisement, including any broadcast or written communication published in a newspaper, magazine or similar medium, or by any letter, circular, or other written communication, sent, given, or communicated to more than 35 persons who prior to such communication have not indicated an interest in purchasing the securities, and any purchases by such persons are for their own account and not with a view to distribution; or

(*b*) prior to or simultaneously with any offering, and prior to issuance, purchasers of such securities have been furnished an offering circular which conforms to the requirements of paragraphs (g) and (h) of this section.

(3) *Definition of institutional investor for purposes of this paragraph (f).* Any bank as defined in section 3(a)(2) of the Securities Act of 1933 ("Act"), whether acting in its individual or fiduciary

capacity; insurance company as defined in section 2(13) of the Act; employee benefit plan, within the meaning of Title I of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, that is either a bank, insurance company or registered investment adviser; investment company registered under the Investment Company Act of 1940; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958.

(g) *Disclosure.* No insured institution shall, directly or indirectly in connection with the offer, sale, or issuance of a security evidencing a borrowing pursuant to this section, make any statement that: (1) is false or misleading with respect to any material fact; or (2) omits to state any material fact (i) necessary in order to make the statements made, in light of circumstances under which they were made, neither false nor misleading, or (ii) necessary to correct any earlier statement that has subsequently become false or misleading.

(h) *Offering circular.* (1) *Review.* No final offering circular shall be furnished to purchasers under subdivision (f)(2)(ii)(*b*) of this section unless it is filed with the Securities Division of the Board's Office of General Counsel, and declared effective prior to its use.

(2) *Content.* A final offering circular under this section shall be in a form satisfactory to the Corporation. At a minimum, it shall contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1, or S–7 if the issuing institution meets the eligibility requirements prescribed by the Securities and Exchange Commission for use of that form, and Item 7 of Form PS as prescribed in Part 563b of this subchapter.

(3) *Financial statements.* A final offering circular under this section shall contain the insured institution's latest audited annual statement of condition and audited statements of operations for each of its last three years. It shall also contain the insured institution's latest unaudited statements of condition and operations on a comparative basis for the quarter ending within one hundred twenty (120) days of its latest amendment. Such financial statements shall be prepared in accordance with the requirements of § 563c.1 of this subchapter. The issuer shall also make available promptly upon request to each purchaser of a security issued subject to the requirements of subdivision (f)(2)(ii)(*b*) (including purchasers upon resale) while the securities are outstanding, audited annual statements of condition and operation and comparative unaudited quarterly statements of condition and operations for the first three quarters.

(i) *Note accounts.* For purposes of this section, note accounts are not borrowings.

(j) *Sale and repurchase of mortgages or mortgage participations.* (1) An agreement for the sale by an insured institution of a pool of mortgages or participations therein that provides that the selling institution will repurchase at par all mortgages outstanding at a future date, up to a stated percentage of the pool, shall, for purposes of paragraph (b) and subparagraph (c)(3) of this section, be treated as a borrowing to the extent of the total outstanding repurchase obligation, provided the following conditions are met:

(i) Only current and outstanding mortgages are required to be repurchased; and

(ii) The agreement does not provide for mandatory substitution of collateral.

(2) If the agreement described in subparagraph (1) does not contain the limitations prescribed in subdivisions (1)(i) and (ii), the transaction shall be treated as a sale with recourse.

(3) Loans are not considered current if they would qualify as scheduled items under § 561.15.

(4) If the agreement described in subparagraph (1) provides for repurchase of mortgages at market value, the transaction shall be treated as a sale without recourse.

(k) *Reverse repurchase agreements used for arbitraging.* (1) Such agreements, as defined in subparagraph (2), that involve only securities that qualify as short-term liquid assets under § 523.10 of this chapter shall not be treated as borrowings for purposes of paragraph (b) and subparagraph (c)(3) of this section.

(2) A reverse repurchase agreement used for arbitraging purposes is a transaction whereby an insured institution sells a security under agreement to repurchase that security (a security with the same issuer, coupon, and maturity date) on the date of maturity of a security purchased with the proceeds of the repurchase agreement, and the return to maturity of the security so purchased exceeds the net cost to the institution of the sale and repurchase of the security through the repurchase agreement.

(3) No reverse repurchase agreement described in subparagraph (2) shall be exempted from limitation under this paragraph unless the insured institution maintains records, including a comparison of maturity dates, return, proceeds from sale, and cost and date of repurchase, sufficient to show the arbitraging nature of the transaction.

10. Amend § 563.8–1 to read as follows:

§ 563.8–1 Issuance of subordinated debt securities.

(a) *General.* No insured institution shall issue subordinated debt securities pursuant to this section or amend the terms of such securities unless it has obtained written approval of the Corporation. Approval of the issue under this section, in order to meet the requirements of § 561.13, may be obtained either before or after the securities are issued, but no approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility requirements.* The Corporation will consider and process an application by an insured institution for approval of the issuance of subordinated debt securities pursuant to this section only if the applicant meets all of the following eligibility requirements at the time of approval, unless one or more of such requirements are waived by the Corporation upon specific request in the case of a particular application:

(1) The issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Applicant's net worth, without regard to the amount of any subordinated debt securities included or to be included in such net worth, meets the requirements of § 563.13;

(3) Applicant's scheduled items do not exceed 2.5 percent of its specified assets;

(4) All appraised losses have been offset by specific loss reserves to the extent required by the Corporation under § 563.17–2;

(5) Applicant's income from operations before income taxes in its most recent fiscal year and at least one of its two immediately preceding fiscal years (after distribution of earnings to the holders of savings accounts and payment of interest on, and amortization of, non-subordinated debt) and its average of such income for such three-year period is at least three times the annual amount required for interest, debt, discount amortization (if any), and amortization of the related expenses of issuance on all outstanding and

proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities); and

(6) The aggregate amount of all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities) does not exceed 50 percent of applicant's net worth, not including any such outstanding and proposed subordinated debt securities.

(c) *Application form; supporting information.* An application for approval of the issuance of subordinated debt securities by an insured institution pursuant to this section shall be in the form prescribed by the Corporation. Such application and instructions may be obtained from the Supervisory Agent. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements are waived by the Board in connection with a sale of such securities to the Corporation in a supervisory situation under subparagraph (d)(4) of this section:

(1) *Form of certificate.* Each certificate evidencing subordinated debt issued by an insured institution pursuant to this section shall:

(i) Bear on its face, in bold-face type, the following legend: "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation";

(ii) Clearly state that the security (*a*) is subordinated on liquidation, as to principal, interest, and premium, if any, to all claims (including post-default interest) against the institution having the same priority as savings account holders or any higher priority; (*b*) is unsecured; and (*c*) is not eligible as collateral for any loan by the issuing institution.

(iii) State or refer to a document stating the terms under which the issuing institution may prepay the obligation, which shall include at least the right to prepay without premium or other penalty during the fifteen months immediately prior to the maturity date;

(iv) State or refer to a document stating that no payment of principal shall be accelerated without the approval of the Corporation, if after giving effect to such payment the institution would fail to meet the net worth or Federal insurance reserve requirements of § 563.13; and

(v) Be in a minimum original amount of at least $50,000, except that the minimum original amount shall be $10,000 for securities meeting the requirements of § 563.8(f)(2)(ii) and upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor.

(2) *Limitation as to term.* No subordinated debt security issued by an insured institution pursuant to this section shall have an original period to maturity of less than 7 years. During the first six years that such a security is outstanding, the total of all required sinking fund payments, other required prepayments and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount thereof multiplied by a fraction the numerator of which is the number of years which have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to maturity.

(3) *Limitations on sale to certain institutions.* No insured institution may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Board in a supervisory situation, to the Corporation.

(e) *Filing of application.* The application for approval of the issuance of subordinated debt securities under this section is filed with the Corporation by transmitting the original and three copies of the application and all supporting documents to the Supervisory Agent. As used in this section, the term "Supervisory Agent" means the President of the Federal Home Loan Bank of the district in which the applicant is located or any other officer or employee of such bank designated by the Board as agent of the Corporation, as provided by § 501.10 or § 501.11 of this chapter.

(f) *Supervisory objection.* No application for approval of the issuance of subordinated debt securities pursuant to this section shall be approved if, in the opinion of the Corporation, the policies, condition, or operation of the applicant affords a basis for supervisory objection to the application.

(g) *Additional requirements.* The Corporation may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, or the Corporation.

(h) *Limitation on offering period.* Following the date of the approval of the application by the Corporation, the institution shall have an offering period of not more than one year in which to complete the sale of the subordinated debt securities issued pursuant to this section. The Corporation may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(i) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution.

11. Delete § 563.8–2 as follows:

§ 563.8–2 [Deleted effective May 30, 1980]

12. Add § 563.8–3 to read as follows:

§ 563.8–3 Distribution of maturities of liabilities.

(a) *Definitions.* As used in this section—

(1) The term "liability" includes any savings account, including any account of $100,000 or more, with a specified term or maturity date; any borrowing, including advances from a Federal Home Loan Bank or a State-chartered central reserve institution; any investment commitment, including any commitment to make or purchase a loan or participation therein, and any loans in process (undistributed loan proceeds).

(2) The term "liquid assets" means assets that qualify as liquid assets under § 523.10(g) of this Chapter.

(b) *General.* If, by incurring a liability, an insured institution causes the aggregate of its liabilities maturing in any consecutive three months, less the amount of the institution's liquid assets at the time it incurs such liability, to exceed an amount equalling 30 percent of the institution's total assets, the institution shall provide to the Principal Supervisory Agent notification as prescribed in paragraph (c) of this section. No institution shall incur any liability that will cause its aggregate liabilities maturing in any consecutive three months, less its liquid assets at the time it incurs such liability, to exceed an amount equalling 40 percent of the institution's total assets, unless the institution has obtained prior approval

of the Corporation under paragraph (d) of this section.

(c) *Notification.* Notification required under paragraph (b) of this section shall include information sufficient to demonstrate that the insured institution has an effective program of liability management and will be able to fund maturing liabilities. Such information shall include (1) anticipated loan payments; (2) projected earnings from all sources; (3) projected savings increases; (4) anticipated rollovers of outstanding liabilities; and (5) economic forecasts and other assumptions on which projections are based.

(d) *Approval.* (1) An application for Corporation approval, as required under paragraph (b) of this section, shall be submitted to the Supervisory Agent and shall include information required under paragraph (c) of this section.

(2) The Supervisory Agent shall submit a report and recommendation on the request to the Director, Office of Examinations and Supervision, within 10 business days after receipt of the request. The Director is authorized, on behalf of the Board, to approve the request if, in the Director's opinion, the institution's program of liability management justifies incurring the liability for which approval is requested. In the event that the Director has not acted favorably on the request within 10 business days after receipt of the materials from the Supervisory Agent, the request shall be submitted for decision by the Corporation and the requesting institution shall be so informed.

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-16493 Filed 5-29-80; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 561

[No. 80-329]

Amendment Regarding Sale of Mortgages and Participations in Mortgages

Dated: May 22, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Home Loan Bank Board's definition of "without recourse," as that term applies to sales by insured institutions of mortgage loans or participations in loans by means of mortgage pass-through securities. Under present regulations, such sales are prohibited if the agreement of sale provides that a purchaser shall have recourse to the selling institution in the event of default in payment of any loan or mortgage involved or any part thereof. This amendment excludes from the prohibition against sales with recourse any sale of mortgage pass-through securities that provides for the seller to take a subordinate interest in part of the mortgages sold, if (1) the subordinate interest does not exceed 10 percent of the original amount of the mortgage pool, and (2) a specific reserve is designated from net worth in an amount equal to 50 percent of the amount of the subordinate interest that does not exceed 5 percent of the pool, plus 100 percent of the amount of the subordinate interest that exceeds 5 percent of the pool. This change is intended to provide a new method of obtaining funds at a reduced cost to institutions.

EFFECTIVE DATE: May 29, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas P. Faucette, Associate General Counsel (202–377–6410) or John R. Hall, Attorney (202–377–6466), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Board Resolution No. 79–456, dated November 1, 1979, proposed to amend § 561.8 of the Rules and Regulations for Insurance of Accounts (12 CFR 561.8) to amend the definition of "without recourse." Section 561.8 provides that the term "without recourse" means, in connection with the sale of a loan or a participation interest in a loan, without any agreement or arrangement under which the purchaser is to be entitled to receive from the seller any sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan or mortgage involved or any part thereof or to withhold or to have withheld from the seller any sum of money or any such thing of value by way of security against any such default. Under § 563.23 all loans and participation interests in loans sold by insured institutions must be sold without recourse. The proposal was published in the **Federal Register** November 8, 1979, (44 FR 64840) with an invitation for public comment until December 8, 1979. Thirty-four public comments were received, and on the basis of those comments and other information available to it the Board has decided to adopt the proposed amendment with certain changes discussed below.

The amendments hereby adopted authorize sales of mortgage pass-through securities which include provisions designed to eliminate the expense of acquiring private mortgage insurance. The amendments permit an insured institution selling such securities to retain a junior interest in a specified percentage of the mortgage pool and thereby provide a form of self-insurance.

Summary of Public Comments

Sixteen commenters recommended that, upon sale of a mortgage pool, an institution be permitted to retain a subordinate interest in an amount up to 10 percent of the pool, rather than 5 percent as proposed. They noted that Federal bank regulators have approved sales of mortgage pass-through securities that include provision for subordination by the selling bank or issuance of a standby letter of credit in amounts up to 10 percent of the pool. They argue that savings and loan institutions need comparable flexibility.

Five commenters stated that a subordinate interest of at least 6.5 percent will be required to achieve a AAA rating on mortgage pass-through securities.

Seven commenters recommeded that the maximum subordinate interest be a percentage of the original amount of the pool, not a percentage of the amount of the outstanding mortgages in the pool.

Board response. The Board has determined to permit subordination of up to 10 percent of the original amount of the pool. The Board believes that this limitation will provide sufficient flexibility to permit insured institutions to compete successfully in the securities market, and that the reserve requirement described below will provide adequate protection against risk of loss to the institution.

Eighteen commenters found the proposed reserve requirements too restrictive and recommended more liberal alternatives. Thirteen commenters recommended that the required reserve amount be based on the anticipated rate of mortgage delinquencies. Commenters argued that the anticipated number of delinquencies is minimal and that the required reserve should equal no more than .2–2 percent of the pool.

Several commenters stated that no reserve is necessary when good quality loans comprise the pool to be sold. They stated that the proposed reserve would unnecessarily erode an institution's net worth position, and one commenter noted that small institutions are particularly unable to sustain such

erosion. One commenter recommended that no reserve be required if all mortgages in the pool with a loan-to-value ratio in excess of 80 percent are insured by a private mortgage insurer. Another suggested requiring a reserve only while mortgages have loan-to-value ratios in excess of 80 percent. Other commenters suggested alternatives to requiring a reserve.

Board response. The Board believes that, because a subordinate interest in a pool provides insurance for the entire amount of the senior interest in the pool, it is appropriate that reserves be maintained to reflect potential liability. On further consideration, however, the Board has determined that, if a subordinate interest does not exceed 5 percent of the amount of the pool, a reserve equalling 50 percent of the subordinate interest will provide adequate protection. However, for any subordinate interest in excess of 5 percent of the pool the reserve amount must equal the amount of the subordinate interest. For example, if an institution's subordinate interest in a loan pool equals 7.5 percent of the pool amount, a reserve of 5 percent is required, i.e., 2.5 percent, or one-half of the initial 5 percent subordinate interest, plus an additional 2.5 percent equalling the amount of subordinate interest in excess of 5 percent of the mortgage pool.

Ten commenters recommended that any reserve required in connection with the retention of a subordinate interest in a loan pool be designated or earmarked from net worth, and not established as a charge against income.

Board response. The Board intended that the reserve be designated as commenters recommended, and the final regulation so states.

One commenter recommended that the final amendment clearly state that an insured institution may retain a subordinate interest in mortgages sold only if sale is by means of mortgage pass-through securities. The commenter stated that if the regulation is interpreted to permit subordination in typical secondary market transactions the market could be unnecessarily disrupted.

Board response. The final regulation has been so clarified.

Other commenters recommended that the Board consider permitting insured institutions to take subordinate positions in other types of transactions, or that other types of self-insurance mechanisms be permitted.

Board response. The Board has determined to limit such authority to the type of transactions under consideration when the amendment was proposed.

In view of the current economic trend toward a more favorable climate for issuing mortgage pass-through securities, the Board believes that it is in the public interest to implement this liberalized regulation as soon as possible, and the Board has therefore determined that publication of the amendments for the time specified in 12 CFR 508.14 and 5 U.S.C. § 553(d) prior to their effective date is contrary to the public interest and that the amendments shall become effective as herein set forth.

Accordingly, the Board hereby amends § 561.8 of the Rules and Regulations for Insurance of Accounts by adding at the end thereof a sentence, to read as follows:

Federal Savings and Loan Insurance Corporation

PART 561—Definitions

§ 561.8 Without recourse.

* * * If an insured institution sells a pool of mortgages or interests therein through issuance of mortgage pass-through securities and the agreement of sale provides for the institution directly or indirectly to hold or retain a subordinate interest in a specified percentage of the pool, which percentage does not exceed 10 percent of the original amount of the pool, the transaction shall not, solely because of that provision, be deemed to be with recourse, provided the institution designates a specific reserve from its net worth equal to one-half the amount of its subordinate interest that does not exceed 5 percent of the original amount of the pool plus the total amount of its subordinate interest in excess of 5 percent of the original amount of the pool.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-16494 Filed 5-29-80; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9104]

SEARS, ROEBUCK AND CO., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires a Chicago, Ill., department store chain to cease, in connection with the advertising and sale of dishwashers, representing that its dishwashers will completely clean dishes, pots and pans without prior rinsing or scraping; and claiming without substantiation that items placed in the top rack of the dishwashers will get as clean as those on the bottom rack. The company is prohibited from making claims regarding the performance of any major home appliance unless those claims are supported by reliable and competent tests. The firm is further barred from misrepresenting the purpose, content or conclusions of tests, studies, reports or surveys, and required to maintain specified records for a period of three years.

DATES: Complaint issued Nov. 4, 1977. Final Order issued April 28, 1980.*

FOR FURTHER INFORMATION CONTACT: FTC/PA, Robert L. Barton, Washington, D.C. 20580. (202) 724–1499.

SUPPLEMENTARY INFORMATION: In the Matter of Sears, Roebuck and Co., a corporation, and J. Walter Thompson Co., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.170 Qualities or properties of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.265 Tests and investigations. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records. Subpart-Misrepresenting Oneself and Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Final Order, including further order requiring report of compliance therewith, is as follows:

Final Order

This matter has been heard by the Commission upon the appeal of counsel for respondent, and upon briefs and oral argument in support of and in opposition to the appeal. The Commission, for the reasons stated in the accompanying Opinion, has granted the appeal in part, and denied the appeal in part. Therefore,

*Copies of the Initial Decision, Opinion of the Commission and Final Order filed with the original documents.

It is ordered that the initial decision of the administrative law judge, pages 1–85, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except for Findings 24–25; last sentence of Finding 26; all of page 80 beginning with the first full paragraph thereon; page 81 except for final paragraph; and except as is otherwise inconsistent with the attached opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

Order

I

It is ordered that for purposes of this Order the following definitions shall apply:

1. "Major home appliance" means air conditioning units (room or built-in), clothes washers, clothes dryers, disposers, dishwashers, trash compactors, refrigerators, refrigerator/freezers, ranges, stoves, ovens (including microwave ovens), and humidifiers.

2. "Competent and reliable test" means a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner, using test procedures that insure accurate and reliable results. Such tests must be truly and fully representative of expectable consumer usage.

II

It is further ordered that Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of dishwashers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any Sears dishwasher will completely remove, without prior rinsing or scraping, all residue and film from all dishes, and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers.

2. Representing, directly or by implication, that dishes in the top rack of any Sears dishwasher will get as clean as those on the bottom rack without prior rinsing or scraping.

It shall be an affirmative defense to a compliance action brought under the preceding paragraphs for Sears, Roebuck and Co. to establish that the representation is truthful.

III

It is further ordered that Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of "major home appliances," in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statements or representations, directly or by implication, concerning the performance of such products unless such statements or representations are true and unless, at the time the statements or representations are made, Sears, Roebuck and Co. possesses and relies on a reasonable basis for such statements or representations, which shall consist of competent and reliable tests, or other competent and reliable evidence which substantiates such statements or representations.

2. Misrepresenting in connection with the advertisement of any such products or in any manner, directly or by implication, the purpose, content or conclusion of any test, experiment, demonstration, study, survey, report or research.

3. Making any statements or representations, directly or by implication, in connection with the advertisement of any such products which are inconsistent in any material respect with any statements or representations contained directly or by implication in post purchase material(s) supplied to the purchasers of such products.

IV

It is further ordered, that Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of dishwashers or other "major home appliances," in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials that were relied upon in making any claim or representation in advertising, sales materials, promotional materials, or post purchase materials, concerning the performance characteristics of any of Sears, Roebuck and Co.'s dishwashers or other major home appliances;

2. Of all test reports, studies, surveys, or demonstrations in their possession that contradict, qualify, or call into question any claim or representation in advertising, sales materials, promotional materials, or post purchase materials disseminated by Sears, Roebuck and Co., or by any advertising agency on behalf of Sears, Roebuck and Co., concerning the performance characteristics of any of Sears, Roebuck and Co.'s dishwashers or other major home appliances.

Such records shall be retained by Sears, Roebuck and Co. for a period of three years from the date such advertising, sales materials, promotional materials, or post purchase materials were last disseminated. Such records may be inspected by the staff of the Commission upon reasonable notice.

V

It is further ordered, that Sears, Roebuck and Co. shall notify the Commission at least 30 days prior to the effective date of any proposed change in it as a corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

It is further ordered, that Sears, Roebuck and Co. shall forthwith distribute a copy of this Order to each of its operating divisions, and to each of its officers, agents, representatives and employees engaged in or connected with the preparation and placement of advertisements for dishwashers or other major home appliances.

It is further ordered, that Sears, Roebuck and Co. shall within sixty (60) days after service upon it of this Order, and at such other times as the Commission may require, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-16508 Filed 5-29-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-16833]

Interpretative Release Relating to Proxy Rules

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff interpretation.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of this release reflecting the views of the Division of Corporation Finance (the "Division") with respect to the disclosure in proxy contests where a principal issue in contention is the liquidation of all or a part of the equity of an issuer. These views are being published because of serious concerns regarding the appropriateness and adequacy of the disclosure in this area.

FOR FURTHER INFORMATION CONTACT: Linda C. Quinn (202) 272-3208, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC, 20549.

SUPPLEMENTARY INFORMATION: In the past year, a number of proxy contests have been undertaken in which a principal issue in contention, either as the platform of one party's nominees or as a separate shareholder proposal, has been the disposition of some or all of an issuer's assets or outstanding stock with the proceeds to be made available to shareholders. While the proposals have run the gamut from a mere promise to seek a buyer for the issuer's assets or outstanding stock to a commitment to undertake a program of disposition of assets and distribution of the proceeds realized, each has been based on the premise that the market price of the issuer's securities did not reflect the value that could be realized by its shareholders upon liquidation of all or a part of their investment in the issuer. Whatever form of disposition proposed, the focus has been on the proceeds to be made available to the shareholders, whether by dividend, tender offer, merger, exchange or liquidation distribution. In a number of instances, those sponsoring the proposal have projected the dollar amount per share to be available to shareholders if such proposal is effected.

The Division is concerned that, even when such valuations are the major factor in the solicitation, the usual expectation that the interests of the opposing parties in a contest will generally assure a full airing of the principal issues may not be warranted for reasons peculiar to this arena. Parties to these contests may not engage in a thorough debate of the merits of such valuations for a number of reasons, not the least of which are perceptions of serious risks of liability in attempting to forecast an alternative valuation, and, even if willing to run such risk, the limited time actually available for the opposing party to consider and make its own estimate of the realizable value likely upon execution of the proposal.

The Division recognizes that the factors constituting a basis for such valuations can, and probably will, vary from case to case, depending on the circumstances and the information available to the person making the valuation.[1] However, the Division wishes to emphasize that the inclusion by the management or oppostion of such valuation in its proxy soliciting material is only appropriate and consonant with Rule 14a-9 under the Securities Exchange Act of 1934 when made in good faith and on a reasonable basis and where accompanied by disclosure which facilitates shareholders' understanding of the basis for and the limitations on the projected realizable values.[2] The Division is also concerned that, where the valuations are so qualified and subject to such material limitations and contingencies, inclusion in proxy soliciting material of specific realizable values may be unreasonable.

Further, where material has been prepared and published by an independent party for purposes other than use in connection with the proxy contest and is offered as support for the valuation, reliance on such material must be reasonable and made in good faith. The context and purpose of the original publication of such information, as well as its currency and the qualifications of the original author to publish the material, are among the factors bearing on the reasonableness of such reliance. Care should be taken that information extracted from such material and used in the proxy solicitation document not be extracted out of context. For example, inclusion, where appropriate, of current cost values to support projected net realizable values, without disclosure of the particular nature of this information as reported in the issuer's financial reports, may raise serious questions.[3] The Division also reminds those proposing to use such material that proxy soliciting material consisting of reprints or quotations from previously published articles is subject to the same scrutiny and the same standards of disclosure as any other proxy soliciting material subject to the proxy rules.

The Division is particularly concerned that shareholders be afforded the opportunity to fully understand and evaluate any material limitations on or qualifications of the opinion of any expert, *i.e.*, investment banker, appraiser or other similar advisor, whose opinion has been sought and is being used to support the projected realizable value of the issuer's assets or outstanding stock or the estimated amount of the proceeds the issuer actually would be able to make available to shareholders in view of its cash needs, etc. Particular care needs to be taken in those instances where there has been limited access to the type of information thought necessary by such expert for the formulation of such an opinion. Where such expertise is relied upon, the proxy soliciting material should detail clearly those inquiries the advisor otherwise normally would have undertaken in formulating such an opinion had it unfettered access to all the information necessary in its view to render such an opinion and should explain the effects of the advisor's inability to make such inquiries on the substance of the opinion rendered. When these explanations constitute a significant qualification of the opinion, the use of such an opinion, or reference to it, outside the context of a complete discussion of the limitations of the review and consequent effect on the opinion, would raise substantial questions under Rule 14a-9. Further, those proffering such opinions as support for a valuation, as well as those rendering them, are cautioned that there

[1] Where applicable, consideration should also be given to the provisions of Securities Exchange Act Release Nos. 16075 (Going private transactions by public companies or their affiliates) and 15572 (Disclosure in proxy statements containing certain sale of assets transactions).

[2] Guidance may be found in the discussions of projections and other forward looking information contained in Securities Exchange Act Release Nos. 15305 (Guides for disclosure of projections of future economic performance) and 15944 (Safe harbor rule for projections).

[3] Replacement cost or current cost values, while supported by the Commission as being relevant information to an assessment of an entity's economic value, will not necessarily coincide with future realizable value in the context of a given plan for the disposition of assets. Depending on the program of disposition, various factors, other than those considered in the computation of replacement cost or current cost, may enter into the determination of projected realizable value. Accordingly, values previously disclosed as replacement cost or current cost in an issuer's published financial report should not be used or relied upon indiscriminately for the purpose of projecting realizable value in connection with a proposed program for disposition or liquidation. Substantial care must be taken in determining the propriety of using such values in connection with any discussion or display of amounts purporting to represent estimated realizable value.

could be circumstances when the valuation is so qualified or subject to such limitations as to raise questions as to the reasonableness of such reliance on the opinion.

Accordingly, 17 CFR Part 241 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 23, 1980.

[FR Doc. 80-16507 Filed 5-29-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80-24; Order No. 85-A]

Permanent Rule Defining Small Existing Industrial Boiler Fuel Users Exempt From Incremental Pricing Surcharges

Issued: May 20, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Order No. 85, which was issued in this docket on May 8, 1980 (45 FR 31980, May 15, 1980), adopted a final rule defining small existing industrial boiler fuel users permanently exempt from incremental pricing surcharges under section 206(a)(2) of the Natural Gas Policy Act of 1978. Order No. 85 also set forth deadlines and procedures for filing exemption affidavits to obtain a permanent exemption. The Federal Energy Regulatory Commission hereby amends its final regulations to extend by 60 days the deadlines established in Order No. 85 pertaining to exemption affidavits. The amended regulations provide that:

(1) an exemption on the basis of company records or previously-filed exemption affidavits continues until *August 31, 1980;*

(2) natural gas suppliers shall mail or otherwise supply exemption affidavits to appropriate facilities not later than *July 20, 1980;*

(3) executed affidavits shall be filed on or before *August 31, 1980.*

EFFECTIVE DATE: Effective May 20, 1980.

FOR FURTHER INFORMATION CONTACT: Alice Fernandez, Office of Producer and Pipeline Regulator , Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-9095, or Carol M. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8114.

Permanent rule defining small existing industrial boiler fuel users exempt from incremental pricing under the Natural Gas Policy Act of 1978.

Order No. 85, which was issued in this docket on May 8, 1980 (45 FR 31980, May 15, 1980), adopted a final rule defining small existing industrial boiler fuel users permanently exempt from incremental pricing surcharges under section 206(a)(2) of the Natural Gas Policy Act of 1978. Order No. 85 also set forth deadlines and procedures for filing exemption affidavits to obtain a permanent exemption.

The Commission, upon its own motion, has determined that an undue administrative burden may be place upon natural gas suppliers and industrial end-users by the exemption affidavit portion of the order. Due to the immediacy of the filing deadlines, coupled with the large number of industrial end-users required to be served with affidavits, it may not be possible for all affected persons to meet the existing deadlines. It is therefore appropriate to extend the exemption affidavit deadlines established in Order No. 85 for a period of two months. Accordingly, Part 282 is amended to provide that:

(1) an exemption on the basis of company records or previously-filed exemption affidavits continues until *August 31, 1980;*

(2) natural gas suppliers shall mail or otherwise supply exemption affidavits to appropriate facilities not later than *July 20, 1980;*

(3) executed affidavits shall be filed on or before *August 31, 1980.*

The amendments adopted in this order relieve administrative burdens imposed on natural gas suppliers and industrial boiler fuel users; accordingly, the Commission finds there exists good cause to make them effective immediately.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*)

In consideration of the foregoing, Part 282 of Subchapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. In Section 282.204 paragraphs (c)(2), (d)(2)(i)(B), (d)(2)(ii)(B), and (d)(7)(i) (A) and (B) are revised to read as follows:

§ 282.204 Obtaining an exemption.

* * * * *

(c) *Exemption on the basis of company records until August 31, 1980.* * * *

(2) The natural gas supplier shall treat an industrial boiler fuel facility for which an affirmative determination is made under subparagraph (1) as exempt from incremental pricing under this part until August 31, 1980, without further action by the owner or operator of the facility.

(d) *Exemption on the basis of affidavit.* * * *

(2) *Availability from natural gas suppliers.*

(i) *Initial service.* * * *

(B) Not later than July 20, 1980, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in paragraph (d)(3) of this section, to the owner or operator of each industrial boiler fuel facility on such supplier's system which obtained an exemption pursuant to § 282.203(a), as in effect from January 1 to August 31, 1980.

(ii) *Response date.* * * *

(B) Natural gas suppliers which supply exemption affidavits under clause (i)(B) shall request that executed affidavits be filed on or before August 31, 1980, in accordance with subparagraph (4).

* * * * *

(7) *Effective date of exemption.* * * *

(i) *Permanent exemption under 282.203(a).*

(A) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission in order to obtain a permanent exemption under § 282.203(a) and sends a copy to the facility's natural gas supplier on or before August 31, 1980, the facility shall be permanently exempt from incremental pricing in accordance with this part as of September 1, 1980.

(B) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in order to obtain a permanent exemption under § 282.203(a) on or after September 1, 1980, the facility shall be exempt from incremental pricing under this part as of the beginning of the first full month following the date the exemption affidavit is filed with the Commission and received by the facility's natural gas supplier.

* * * * *

[FR Doc. 80-16408 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 80-142]

19 CFR Parts 4, 144, 151, 159

Imports of Petroleum and Petroleum Products; Customs Regulations

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to imported petroleum and petroleum products to incorporate recommendations of a Customs Petroleum Imports Task Force for establishing standardized guidelines and procedures, including the use of public gaugers, for monitoring imports of petroleum and petroleum products. These amendments are being made to ensure proper control of imported petroleum and petroleum products and uniform, complete, and reliable statistics relating to the importation of these products. The amendments to the regulations are considered to be significant.

EFFECTIVE DATE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Alice M. Rigdon, Cargo Processing Division, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5354).

SUPPLEMENTARY INFORMATION:

Background

Controls and checks on the unlading and shore tank gauging of imported petroleum and petroleum products now are established by each district director of Customs under section 151.42, Customs Regulations (19 CFR 151.42). Depending on local conditions, the district director may employ any of the following methods of control:

(a) Complete and continuous supervision by a Customs officer when other methods are not considered adequate, or when the importer requests continuous supervision;

(b) Use of reports of public gaugers approved by the Commissioner of Customs in accordance with section 151.43, Customs Regulations (19 CFR 151.43);

(c) Use of positive displacement meters at installations where provided by the importer;

(d) Use of turbine-type meters at installations where provided by the importer;

(e) Sealing of all valves when practical; or

(f) Taking of vessel ullages before and after the discharge.

To ensure proper control of imported petroleum and petroleum products and uniform, complete, and reliable statistics relating to the importation of these products, a Customs Petroleum Imports Task Force was established to survey operations at selected Customs field locations and to formulate proposals to achieve these goals.

Survey teams conducted studies from July 2-20, 1979, in the 10 locations through which most petroleum and petroleum products imported into the United States are entered. The teams "* * * found that, in general, the Customs Service was providing proper controls and reporting reliable statistics." However, it was also discovered that "* * * there were isolated instances of insufficient controls and that the Customs Service was lacking in standardized national procedures and guidelines for various aspects of imported petroleum." Therefore, it was determined to be in the national interest, in light of the present energy situation, to develop standardized guidelines for processing petroleum and petroleum product importations.

On the basis of Task Force recommendations, and in accordance with Customs intent to maintain a permanent oversight function in regard to petroleum imports to ensure continued control in this vital area, the Customs Service published a notice in the **Federal Register** on November 7, 1979 (44 FR 64434), proposing to amend the Customs Regulations to establish standardized guidelines and procedures applicable to the appropriate methods of control and the use of public gaugers in monitoring imports of petroleum and petroleum products. These guidelines were similar to Customs procedures followed in most locations. Significant changes emphasize uniformity throughout Customs and tighter control through increased supervision of various gauging procedures, including controls on the use of public gaugers.

The notice invited interested persons to submit comments on or before December 7, 1979. At the request of an industry trade association, the period of time for the submission of comments was extended until December 14, 1979, by a notice published in the **Federal Register** on November 21, 1979 (44 FR 66835).

In response to the notices, 17 comments were received from corporations, cooperatives, industry representatives, refiners, and others. In addition, in accordance with requests from certain commenters for further discussion of the proposals prior to the issuance of a final rule, pursuant to a notice published in the **Federal Register** on December 21, 1979 (44 FR 75635), Customs held an open conference on January 8, 1980, for the discussion and clarification of the issues raised in the comments. Approximately 45 individuals representing various interested parties attended. Specific proposals were discussed, the Customs position on each was explained, and areas of misunderstanding were clarified.

Summary of Major Changes in Existing Regulations

1. Section 4.12 requires that manifest shortages and overages be reported to the district director. However, it does not state how great the discrepancy must be before a report is mandatory for bulk importations. Customs proposed that discrepancies exceeding one percent between the manifested quantity and the gross quantity unladen be reported on Customs Form 5931, signed by both the carrier and the importer, and that penalties otherwise provided by law be imposed if the required notification and explanation were not filed timely, or if the reasons for the discrepancy was not satisfactorily explained.

This proposal has been adopted and modified to delete the requirement that Customs Form 5931 be signed by both the carrier and the importer.

2. Sections 151.41 and 151.45(c) permit importers to estimate the amount of petroleum and petroleum products to be unladen for entry or withdrawal from bonded tanks if the exact quantity cannot be determined in advance. In order to obtain more accurate statistics regarding these imports, Customs proposed that this estimate not vary by more than one percent from the gross quantity unladen and that penalties otherwise provided by law be imposed if the required notification and explanation were not filed timely, or if the reason for the discrepancy was not satisfactorily explained.

This proposal has been adopted with the modification that the estimate may vary by three percent.

3. Section 151.42 provides that each district director shall establish controls and checks on the unlading and shore tank gauging of petroleum and petroleum products imported by vessel. Customs proposed to amend § 151.42 to include imports by truck, railroad car, pipeline, or other carrier.

This proposal has been adopted without modification.

Section 151.42 also permits the district director to exercise discretion in

determining which methods of control to use in the unlading and gauging of petroleum and petroleum products. Customs proposed that this section be amended to state that, where possible, two methods of control shall be used.

This proposal has been adopted. Accordingly, for control purposes, both shore measurements (§ 151.42(a)(1)) and vessel ullages (§ 151.42(a)(2)) shall be taken. For purposes of determining the gross quantity unladen, shore measurements will be used. Vessel ullages will not be used to determine the gross quantity unladen unless none of the methods of shore measurement are available or adequate.

At the suggestion of one commenter, weighing of trucks and railroad cars has been added as a method of control.

Consistent with an existing requirement that meters used in gauging petroleum and petroleum products be approved by Customs, it was proposed to amend § 151.42 (c) and (d) to provide that positive displacement meters and trubine-type meters used as methods of control in gauging petroleum and petroleum products must be of a type approved by Customs.

This proposal has been adopted without modification.

It was proposed further to amend § 151.42 to provide that Customs officers would perform or witness: (1) opening ullages of carriers; (2) closing ullages of all carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages due to special problems; (3) shore tank gauges performed by company or related party employees; (4) between 5 and 10 percent of shore tank gauges conducted by public gaugers; and (5) shore tank gauges, including those conducted by a public gauger, where no carrier ullages are taken. Because the sealing of valves is not a complete method of measurement and control, it was proposed to delete § 151.42(e), which refers to this method. Sealing of valves would continue to be used in shore tank gauging to the extent that it is safe and practicable.

These proposals have been adopted without modification.

Customs also proposed to add a new subsection to section § 151.42. The new subsection would require the reporting of discrepancies in manifests of petroleum and petroleum products imported by truck, railroad car, pipeline, or other carrier, if the discrepancy exceeds one percent.

This proposal has been adopted without modification.

4. Section 151.43(a) provides that the acceptance of public gauger quantity reports of imported petroleum and petroleum products is discretionary with the district director. Customs proposed to amend this section to permit acceptance of these reports for shore tank gauging and closing carrier ullages if Customs independently employed, as a second method of control, one of the other methods described in § 151.42(a), and there was no evidence that the public gauger failed to comply with the provisions of Part 151, Subpart C, Customs Regulations.

This proposal has been adopted. Therefore, Customs will accept public gaugers reports only when it has independently performed or witnessed opening and closing carrier ullages as prescribed in § 151.42(b).

5. Section 151.43(b) provides that in applying for Customs public gauger approval, an applicant must agree to avoid conflict-of-interest situations. In its notice of proposed rulemaking, Customs proposed to amend § 151.43(b) to require approved public gaugers to notify the Commissioner in writing within 60 days of any change of name, address of principal place of business, ownership, or financial condition, or, if a corporation, of any change in its articles of incorporation, officers, directors, or parent-subsidiary relationship.

It also was proposed that public gaugers be required to notify Customs of any (1) effort to influence or otherwise impede the performance of their duties in connection with proper gauging of petroleum or petroleum products, or (2) attempt to coerce them fraudulently to change or falsify records maintained by them in the course of their employment.

Both of these proposals have been adopted without modification.

6. Section 151.43(d) provides that a public gauger's Customs approval may be revoked for failure to comply with the provisions of that section but does not provide for the imposition of any other sanction. Customs proposed to amend this section to permit it to suspend approval or to assess liquidated damages under the public gauger bond described in § 113.13(b), Customs Regulations (19 CFR 113.13(b)).

This proposal has been adopted without modification.

7. Section 151.43(e)(1) provides that to be approved by Customs, all measuring and testing devices in use in a public gauger's operation shall be maintained in first-class condition. To clarify that sampling devices also are covered, it was proposed to amend § 151.43(e)(1) to include sampling devices with measuring and testing devices.

This proposal has been adopted without modification.

8. Section 151.43(e)(3) requires that as a condition of approval, public gaugers authorized to sign gauging reports must have a minimum of 6 months on-the-job training and experience. In the notice of proposed rulemaking, Customs proposed to amend § 151.43(e)(3) to require that public gaugers provide Customs with written certification of their training and experience.

This proposal has been adopted with the modification that each public gauger and each other person authorized to sign gauging reports shall furnish the required information.

9. The regulations do not require that a public gauger maintain records for Customs inspection pertaining to the measurement, gauging, testing, or sampling of imported petroleum or petroleum products performed in the course of his employment, nor for Customs verification of any records kept by him in the normal course of business. It was proposed to add new subsections (g) and (h) to § 151.43, establishing a recordkeeping requirement for public gaugers and providing a procedure for verification of these records by Customs.

This proposal has been adopted without modification.

10. Part 151, Subpart C, provides that Customs approval of a public gauger may be revoked for failure to comply with any of the provisions of that subpart. However, it is silent as to the public gauger's rights in such situations. Customs proposed to add a new subsection (i) to § 151.43, to provide an approved public gauger with due process before any revocation or suspension of his approval by Customs.

This proposal has been adopted without modification.

11. It was proposed to add a new subsection (j) to § 151.43 to state that in addition to (1) any penalty otherwise provided by law which may be incurred for failure to comply with the provisions of Part 151, Subpart C, or (2) any sanction which may be imposed against a public gauger approved by Customs under the provisions of that subpart, a monetary penalty also may be assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), if appropriate.

This proposal has been adopted without modification.

12. Section 151.44(c) provides that whenever practicable, the district director may require that the measurements and calibrations shown on the gauge tables of petroleum storage tanks be verified by a Customs officer. Because a district director may deem verification necessary at a time when no qualified Customs officer is available, it was proposed to amend this section to permit the district director to accept an independent certification verifying these

measurements and calibrations. The independent verification would be performed at the expense of the storage tank proprietor.

This proposal has been adopted with the modification that the district director may require verification of the measurements and calibrations shown on the gauge tables of petroleum tanks whenever he has reason to suspect their reliability, instead of whenever practicable.

Discussion of Comments

A majority of the commenters endorse, in principle, Customs proposals to ensure proper control of imported petroleum and petroleum products, to provide uniform, complete, and reliable statistics relative to the importation of these products, and to establish standardized guidelines applicable to the use of public gaugers for monitoring imports of petroleum and petroleum products. They are generally of the opinion that these guidelines will improve the reliability of public gaugers; promote greater uniformity and accuracy in the measurement of imported petroleum and petroleum products; ensure proper control of imported petroleum and petroleum products; ensure the availability of uniform, complete, and reliable statistics regarding these imports; and simplify the international transportation of petroleum and petroleum products.

However, the commenters criticized the proposals as inadequate, vague, too restrictive, and likely to increase both expenses and the burden of documentation for importers and Customs, which possibly could thwart the collection of accurate statistics and increase discrepancies for which importers would be penalized unfairly.

The specific comments are as follows:

I. Discrepancies

A. Reporting of One Percent Discrepancy

Fourteen commenters object to Customs proposal that discrepancies exceeding one percent between manifested and unladed quantities shall be reported on Customs Form 5931 and that penalties otherwise provided by law may be incurred automatically if the discrepancy exceeds one percent. A number of commenters believe that the one percent figure is too restrictive and suggest allowances ranging from 1.5 to five percent. Other commenters oppose the imposition of any reporting requirement. In their objections, the commenters state that the reporting of manifest discrepancies is impracticable because:

(1) Using at least two methods of measurement, one of which might be ullaging, may in itself guarantee discrepancies exceeding one percent;

(2) Discrepancies may result from factors beyond the control of the carrier or the importer, such as physical losses, temperature deviation, cargo remaining on board, measurement errors at either the loading or receiving port, inconsistent operations in foreign ports, vessel ullages taken at sea, and variables associated with pipelines;

(3) Other factors, such as imprecise gauge tables, and the presence of suspended water and sediment, may increase the likelihood of discrepancies; and

(4) Problems associated with split entries and the use of lightering vessels introduce variables in the determination and measurement of cargo which also may result in discrepancies.

The commenters contend that, for these reasons, the imposition of a penalty in every case in which a manifest discrepancy exceeds one percent would be unreasonable.

The addition of proposed paragraph (c) to § 4.12, Customs Regulations (19 CFR 4.12), does not change materially the requirement that a vessel master or agent is responsible for explaining manifest overages and shortages, but is a restatement of a longstanding Customs practice. Under the proposed amendments, the master or agent would manifest all cargo on board to be imported. The manifested quantity (gross quantity on board and to be unladen) would be compared to the gross quantity actually unladen, as determined in accordance with §§ 151.42(a) and 151.43(a). If there is a discrepancy in excess of one percent between the two figures, the master or agent would be required to file a report on Customs Form 5931 in accordance with § 4.12(a)(2) or (a)(3). It is not intended that a penalty will be imposed automatically if the discrepancy exceeds one percent. However, if the required notification and explanation are not filed timely, or if the reason for the discrepancy is not satisfactorily explained, an appropriate penalty will be imposed.

The net quantity unladen (the gross quantity unladen adjusted for excessive water and sediment) is the quantity which will be used for entry, licensing, and statistical purposes.

Because Customs recognizes that factors beyond the master's control may contribute to discrepancies, a one percent variable has been provided. The manifest is prepared by the vessel master and may be amended at any time before unlading. Accordingly, before unlading, the master may correct the manifest to take into account any variables of which he is aware. This may include correcting the manifest to reflect opening vessel ullages.

Customs has found that in those locations where vessel masters or agents now are required to report discrepancies exceeding one percent, no discrepancy reports were necessary in approximately 95 percent of the transactions.

B. Explanation of Manifest Discrepancies

Six commenters submit observations regarding Customs proposals to require discrepancy reports.

One commenter suggests that because there are reasons other than absorption of moisture, temperature, and faulty weighing at the port of lading, listed in § 4.12(a)(5)(b), which may account for discrepancies between the manifested quantity and the gross quantity unladen, the word "explainable" should be substituted for the word "similar" in the provision " * * * a correction in the manifest shall not be required in the case of bulk merchandise if the district director is satisfied that the difference between the manifested quantity and the quantity unladen is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason."

Another commenter suggests that a correction of the manifest should not be required if discrepancies between the manifested quantity and the quantity unladen can be explained. Other commenters state that references to discrepancies of manifested entered quantities should be more specific as to which method of quantity determination shall be used and that the terms used be more specifically defined. One commenter also notes that carriers other than vessels, such as rail carriers, often are transient, and furnishing a report signed by both the carrier and the importer within 60 days of entry would be difficult.

Customs did not propose any changes to § 4.12(a)(5)(b) and believes that it is inappropriate to amend that section at this time. The section as written is sufficiently broad to take account of factors other than moisture absorption, temperature, and faulty weighing, which may contribute to discrepancies between quantities which are manifested and which are unladen.

The amendments to the Customs Regulations were proposed to ensure proper control of imported petroleum and petroleum products and uniform, complete, and reliable statistics relating

to the importation of these products. To carry out these purposes, proper carrier controls must be maintained. Accordingly, Customs is of the opinion that the provision requiring the correction of vessel manifests if there is a discrepancy of more than one percent between the manifested quantity and the gross quantity unladen is warranted.

As previously noted, vessel manifests may be amended at any time before unlading. Discrepancies will not be determined by comparing the entered quantity to the quantity unladen, but by comparing the quantity manifested to the quantity unladen, with both figures corrected to the same temperature coefficient—60° Fahrenheit.

Customs experience with rail carriers confirms that they are able to submit discrepancy reports within the 60 days provided. However, after further consideration, Customs has determined that it is unnecessary to require that manifest discrepancies reported on Customs Form 5931 be signed by both the carrier and the importer. Accordingly, the requirement has been deleted from proposed section 4.12(c).

II. Methods of Measurement

A. Ullages

Six commenters object to Customs proposal to use vessel ullages as a method of measurement. The commenters contend that the taking of vessel ullages is not a reliable basis for import reporting because it fails to take into account factors such as clingage, remains on board, the tank washing policy, differences in temperature above and below the waterline, and the inherent ship vs. shore measurement bias. It is suggested that ullage measurements be regarded only as an indication that a discrepancy may exist and not as a method for establishing a discrepancy for the purposes of imposing a penalty.

Customs agrees that vessel ullages are not the most accurate method of measuring the quantity unladen. The ullaged figure will not be used to determine quantity unladen for reporting purposes unless no other method of measurement is available or adequate. Nevertheless, vessel ullages shall be taken in every case unless the district director determines that it is unsafe to do so, or because technological factors, such as the presence of inert gas systems, prevent doing so. Customs intends to use the ullaged figure as an indication of the accuracy of the quantity manifested so as to afford the vessel master an opportunity to amend the manifest if a comparison between the quantity manifested and the ullaged figure shows a variance. Customs also will use the ullaged figure as an indication of the accuracy of shore metering and shore tank calibrations.

B. Meters

Four commenters address the proposal that positive displacement and turbine type meters used as methods of measurement be of a type approved by Customs. Two commenters suggest that applicable industry standards be used by Customs as criteria for approval of these meters. One commenter cautions that, in certain circumstances, meters may provide inaccurate measurements and suggests that gauging would be the most reliable means for measuring petroleum and petroleum products. Another commenter states that it is unnecessary for Customs to approve these meters, but if Customs chooses to do so, it should be required to provide approval within a specified time frame (i.e., 15 days) after the importer has requested approval.

Customs traditionally has used accepted industry standards in approving meters and intends to continue this practice. Experience has shown that Customs approved meters are generally as accurate or more accurate than gauging as a method of measurement. Furthermore, Customs may compare manifested quantities and quantities determined by opening ullages to metered quantities as an indication of the accuracy of the meter.

It is, and will continue to be, Customs policy to approve meters as rapidly as possible. Customs recognizes the need for timely approval of these devices and does not intend to inconvenience operators unnecessarily. However, Customs is of the opinion that it would be unduly restrictive to include a time constraint in the regulations.

C. Use of Two Methods of Measurement

Two commenters object to the proposal that, if possible, Customs use two methods of measurement to report imported petroleum and petroleum products. They state that there is no technical basis for assuming that the use of two equivalent measurement systems will give a more accurate reading than the use of one, that such use is expensive and redundant, will not increase the uniformity of controls, and only will generate an additional set of figures, thus creating an area of dispute.

Customs does not intend to use either an average or a combination of both figures for reporting purposes. The figure derived from the shore measurement will be the gross quantity unladen and ordinarily will be the basis for determining the net quantity unladen. The net quantity unladen, as determined by Customs, is the quantity used for entry, licensing, and statistical purposes in each case, whether or not there is a discrepancy between the quantity manifested and the gross quantity unladen. However, if shore measurements are unavailable or inadequate, Customs then will use vessel ullages to determine the gross quantity unladen.

Proposed § 151.42 has been modified to reflect this change.

D. Sealing of Valves

Three commenters oppose Customs proposal to eliminate sealing of valves as a method of control. One of the commenters states that although the sealing of valves is not a method of measurement, it is an effective means of controlling the flow of products into the measuring facility and that elimination of this method of control would remove a deterrent to both the intentional or inadvertent diversion of the product. Another commenter is concerned that eliminating the use of sealing of valves implies that segregation of a receiving system by installation of blinds will be required and that such a system would hinder normal terminal operations, especially lube oil operations.

Customs recognizes that the sealing of valves is an effective means of controlling the flow of products into measuring facilities. However, used alone, it is not a complete method of measurement. Accordingly, the sealing of valves has been deleted from the methods of measurement in proposed § 151.42(a)(1). However, sealing of valves shall continue as part of shore tank gauging to the extent safe and practicable.

Because the sealing of valves may be used in conjunction with the methods of measurement listed in § 151.42(a)(1), Customs does not anticipate that eliminating sealing of valves as a method of control will require the segregation of receiving systems by installing blinds.

E. Other

Additional commenters express reservations concerning use of the other methods of measurement proposed by Customs.

One commenter states that although Customs has set forth four methods of measurement which may be used in measuring imports of petroleum and petroleum products, it has not specified which shall be the ruling one for Customs outturn, license decrementation, and liquidation. The commenter suggests that the methods be given a rated priority of preference.

A second commenter recommends that only Customs inspectors perform ullaging and gauging. A third commenter notes that the only method of measurement discussed in the proposal is liquid gallons, but that many petroleum products, such as natural gas, greases, and waxes, are measured otherwise than in liquid gallons, and that weighing, an effective method for measuring the content of tank trucks and railroad cars, is not designated as a method of measurement.

Another commenter states that the shore tank gauge reading should be the only figure used for the determination of exact quantity discharged for statistical purposes and duty assessment where a partial quantity of a vessel's cargo is discharged at a particular port, and that a "bone dry certificate" from an independent surveyor should be required to determine that all of the material on board has been discharged in those instances where the vessel discharges all of the cargo on board.

One commenter suggests that specific procedures (e.g., frequency of audits or rotation of times that audits will be conducted) should be developed stating when the 5 to 10 percent of shore tank gauges conducted by public gaugers would be performed or witnessed by Customs.

One commenter states that with regard to stream-boarding of vessels, the decision whether or not to stream-board should be made by the individual inspector, not the district director.

As previously stated, Customs intends to employ only one method of mesurement (other than ullaging) to determine the gross quantity unladen. Customs does not believe that one method of shore measurement should be given preference over another because each port has different facilities, and a method used efficiently at one port may not be appropriate for use at another.

Because other Customs officers, such as warehouse officers, also may perform ullaging and gauging, Customs does not intend to authorize only inspectors to perform this function.

Although the measurement quantities discussed in the proposal included, but were not limited to, liquid gallons, the methods of control do not specify that measurements must be made in liquid gallons. It is Customs practice to measure merchandise in quantity units appropriate to each commodity.

Customs agrees that the weighing of tank trucks and rail cars is an effective measure and has determined to include it as a method of measurement in proposed § 151.42(a)(1), which has been modified accordingly.

The net amount unladen is the amount to be used for entry, licensing, and statistical purposes. Customs does not require a bone dry certificate because the burden is on the master to account for the entire cargo of the vessel whether or not the entire cargo is discharged at any particular port.

Specific procedures governing when the 5 to 10 percent of shore tank gauges conducted by public gaugers will be performed or witnessed by Customs have been developed. In addition, Customs intends to ensure the reliability and integrity of public gauger reports by random audits and by random on-site verification of quantities measured.

The Customs position, incorporated in an internal directive referencing safety problems, has been to allow each boarding officer to determine at the time of boarding whether or not it is safe to board a vessel in stream. This policy remains in effect. Customs does not intend to jeopardize the health and safety of its employees by requiring them to stream-board vessels under hazardous conditions.

III. Deduction for Basic Sediment and Water (BS&W)

Although the notice of proposed rulemaking did not address the subject, six commenters suggest that Customs amend the existing allowances for BS&W in suspension in imported petroleum and petroleum products.

Customs is amendable to suggestions and discussions leading to review of its BS&W claims policy. However, because no changes in existing policy were proposed in the notice, further consideration of comments regarding BS&E claims policy at this time is inappropriate.

IV. Public Gaugers

Seven commenters respond to Customs proposals regarding public gaugers.

Two commenters note that while Customs proposes to require that public gaugers maintain automatic sampling devices in first class condition, these devices normally are fixed shore installations owned and operated by the terminal operator, who is responsible for their maintenance. They suggest that gaugers be required to determine only that these devices be in first class condition.

One commenter recommends that a system for the verification of selected entries be instituted and that Customs investigate both public gaugers requesting Customs approval and gaugers who previously have been approved.

Another commenter suggests that the proposed amendments also provide for Customs approval of company-employed gaugers.

Two commenters note that while Customs would require each public gauger authorized to sign gauging reports to furnish Customs with a written certification that he has a minimum of six months on-the-job training and experience, there is no requirement that the person doing the gauging provide such certification. The commenter recommends that each gauger certified by Customs be required to carry identification stating that he is certified to perform gauging at any port his employer may send him.

One commenter questions whether, as part of Customs recordkeeping proposal, public gaugers must keep physical samples for a period of five years. The commenter suggests that maintaining these samples for six months or until liquidation of the entry would be sufficient.

One commenter is of the opinion that the provision that the Customs Office of Investigations shall investigate a gauger's fitness and reputation and verify the correctness of the statements made in his application at the direction of the Commissioner, as he deems necessary, vests too much discretion in the Commissioner. The commenter suggests that the provision should be modified to delete the section granting the Commissioner discretion in this situation.

One commenter suggests that if Customs exercises its discretion not to accept reports of public gaugers in certain situations, the volumes recorded for imports by a company and by Customs may vary. The company would employ an independent gauger to determine the discharged volume for accounting and reporting purposes, while Customs might record a different volume.

It has been Customs policy to require that gaugers maintain all of their measuring and testing equipment in first-class condition. In the proposed regulations, sampling devices also were included. However, the word "automatic" was inserted inadvertently in the notice of proposed rulemaking. Proposed § 151.43(e)(1) is modified to correct this error.

It is assumed that in recommending that a system for the verification of selected entries be instituted, the commenter is suggesting that Customs establish a means for ensuring the accuracy of public gaugers' reports. As previously noted, Customs intends to ensure the reliability and integrity of public gauger reports by random audits

and by random on-site verification of quantities measured.

All applicants who have received Customs approval previously have undergone Customs investigations to determine their fitness and reputation and to verify the correctness of the statements made in their applications. As set forth in § 151.43(c), this practice will be continued. Customs is of the opinion that re-investigating all public gaugers previously approved would require an unnecessary expenditure of money and manpower. Further, a revised agreement in the form set out in proposed § 151.43(b)(5) will not be required of previously-approved public gaugers. However, because the public gauger bond, posted by all previously-approved public gaugers is conditioned that the public gauger ". . . shall perform in accordance with standards and procedures of gauging as required by the Customs Regulations . . .", approved public gaugers have a continuing obligation to comply with changes in the regulations. Accordingly, they will be required to comply with new requirements set forth in this document. These include: conflict-of-interest requirements; recordkeeping requirements; the maintenance of sampling devices; and employee experience and training.

Customs does not agree that company-employed gaugers also should be approved by Customs and that Customs should accept reports made by company gaugers. Because company gaugers are directly employed by the concern for which the gauging is performed, Customs is of the opinion that accepting reports from company gaugers is not a form of independent verification because it may place the company gauger in a conflict-of-interest situation.

Customs agrees that both persons authorized to sign gauging reports and persons performing gauging should have a minimum of six months on-the-job training and experience. Accordingly, proposed § 151.43(e)(3) has been modified to reflect this change.

Customs does not agree, however, that it would be beneficial to require that each Customs approved gauger carry identification stating that he is certified to perform gauging at any port where his employer may send him because gaugers may perform gauging only in the district(s) for which they are approved. The district director in each district will verify which gaugers are approved to perform gauging within that district.

Public gaugers are not required to retain physical samples for a period of five years. The length of time for retaining physical samples is discretionary with the gauger. Customs maintains its own samples for analysis in cases where questions arise.

Even though in the past the Commissioner has directed that each applicant for Customs public gauger approval be investigated, Customs agrees that an automatic investigation would be beneficial. Accordingly, § 151.43(c) is modified to require that, in all cases, an applicant's fitness and reputation shall be investigated, and the correctness of the statements made in his application shall be verified.

Although an importer may determine his own policy for computing the quantity unladen, the net quantity unladen, as determined by Customs, is the amount to be used for entry license control and statistical purposes. When there is a variance between the quantitites recorded by the company and Customs, the quantity recorded by Customs will be used.

V. Foreign-Trade Zones

Two commenters note that procedures concerning the transfer into and out of, and the processing of petroleum within, foreign-trade zones are not addressed in the notice of proposed rulemaking. One suggests that foreign-trade zones be specifically exempt from the measuring requirements set forth in the notice. The other is of the opinion that operations in foreign-trade zones should be excluded from the proposed amendments except where these procedures can be applied effectively at the discretion of the district director.

The transfer of petroleum and petroleum products into and out of foreign-trade zones, and their processing within foreign-trade zones, were not addressed specifically in the notice of proposed rulemaking because the admission, handling, and removal of foreign-trade zone merchandise is subject to the requirements of Part 146, Subpart D, Customs Regulations (19 CFR Part 146, Subpart D). However, the transfer of petroleum and petroleum products into and out of foreign-trade zones also is subject to the provisions of Part 151, Subpart C, Customs Regulations, as amended by this document.

VI. Quantities Unladen

Three commenters remark on Customs proposal to use the amount of petroleum and petroleum products actually unladen as the quantity imported for statistical purposes.

One commenter suggests that because it is the most nearly correct expression of petroleum imports, the net quantity unladen should be used for all statistical purposes. The commenter further states that the requirement that an independent commercial laboratory must be used to determine the quantity is non-productive because receivers have extensive laboratory facilities for this purpose. This commenter suggests that Customs establish a method for ensuring that laboratory tests by receivers are in accordance with ASTM/API standards and, therefore, acceptable. A second commenter states that the wording used in proposed § 151.47(a) for determining the net quantity of petroleum unladen should refer to the table in § 151.46, instead of sediment and water in excess of 0.3 percent, and that in determining the net quantity unladen, reference should be made to § 158.13 and the need to file Customs Form 4315.

A third commenter is of the opinion that the parties responsible for securing and maintaining samples for testing in laboratories should be specified clearly to establish a chain of custody, and that a Customs laboratory should test all samples, including those tested in gaugers' laboratories.

As previously noted, the net quantity unladen is the amount which will be used for entry, licensing, and statistical purposes.

Customs does not agree that the provision in § 151.47(a) requiring that an independent commercial latoratory be used to determine the quantity should be changed at this time because it did not propose to change this requirement in the notice of proposed rulemaking. However, Customs would consider a request to change this provision at a later date.

Customs agrees that proposed § 151.47(a), the provision for determining the net quantity of petroleum unladen, should be expanded to refer to the table in § 151.46, instead of sediment and water in excess of 0.3 percent. Customs also agrees that in determining the net quantity unladen, reference should be made to § 158.13 and the need to file Customs Form 4315. Proposed § 151.47(a) is modified accordingly.

Because when a claim is made, independent laboratory reports are verified by Customs laboratory tests using Customs own samples, Customs is of the opinion that it is not necessary to establish a chain of custody for samples tested in commercial laboratories.

Customs does not believe that it should routinely test all samples. To do so would not be cost effective. However, Customs now tests, and will continue to test, all samples subject to a claim filed on Customs Form 4315.

VII. Storage Tanks

Four commenters address Customs proposals to amend sections 151.44 and 151.45, relating to storage tanks.

One commenter objects to the provision in proposed § 151.44(c) that if no qualified Customs officer is available, the district director may accept an independent certification of the measurements and calibrations of storage tanks, performed at the expense of the storage tank proprietor. The commenter states that the provision should state more specifically when a verification is called for and what it is to consist of, and that Customs, not the proprietor, should bear the expense of an independent verification.

A second commenter states that Customs should require certification of carrier tanks when gauge tables are to be used for vessel ullages. Although customs proposed no change to § 151.45(b), a third commenter notes that although this section states that under certain circumstances, non-bonded petroleum may be required to be completely removed from bonded storage tanks, this is not practicable or possible in all situations and that some method of accommodation should be provided.

Another commenter states that if Customs discovers through independent survey that tanks do not contain accurate measurements and calibrations, and it can be proven that the tank proprietor was negligent in reporting suspected inaccuracies to Customs before the survey, a penalty should be assessed against the proprietor.

Customs agrees that proposed § 151.44(c) should state more specifically when verification is called for. Customs is of the opinion that the district director should have discretion to require verification of the measurements and calibrations shown on the gauge tables whenever he has reason to suspect their reliability. Proposed § 151.44(c) is modified accordingly.

Customs believes that it is justified in requiring that independent certification of the measurements and calibrations of storage tanks be performed at the expense of the storage tank operator when no Customs officer is available. The proper maintenance of storage tanks and gauge tables is the responsibility of the owner and, therefore, it is the owner who should bear the expense of properly maintaining them. Further, because Customs allows importers the convenience of unlading at their own facilities, Customs must be assured that provisions for determining the quantities unladen are adequate.

Customs has concluded that certification of carrier tanks when gauge tables are to be used for vessel ullages would cause an unnecessary expense to the carrier in view of the fact that ullages ordinarily will not be used to determine the actual quantity unladen unless none of the other methods of control in proposed § 151.42(a)(1) is available or shore measuring facilities are inadequate.

Customs must be assured that only bonded cargo is stored in storage tanks bonded as warehouses. Accordingly, it is not unreasonable to require removal of non-bonded petroleum from bonded tanks.

Customs is of the opinion that current law provides for the imposition of a penalty if a storage tank proprietor is negligent in reporting suspected inaccuracies to Customs before a survey of his tanks.

VIII. Hearing, Meeting and Study Committee

Three commenters state that, before implementing a final rule, Customs should provide the public with an opportunity to discuss and comment on the proposed changes One commenter suggests that Customs hold a public hearing; the second commenter suggests that Customs establish a study committee consisting of Customs officials, industry representatives, and experts in the science of petroleum management and statistics to study the proposals; and the third commenter suggests that Customs meet with industry personnel to discuss the proposals.

As previously noted, on January 8, 1980, Customs held an open conference with interested members of the public to further discuss and clarify the issues raised by the commenters. At the conference an attempt was made to resolve objections to the proposed regulations to the satisfaction of all participants.

IX. Vagueness of Terms—Need for Further Definition

Seven commenters state that terms used in the proposed regulations are either vague or inadequately defined.

Two commenters state that proposed § 151.42 is vague in that it does not specifically state under what conditions two methods of control are to be used and who is to determine when it is possible to use two methods of control.

Five commenters state that terms such as "petroleum and petroleum products," "gross quantity landed," "net quantity landed," "net quantity," "manifest," "public gauger," "verification," and "acceptance" should be better defined.

As previously stated, Customs has determined that only one method of measurement will be used to determine the amount of petroleum and petroleum products unladen and has modified the proposed regulations accordingly.

Customs is of the opinion that the terms "public gauger," "verification," and "accepted," do not require further definition because their meanings in the context of the regulations are well known to the importing and transportation communities. However, to aid in understanding the regulations, the following definitions are provided:

1. "Petroleum and petroleum products" includes, but is not limited to, those items found in Schedule 4, Part 10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), and those items in Schedule 4, Part 2, TSUS, if comprised of hydrocarbons derived from pertroleum. Customs reserves the right to determine the application of the term on a case-by-case basis.

2. "Gross quantity unladen" or "gross quantity" is the amount directly unladen (landed) from vessel to shore without allowance for excessive water and sediment (BS&W).

3. "Net quantity unladen" or "net quantity" is the gross quantity unladen (landed) adjusted for excessive water and sediment (BS&W) in accordnace with § 151.46, Customs Regulations.

4. "Manifest" is an invoice of the cargo on board a carrier. The form of the manifest and the information therein varies according to the type of carrier. Customs manifest requirements are found in sections 4.7 and 4.7a and Part 123, Customs Regulations (19 CFR 4.7, 4.7a, Part 123) and 19 U.S.C. 1431.

X. Miscellaneous

One commenter is of the opinion that (1) requiring that estimates of petroleum and petroleum products unladen or withdrawn from bonded tanks not vary by more than one percent from the actual gross quantity unladen or withdrawn, and (2) the assessment of a penalty in cases where the variance exceeds one percent, are unreasonable considering the difficulty in measuring certain products or unusually small quantities of a product. A second commenter believes that a difference of three percent should be allowed between estimation and delivery because there are many variables (such as problems in the use of common pipelines to supply fuels to bonded tanks) which make it impossible to meet the one percent requirement.

Another commenter states that, in reference to proposed § 151.41,

"Information on Entry Summary," the explanatory material refers to an estimate of the quantity unladen, but the proposed regulation itself requires a notation of the API gravity, which is redundant because petroleum is graded by API gravity for tariff schedule purposes. One commenter questions whether and to what extent the proposed amendments imply recalibration (restrapping).

Customs recognizes the difficulties involved, and in order to allow importers greater latitude in preparing estimates required in proposed §§ 151.41 and 151.45, the regulations have been modified to provide for a three percent variance between the estimated quantity and the net quantity unladen before a penalty may be incurred.

Although § 151.41 requires that the importer show API gravity at 60° Fahrenheit, that and the estimate of the volumetric quantity landed are two distinctly different figures and both must be provided.

Customs does not anticipate that any additional recalibration or restrapping will be required as a result of these amendments.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Department of the Treasury participated in its development.

Adoption of the Proposed Regulations

The proposed regulations set forth in the notice of proposed rulemaking published on November 7, 1979 (44 FR 64434), are adopted subject to the revisions made below.

Amendments to the Regulations

Parts 4, 144, 151, and 159, Customs Regulations (19 CFR Parts 4, 144, 151, 159), are amended as set forth below.

R. E. Chasen,

Commissioner of Customs.

Approved: April 24, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

Amendments to the Customs Regulations

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.12 is amended to read as follows:

§ 4.12 Explanation of manifest discrepancy.

(a)(1) Vessel masters or agents shall notify the district director on Customs Form 5931 of shortages (merchandise manifested, but not found) or overages (merchandise found, but not manifested) of merchandise.

(2) Shortages shall be reported to the district director by the master or agent of the vessel by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in § 158.3 of this chapter, or within 60 days after the date of entry of the vessel, whichever is later. Satisfactory evidence to support the claim of nonimportation [23] or of proper disposition or other corrective action (see section 4.34) shall be obtained by the master or agent and shall be retained in the carrier's file for one year.

(3) Overages shall be reported to the district director within 60 days after the date of entry of the vessel by completion of a post entry [24] or suitable explanation of corrective action (see section 4.34) on the Customs Form 5931.

(4) The district director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the master or agent. The master or agent shall satisfactorily resolve the matter within 30 days after the date of such notification, or within 60 days after entry of the vessel, whichever is later.

(5)(a) Unless the required notification and explanation is made timely and the district director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the master or agent that there was a valid reason for failing to so report), applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. For the purpose of assessing applicable penalties, the value of the merchandise shall be determined as prescribed in § 162.43 of this chapter. The fact that the master or owner had no knowledge of a discrepancy shall not relieve him from the penalty.

(b) Except as provided in paragraph (c) of this section, a correction in the manifest shall not be required in the case of bulk merchandise if the district director is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantity and description of the merchandise in such packages are correctly given.

(c) Manifest discrepancies (shortages and overages) of petroleum and petroleum products imported in bulk shall be reported on Customs Forms 5931, if the discrepancy exceeds one percent.

(R.S. 251, as amended, secs. 440, 584, 624, 46 Stat. 712, as amended, 748, as amended, 759 (19 U.S.C. 88, 1440, 1584, 1624))

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(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Section 144.37(e) is amended by changing the spelling of the word "gage" to "gauge" wherever it appears.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

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[23] * * * "If any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided*, That if the appropriate Customs officer shall be satisfied that the manifest * * * is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *, the term 'clerical error' means a non-negligent, inadvertent, or typographical mistake in the preparation, assembly or submission of the manifest. * * *" (Tariff Act of 1930, sec. 584, as amended, 19 U.S.C. 1584).

[24] "If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500." (Tariff Act of 1930, sec. 440, as amended; 19 U.S.C. 1440).

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. Section 151.28 is amended by changing the spelling of the words "gage" and "gaging" to " gauge" and "gauging", respectively, wherever the words appear.

2. Subpart C is amended to read as follows:

Subpart C—Petroleum and Petroleum Products

§ 151.41 Information on entry summary.

On the entry summary for petroleum or petroleum products in bulk, the importer shall show the API gravity at 60° Fahrenheit, in accordance with the current edition of the ASTM–IP Petroleum Measurement Tables (American Edition), published by the American Society for Testing and Materials. The appropriate unabridged table shall be used in the reduction of volume to 60° F. If the exact volumetric quantity cannot be determined in advance, the entry summary may be made for "—— United States gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen. The information required by this section also shall be shown on the entry summary permit if the entry summary is filed at the time of entry, and on each entry summary continuation sheet regardless of when the entry summary is filed.

§ 151.42 Controls on unlading and gauging.

(a) *Methods of control.*

(1) Each district director shall establish controls and checks on the unlading and measurement of petroleum and petroleum products imported in bulk by vessel, truck, railroad car, pipeline, or other carrier. One of the following methods of control shall be employed:

(i) Customs approved positive displacement meters at installations where provided by the importer;

(ii) Customs approved turbine-type meters at installations where provided by the importer;

(iii) Shore tank gauging; or

(iv) Weighing for trucks and railroad cars.

(2) Vessel ullages shall be taken in every case unless the district director determines that it is impracticable to do so for safety or technological reasons. Ullages may be taken for trucks and railroad cars if weighing or shore tank gauging is not available as a method of control. Vessel ullages will not be used to determine the quantity unladen unless none of the other methods provided for in this paragraph is available or adequate.

(b) *Duties of Customs officers.* Customs officers shall perform or witness ullaging and gauging as follows:

(1) Opening ullages.

(2) Closing ullages of carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages because of special problems.

(3) Shore tank gauges performed by company or related-party employees.

(4) Between 5 and 10 per cent of shore tank gauges performed by public gaugers.

(5) Shore tank gauges, including those conducted by a public gauger if no carrier ullages are taken.

(c) *Manifest discrepancies.* Manifest discrepancies (shortages and overages) shall be reported by or on behalf of the carrier in the manner specified in section 4.12 of this chapter. If a reported discrepancy is not explained to the satisfaction of the district director, the master or other person in charge, or the owner of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy, will be subject to the imposition of the appropriate penalty under section 460, 584, or 592, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584, 1592).

§ 151.43 Public gaugers.

(a) *Acceptance of quantity reports.* Subject to such controls and checks as he may deem necessary, the district director may accept, for shore tank gauging and closing carrier ullages, the reports of quantities of imported petroleum and petroleum products made by public gaugers approved by the Commissioner in accordance with this section, provided—

(1) Customs officers have exercised the supervision required by section 151.42(b) of this part, and

(2) There is no evidence that the public gauger has failed to comply with the provisions of this subpart.

(b) *Application.* Any public gauger desiring approval shall submit an application, which may be in the form of a letter, to the Commissioner of Customs, Washington, D.C. 20229. The application shall contain or be accompanied by the following:

(1) The applicant's name, address, and ownership, and a statement of financial condition.

(2) If a corporation, a copy of its articles of incorporation, a list of its officers and directors, and details of any parent-subsidiary relationship.

(3) A detailed statement of the applicant's qualifications.

(4) The Customs district(s) for which approval is requested.

(5) A written agreement in the following form to avoid conflict-of-interest situations and to comply with operating requirements prescribed by Customs:

Public Gauger Agreement

As conditions for the approval of this application, I undertake and agree:

(1) To have no financial interest or other connection (except for acceptance of the usual fees for gauging services) with any business or other activity which might be considered to affect the unbiased performance of my duties as a public gauger for Customs purposes, in accordance with the standards and procedures approved by the Commissioner of Customs.

(2) To comply with the requirements of Part 151, Subpart C, Customs Regulations (19 CFR Part 151, Subpart C), and with any procedures prescribed by the Commissioner or district director of Customs pursuant to that subpart.

(3) To notify the Commissioner and district director of Customs in writing within 60 days of any change of name, address, ownership, or financial condition, and, if a corporation, of any change in its articles of incorporation, officers, directors, or parent subsidiary relationship.

(4) To communicate immediately to the Commissioner and district director of Customs notice of any—

(i) Effort to influence, or otherwise impede, the performance of my duties in connection with the proper gauging of petroleum or petroleum products, or

(ii) Attempt to coerce me fraudulently to change or falsify records maintained in the course of my employment.

(6) A bond in the amount of $10,000 to insure that the gauging will be in conformance with the approved standards and procedures, and with such procedures as may be prescribed by the district director pursuant to paragraph (f) of this section. The form of the required bond will be available from any district director.

(c) *Investigation of applicant.* The Commissioner shall direct the Office of Investigations to determine the applicant's fitness and reputation, and to verify the correctness of the statements made in the application.

(d) *Notice of approval, disapproval, suspension, or revocation.* When the investigation is completed, the applicant will be advised of the approval of his application, or, if disapproved, of the reasons for such action. An approval may be suspended or revoked by the Commissioner for failure to comply with any of the provisions of this subpart, or liquidated damages may be assessed under the public gauger bond described in section 113.13(b) of this chapter. Notice of approvals or suspensions or revocations of approval will be

published from time to time in the Customs Bulletin.

(e) *Requirements for operations.* To be approved for Customs purposes, a public gauger's operations shall conform to the following requirements.

(1) All measuring, testing, and sampling devices in use shall be maintained in first-class condition. Each device shall be calibrated before the first use, and checked at regular intervals thereafter, against standards whose accuracy is traceable to standards issued by the National Bureau of Standards. In making calibrations and checks, the applicable methods of the American Society for Testing and Materials or the American Petroleum Institute shall be used.

(2) All measuring, testing, and sampling procedures shall be in conformance with published industry standards, such as those of the American Petroleum Institute or the American Society for Testing and Materials, and shall conform to such specific procedures as may be required by the district director in accordance with paragraph (f) of this section.

(3) Each public gauger and each other person authorized to sign gauging reports shall furnish Customs with a written certification that he has a minimum of 6 months on-the-job training and experience.

(4)(i) The public gauger shall investigate promptly any apparent irregularities, procedural difficulties, or indications of systematic bias called to his attention by the district director, or of which he otherwise may become aware, and immediately shall take corrective measures if indicated. The public gauger shall notify the district director of any such matter of which he may become aware.

(ii) The district director shall notify the Commissioner of each such matter that he brings to the attention of the public gauger, or which the public gauger brings to his attention, and of the corrective measures taken.

(f) *Procedures prescribed by district director.* The district director is authorized to prescribe general or specific procedures to be followed by each approved public gauger at each of the discharging facilities in the district.

(g) *Recordkeeping requirement.* Records of the public gauger of the type normally kept in the ordinary course of business, pertaining to the measurement, gauging, testing, and sampling of imported petroleum and petroleum products, shall be maintained for 5 years in accordance with sections 162.1a and 162.1c of this chapter.

(h) *Verification requirement.*

(1) *Compliance.* To ensure compliance with the provisions of this subpart and accuracy and uniformity in the information submitted by public gaugers, the district director shall verify by integrity checks, audits, and, if necessary, investigations, the gauging operations in his district. Any discrepancy between the quantity reported by the gauger and the quantity found by Customs shall be resolved in favor of Customs unless the gauger produces clear and convincing evidence that Customs is in error.

(2) *Sanctions.* If a public gauger's reports are repeatedly inaccurate to a significant degree, the gauger may be subject to sanctions in accordance with sections 151.43(d) and (i).

(i) *Suspension or revocation of Customs approval.*—(1) *Grounds.* Failure to comply with the provisions of this subpart may be grounds for suspension or revocation of Customs approval of a public gauger.

(2) *Notice.* The district director shall give written notice of the proposed suspension or revocation to the public gauger. The notice shall be in the form of a statement setting forth specific grounds for the proposed action and shall become final unless the public gauger files a written reply in accordance with paragraph (3) of this subsection. An information copy of the notice shall be forwarded by the district director to Headquarters.

(3) *Reply.* The public gauger may file a written reply with the district director within 10 days following receipt of the notice. An extension of time to reply beyond the 10-day period may be granted for good cause. The reply shall be filed in duplicate and shall set forth the response of the public gauger, including his answers to the allegations and rebuttal evidence, if any. The district director upon request, may allow an oral presentation as to why approval should not be suspended or revoked.

(4) *Action on reply.* If the district director determines that the allegations set forth in the notice have not been proved, he shall notify the public gauger that suspension or revocation no longer is contemplated, and the case shall be closed. Otherwise, the approval shall be suspended or revoked, in which case the district director shall notify the gauger that he may request review of the suspension or revocation by the Commissioner in accordance with paragraph (6). An information copy of the district director's action shall be forwarded to Headquarters.

(5) *Stay of suspension or revocation.* The decision of the district director to suspend or revoke approval shall be stayed until the time for the gauger to file a petition for review by Headquarters has passed and no action has been taken on his part or, if a petition for review has been filed in accordance with paragraph (6), until Headquarters affirms the decision of the district director.

(6) *Review of suspension or revocation of approval.* Petitions for review of suspension or revocation of a public gauger's Customs approval by the district director shall be addressed to the Commissioner and filed in duplicate with the appropriate district director for transmission to Headquarters. Petitions for review shall be filed within 30 days from the date of suspension or revocation of approval and shall state the facts and circumstances relied upon by the petitioner in seeking review of the district director's order. The petition shall be reviewed by the Commissioner or his designee. Upon completion of the review, a written decision shall be forwarded to the district director for delivery to the public gauger.

(7) *Publication.* Notice of any final action by the district director or the Commissioner suspending or revoking approval of a public gauger shall be published in the **Federal Register** and the Customs Bulletin.

(j) *Penalties.* In addition to—

(i) Any penalty otherwise provided by law which may be incurred for failure to comply with the provisions of this subpart, or

(ii) Any sanction which may be imposed against a public gauger approved by Customs under the provisions of this subpart, a monetary penalty also may be assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), if appropriate.

§ 151.44 Storage tanks.

(a) *Plans and gauge tables.* When petroleum or petroleum products subject to duty at a specific rate per gallon are imported in bulk in tank vessels and are to be transferred into shore storage tanks, both the plans of each shore tank showing all outlets and inlets and the gauge table for each tank showing its capacity in U.S. gallons per inch or fraction of an inch of height shall be certified as correct by the proprietor of the tank. One set of these plans and gauge tables so certified shall be kept on file at the plant of the oil company and shall be available at all times to Customs officers. Another certified set of the shore tank plans and gauge tables shall be filed with the district director for use in verifying the Customs officers' reports. The district director may require such additional sets of shore tank plans, including subsidiary pipeline plans, and gauge tables as he may deem necessary.

The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum or petroleum products.

(b) *Tags required on valves.* The inlet and outlet valves of each tank shall have tags of a permanent type affixed by the proprietor or lessee indicating the use of the valves.

(c) *Verification of gauge tables.* Whenever he has reason to suspect their reliability, the district director may require the measurement and calibrations shown on the gauge tables to be verified by a Customs officer. If no qualified Customs officer is available, the district director may accept an independent certification verifying the measurements and calibrations. The independent verification shall be performed at the expense of the storage tank proprietor.

§ 151.45 Storage tanks bonded as warehouses.

(a) *Application.* Tanks for the storage of imported petroleum or petroleum products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum or petroleum products belonging or consigned to the owner or lessee of the tank. In addition to the documents and bonds required to be filed with the application to bond (see section 19.2 of this chapter), the certified plans and gauge tables required by section 151.43 shall be filed.

(b) *Removal of nonbonded petroleum.* If a bonded tank is not empty at the time the first importation of bonded petroleum or petroleum products is to be stored therein, the amount of nonbonded petroleum or petroleum products in the tank shall be withdrawn by the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. Domestic or duty-paid petroleum or petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(c) *Information on warehouse withdrawal.* Warehouse withdrawals of petroleum or petroleum products from bonded tanks shall show the information specified in section 151.41, as well as the designation of the tank from which the merchandise is to be withdrawn. Such withdrawals may be made for "—— U.S. gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen.

§ 151.46 Allowance for excessive water and sediment.

Allowance for excessive moisture or other impurities in imported petroleum or petroleum products shall be made in accordance with section 158.13 of this chapter for the quantity of water and sediment, established to be in excess of that usually found in such merchandise, as set forth in the following table:

Merchandise	*Quantity (percent)*
Crude petroleum	0.3
Petroleum products having an API gravity at 60° or less than 22°	0.5
22° to 30°	0.3
More than 30°	0.0

§ 151.47 Entered quantities of petroleum or petroleum products released under entry or immediate delivery.

(a) *Optional entry of net quantity landed.* As an alternative to stating on the entry summary the gross quantity of petroleum or petroleum products released under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), the importer may file an entry summary for the net quantity of petroleum or petroleum products unladen. The net quantity shall be determined in accordance with section 158.13 of this chapter, with an allowance made for sediment and excessive water present, as prescribed in the table found in section 151.46, and reported in a laboratory test made by an independent commercial laboratory which has been approved by the Commissioner. The commercial laboratory report shall be filed with the entry summary.

(b) *Approval of independent commercial laboratories.* Applications of independent commercial laboratories for approval of the use of their tests in determining the net landed quantity of petroleum or petroleum products shall be sent to the Commissioner of Customs, Washington, D.C. 20229. For the purposes of this section, the approval of a public gauger by the Commissioner in accordance with § 151.43 shall constitute approval of the commercial laboratories operated by the public gauger as a part of the services rendered by him for his customers.

(c) *Use of Customs laboratory tests for liquidation.* Where there is a difference between the quantity reported by the Customs laboratory and the quantity reported by the approved independent commercial laboratory, the results of the Customs laboratory test shall be used in the liquidation of the entry and in determining the quantity chargeable against the importer's oil import license, unless the difference is within the limits set forth in paragraph (d) of this section.

(d) *Use of commercial laboratory tests for liquidation.* The quantity reported by the approved independent commercial laboratory shall be used in the liquidation of the entry and in determining the quantity chargeable against the importer's oil import license if the difference between the commercial laboratory test and the Customs laboratory test do not exceed the differences set forth in the following table (adapted from ASTM Designation D1796, Fig. 3):

Percentage of water and sediment found by Customs laboratory	Maximum percentage difference allowable
0.05 to 0.50	0.1
0.51 to 1.50	0.2
More than 1.50	0.3

(Sec. 507, 46 Stat. 732 (19 U.S.C. 1507)) (R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (19 U.S.C. 66, 1202 (Gen. Hdntes. 11, 12), 1624))

PART 159—LIQUIDATION OF DUTIES

Section 159.21(a) is amended by changing the spelling of the word "gage" to "gauge" in the first sentence.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 80-16520 Filed 5-29-80; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

[Docket No. 78N-0049]

Protection of Human Subjects; Prisoners Used as Subjects in Research

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes regulations to provide protection for prisoners involved in research activities that fall within the jurisdiction of the Food and Drug Administration (FDA). These regulations implement the recommendations of the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research (National Commission) on research involving prisoners. These regulations restrict the use of prisoners in research within the jurisdiction of FDA and establish requirements for the composition of and additional duties for institutional review boards when prisoners are involved in the research.

EFFECTIVE DATE: June 1, 1981.

FOR FURTHER INFORMATION CONTACT: Roger Barnes, Office of Health Affairs (HFV–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: Under the National Research Act (Pub. L. 93–348), the National Commission was charged with, among other duties, identifying the requirements for informed consent by prisoners for participation in biomedical and behavioral research. On the basis of its investigation and study of this issue (see paragraph 7), the National Commission identified the requirements for informed consent and made recommendations to the Secretary of Health and Human Services (HHS) about appropriate administrative actions to ensure that those requirements would be met in research subject to the Department's jurisdiction. The National Commission's recommendations covered research conducted or supported under programs administered by the Secretary and research reported to the Secretary in fulfillment of regulatory requirements (42 FR 3076, 3079, January 14, 1977).

Section 205 of the National Research Act, however, only required the Secretary to determine whether the National Commission's recommendations were appropriate to assure the protection of prisoners as subjects of biomedical or behavioral research conducted or supported under the programs the Secretary administered. (In the **Federal Register** of January 8, 1978 (43 FR 1050), the Secretary announced that the Department was adopting the National Commission's recommendations for such research and was proposing regulations implementing this determination. These regulations were adopted in final form on November 16, 1978 (43 FR 53652).) Section 205 did not explicitly impose an obligation on the Secretary to respond to the National Commission's recommendations with regard to research reported in fulfillment of regulatory requirements.

Nevertheless, the Secretary believed that a determination should be made as to whether the National Commission's recommendations should be adopted for non-HHS supported research that is submitted to FDA to satisfy its regulatory requirements. Because rulemaking authority with respect to FDA activities has been delegated to the Commissioner of Food and Drugs, the Secretary directed the Commissioner to take appropriate action on these recommendations (43 FR 1051).

In the **Federal Register** of May 5, 1978, the Commissioner announced the tentative decision to adopt the findings of both the National Commission and the Secretary regarding the inherently coercive nature of the prison environment and the need for special protections for prisoners involved as subjects of clinical research (43 FR 19417, 19418). Therefore, on the basis of the authority granted under the Federal Food, Drug, and Cosmetic Act (the act), the Commissioner proposed these regulations to establish those special protections.

FDA allowed 60 days for comment on the proposed regulations. The agency received more than 40 letters with comments directed to the proposal. These comments were from government officials, prisoners, clinical investigators, trade associations, professional societies, academic research institutions, drug companies, members of Congress on behalf of constituents, and other private citizens. The substantive comments received and the agency's conclusions about them are discussed below.

In addition, the reasoning in the preambles to HHS's proposed rulemaking (43 FR 1050) and rulemaking on adopting "Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects" (43 FR 53652) has been considered by FDA and is incorporated as part of this record.

Comments on the Advance Notice of Proposed Rulemaking and the Proposed Rule

1. Several comments challenged FDA's authority to issue these regulations.

A thorough discussion of FDA's authority was provided in the preamble to the proposed rule (see 43 FR 19419). FDA believes it is unnecessary to reproduce that discussion here. Some comments on the proposed regulations challenged the agency's analysis of its authority. FDA has studied them carefully, and FDA continues to believe that its assessment is accurate. However, in the interest of responsiveness, FDA will reply to each objection relating to its authority.

2. Two comments stated that FDA lacks authority to promulgate regulations concerning the validity of informed consent based on prisoner status.

FDA rejects these comments. As discussed in the preamble to the May 5, 1978 proposal, sections 505(i), 507(d), and 520(g) (21 U.S.C. 355(i), 357(d), and 360j(g)) of the act require that FDA promulgate regulations for the exemption of drugs and devices for investigational use. These sections of the act direct FDA to issue regulations that protect the public health in the course of clinical investigations and that provide that informed consent will be obtained from the human subjects of the investigations.The act also requires these regulations, in the case of drugs, have due regard for the interests of patients (21 U.S.C. 355(j)(1) and 21 U.S.C. 357(g)(1)) or, in the case of devices, be consistent with ethical standards (21 U.S.C. 360j(g)(1)).

FDA believes that there is significant evidence that additional regulations are necessary to protect adequately the interests of prisoners who participate as human subjects of research within its jurisdiction. FDA notes that the legislative history of the National Research Act indicates that it was passed in reaction to abuses in the field of human experimentation, including prison research. See 1974 U.S. Code Cong. & Admin. News, 93rd Cong., 2d Sess., 3634, 3650 (S. Rep. 93–381). As at least one court has stated, a particular concern to the drafters of the National Research Act was that a subject's consent be based on full disclosure and be free of any form of coercion. *Clay* v. *Martin*, 509 F.2d 109, 173 (2d Cir. 1975), citing 1974 U.S. Code Cong. & Admin. News, *supra*, at 3657. Yet the National Commission found, which finding FDA has adopted, that the prison environment is inherently coercive.

Therefore, FDA has decided that due regard for the interests of prisoners as subject and for appropriate ethical standards, as well as for the protection of the public health and safety, requires that special protections be adopted for prisoners involved in clinical investigations. Under the authority granted to it in sections 505(i), 505(j), 507(d), 507(g), and 520(g) of the act FDA is promulgating these regulations that restrict the circumstances in which prisoners can be used as subjects in the research that is under the jurisdiction of FDA.

3. One comment stated that the act requires FDA to accept all clinical investigations that are submitted to the agency to support marketing of a new drug or device pursuant to sections 505(i), 507(d), and 520(g) of the act. The comment went on to suggest that FDA lacks the rulemaking authority to reject private scientific research on the basis that such research was conducted on prisioners.

FDA rejects this comment. No legal basis for the propositions asserted is cited in the comment, and none exists in the act. The agency's authority to define what clinical investigations it will eccept is well-established and is discussed at length in the preamble to

the proposed regulations (See 43 FR 19419).

4. Two comments argued that nothing in the act provides FDA with statutory authority to ban all privately supported and conducted scientific research involving prisoner volunteers.

These comments misconstrue the effect of these regulations. These reglations apply to all clinical investigations regulated by FDA under sections 505(i), 507(d), and 520(g) of the act, as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA. However, the regulations do not affect privately supported and conducted scientific research on prisoner volunteers that is not subject to FDA jurisdiction.

5. One comment stated that the proposed regulations are an impermissible intrusion upon the rights of the States to manage their own prison systems. Two comments contended that FDA's regulations would vilolate a California law that permits prisoner research.

FDA disagrees with these comments. These regulations impose no obligations on State prison authorities. They state that except in limited circumstances, the agency will not permit the use of prisoners in the clinical investigations it regulates under sections 505(i), 507(d), and 520(g) of the act or accept clinical investigations that involved prisoner subjects in support of applications for research or marketing permits for products regulated by FDA.

6. Several comments stated that FDA was "taking away a prisoner right" to participate in research, and that these regulations denied equal protection of the law to prisoners by taking away that right.

FDA rejects these comments. Participation in research, which has been a source of income for prisoners, will be greatly restricted by these regulations. However, FDA believes that any deprivation to prisoners that results is clearly outweighed by the fact that these regulations are necessary to assure that the interests of prisoners who participate in research subject to FDA's jurisdiction are adequately protected (see also paragraph 12 of this preamble). It is relevant to point out, as noted in HHS's final rule published in the **Federal Register** of November 16, 1978 (43 FR 53652, 53654), that medical and medically related research involving prisoners: (1) has already been prohibited in all Federal prisons; (2) has been prohibited in eight States; and (3) is conducted only in about seven of the States that either permit it or do not regulate it. These prohibitions have been based on the demonstrable inequities of such research and on the questionable voluntariness of prisoner consent.

7. Many comments objected to the recommendations of the National Commission. The comments argued that the National Commission had no basis to conclude that research conducted with prisoner subjects was unsafe or coercive. Several comments stated that the only rationale for the National Commission's recommendations was an emotional bias against research involving prisoners. These comments suggested that FDA reject the National Commission's recommendations and allow prisoners to continue to be subjects of clinical investigations subject to FDA's jurisdiction.

FDA rejects these comments. The National Commission's findings and recommendations were based on extensive research. The National Commission visited prison research facilities, interviewed many prisoners, and discussed prison procedures with prison officials. In addition, to ensure that viewpoints of minorities were heard, the National Commission contracted with the National Urban Coalition to organize a conference on human experimentation which was held in January 1977. The National Commission also conducted a public hearing on the issue of research involving prisoners and considered papers on the ethical issues involved in research with prisoners that were prepared for it. The National Commission used all of this information in its final report. FDA has not found any reason to alter its decision to adopt the findings and recommendations contained in that report.

8. One comment received by the Secretary after publication of the recommendations of the National Commission stated that the discontinuation of research currently in progress within one year following issuance of the regulations, might cause valid data to be lost or new studies to be jeopardized by sudden termination of the therapeutic regimen afforded by the study. The Secretary stated in response that the Commissioner would consider the effect of this matter on non-HHS supported research (43 FR 1052).

FDA believes that the one year interval strikes an appropriate balance between the need for prompt implementation of these protections for prisoners and the need of sponsors of ongoing clinical investigations involving prisoners as subjects to complete or discontinue the investigations or to bring them into compliance with these regulations without unduly jeopardizing valid data.

9. One comment suggested that regulations of HHS and FDA concerning use of prisoners in clinical investigations be uniform.

FDA agrees that, wherever possible, its regulations should be compatible with, if not identical to, those of the Department. A multiplicity of dissimilar and inconsistent Federal requirements is burdensome to institutions, institutional review boards, and the process of clinical investigation. These regulations closely follow and apply the principles set forth in the HHS regulations on prisoner research.

10. Several comments pointed out that FDA's regulations would prohibit prisoner participation in any research subject to FDA jurisdiction that is not related to the health or well-being of the subjects or is not on conditions particularly affecting prisoners as a class. These comments noted that under the National Commission's recommendations, reports on such research involving prisoners could be accepted in fulfillment of regulatory requirements, if certain conditions were met in the particular study. These comments argue that FDA's regulations consequently exceed the National Commission's recommendations.

FDA acknowledges that the National Commission did not explicitly recommend a prohibition on the use of prisoners in all research that is not related to the health or well-being of subjects or is not on conditions particularly affecting prisoners as a class. However, FDA believes that these regulations are authorized by the act and implement the thrust of the National Commission's recommendations.

The National Commission recommended that reports on research involving prisoners should be accepted in fulfillment of regulatory requirements only if three requirements are satisfied:

a. The type of research fulfills an important social or scientific need, and the reasons for involving prisoners in the type of research are compelling;

b. The involvement of prisoners in research satisfied "conditions of equity"; and

c. A high degree of voluntariness on the part of research subjects and openness on the part of the institutions characterized the conduct of the research (see 42 FR 3080; January 14, 1977).

FDA has reviewed all research subject to its jurisdiction that would not be permitted under § 50.44. Based on the act's requirements that subjects of clinical investigations be protected (see paragraph 2), on the National Commission's finding that the environment in prisons is inherently

coercive, and on the findings of the Secretary, FDA has concluded that there are no compelling reasons for involving prisoners in this research, and, consequently, that the first of the National Commission's requirements for the acceptance of reports on investigations cannot be satisfied for such research.

None of the comments submitted in response to the proposal suggested that a compelling reason for the agency to accept reports on this research could be asserted. For example, several comments pointed to problems that might develop in Phase I testing if prisoners could not be used, but no comment suggested that alternate subjects for Phase I testing could not be found. Significantly, other nations active in biomedical research have been able to conduct investigations without involving prisoners.

In addition, FDA has incorporated the reasoning of HHS for restricting the use of prisoners as subjects, which is set forth in the preambles to the proposed and final rulemaking of the Department (see 43 FR 1050–1051 and 43 FR 53652, 53654).

Aside from these substantive factors, FDA decided to prohibit the use of prisoners in research subject to its jurisdiction that is not related to the health or well-being of the subjects or to conditions particularly affecting prisoners as a class because this prohibition is consistent with the regulations adopted by HHS. As discussed in paragraph 9 of this preamble, the agency believes that, when appropriate, there is significant value in FDA adopting regulations compatible with, if not identical to, those of HHS.

11. One comment suggested that a prisoner population is needed to maintain a well-controlled testing atmosphere. The comment pointed out that many activities of prisoners are monitored, and that there is less control over those same activities in nonprisoner populations. Therefore, the comment asserted, drug studies can be more effectively done in prisons.

While it is true that many activities of prisoners are monitored that are not monitored in nonprisoner populations, FDA disagrees with the conclusion and rejects the comment. No data showing that prisoners are necessary to conduct well-controlled research, and that no reasonable alternative is available, have ever been presented to FDA, nor is the existence of such data indicated in the National Commission's report. In addition, FDA has found that in certain circumstances, prisoners are actually an unsuitable population for drug testing. See, e.g., Warner-Lambert/Parke-Davis & Co.; Benylin; Final Decision (44 FR 51512, 51524, August 31, 1979).

12. Several comments stated that research was a good way for prisoners to earn money while incarcerated. Comments also suggested that prisoners receive other benefits from participation in the studies and are motivated by a desire to help the public.

In its report, the National Commission stated that in its interviews with prisoners involved in Phase I drug studies, participants gave many reasons for volunteering for research, "but it was clear that the overriding motivation was the money they received for participating. In fact, their strongest objection was that the pay for participation in research was held down to levels comparable to prison industries" (42 FR 3083). The National Commission found, however, that "although prisoners who participate in research affirm that they do so freely, the conditions of social and economic deprivation in which they live compromise their freedom" (42 FR 3078). The National Commission believed that the availability of a population living in conditions of social and economic deprivation makes it possible for researchers to bring to this population types of research which persons better situated would ordinarily refuse. The National Commission concluded that "prisoners are, as a consequence of being prisoners, more subject to coerced choice and more readily available for the imposition of burdens which others will not willingly bear" (42 FR 3078). FDA adopts these findings by the National Commission.

13. Several comments stated that research involving prisoners is safe, and that prisoners do not need special protections. These comments asserted that prisoners are now free from any outside influence in choosing to participate in studies, and therefore, these regulations are unnecessary.

FDA rejects these comments for the reasons that are set forth in paragraph 12 of this preamble.

14. One comment suggested that FDA prohibit the use of prisoners in any research that is subject to FDA jurisdiction.

FDA rejects this comment. One of the specific recommendations of the National Commission was that "[r]esearch on practices both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the individual prisoner may be conducted or supported * * *." (42 FR 3080). The National Commission believed, and FDA agrees, that a research subject should not be deprived of health benefits (even experimental ones) simply because the subject is a prisoner. Section 50.44(b)(2) and (3) (21 CFR 50.44 (b)(2) and (3)) allows submission of research that will benefit the prisoner subjects involved.

15. One comment suggested that psychiatric patients should not be used in drug studies that will not directly benefit their health. The comment stated that because of the nature of their illness, they may not be able to give effective informed consent to participate in a drug study.

FDA agrees with this comment, and except in limited circumstances, psychiatric patients in prisons, like other prisoners, cannot be used as subjects in studies subject to FDA's jurisdiction. The National Commission issued its report concerning the institutionalized mentally disabled patients in the **Federal Register** of March 17, 1978 (43 FR 11328). HHS has issued proposed regulations governing the use of mentally disabled patients as subjects in clinical investigations, and FDA is considering the need to publish similar regulations.

16. One comment questioned the scope of these regulations. The comment stated that it was unclear whether all clinical investigations, including those involving cosmetics, OTC drugs, and low-risk medical devices were covered by these regulations.

The scope of these regulations pertains to those clincial investigations regulated by FDA under sections 505(i), 507(d), or 520(g) of the act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the agency. Therefore, the regulations would be applicable to clinical investigations involving OTC drug products and any medical devices, whether or not the devices are significant risk devices as defined in 21 CFR Part 812, if reports of those investigations are to be submitted to FDA. Cosmetic products are not included among the types of products to which the regulation applies.

17. Several comments raised questions about specific definitions in proposed § 50.3 (21 CFR 50.3). Other comments suggested alternative definitions to those contained in that section.

With one exception, proposed § 50.3 has been reproposed by the agency in its proposed standards for informed consent, published in the **Federal Register** of August 14, 1979 (44 FR 47713). Comments on the proposed standards for informed consent, including reproposed § 50.3, are on file in the Hearing Clerk's office (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville,

MD 20857, under Docket No. 78N-0400. Those comments on the prisoner research regulations that contained questions or suggestions about definitions in proposed § 50.3 have been included in Docket No. 78N-0400 and will be addressed when the final regulations governing informed consent are published.

FDA is adopting at this time the definition of the term "Application for research or marketing permit," § 50.3(b) (21 CFR 50.3(b)). The agency has decided to do so to ensure that the meaning of this phrase, which is used to define the scope of these regulations, is clear.

18. Several comments urged that the regulations should permit prisoners to receive placebos as a control group. A few comments stated that the validity of any research done would be questionable unless there was a placebo control group. One comment suggested that the regulationd does not clearly state whether prisoners would be able to act as placebo controls in otherwise permissible prisoner research.

To be consistent with the HHS regulations, FDA has revised § 50.44 (21 CFR 50.44) to permit certain research on conditions particularly affecting prisoners as a class, in addition to research on practices that have the intent and reasonable probability of improving the health and well-being of the subjects. FDA has also decided to permit prisoners to participate in these types of research as members of a control group, including a placebo control group, even though as members of a control group they may not benefit directly from the research. These changes were based on comments received by FDA and the Department. However, to be consistent with the recommendations of the National Commission, FDA has required that prisoner participation in research on conditions affecting prisoners as a class and in research as control subjects be approved by the agency on a study by study basis.

19. One comment noted that the preamble to the proposal stated that the agency has concluded that an environmental impact statement is not required for this regulation, but that an environmental impact assessment was on file with the FDA Hearing Clerk. The comment pointed out that, in fact, no environmental impact assessment had been filed.

The notice of proposed rulemaking did inadvertently refer to an environmental impact assessment (43 FR 19419). However, this proposed action did not require the preparation of an environmental impact assessment under 21 CFR 25.1(b) and (h). An environmental impact assessment also is not required under FDA's proposed new environmental regulations (44 FR 71742; December 11, 1979). The agency has determined pursuant to proposed 21 CFR 25.24(b)(12) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact assessment nor an environmental impact statement is required.

20. One comment asserted that a proper economic assessment of the impact of this regulation had not been prepared by FDA. The comment stated that the document FDA prepared did not adequately describe the proposed regulations and was not prepared under the appropriate Executive Order.

FDA agrees with the comment concerning the reference to the appropriate Executive Order. The original economic impact assessment concluded that the proposed regulations would not have a major economic impact as defined by Executive Order 11821, as amended by Executive Order 11949. During the period from January 1, 1978 to March 22, 1978, when Executive Order 12044 was issued, no Executive Order was in effect, although FDA continued to prepare economic impact assessments under the expired order. This process continued until August, 1978, when FDA prepared "Interim Regulatory Analysis Guidelines" for use by the agency in implementing Executive Order 12044. Because the proposed regulations were published during the period of transition from the standards of Executive Order 11821, as amended, to those of Executive Order 12044, the technically appropriate reference was not made. However, the specific relevant standard for assessing whether the action would have a major economic impact was the same.

FDA also agrees in part with the comment that the original economic impact assessment did not adequately describe the proposed regulations. FDA therefore has reassessed the economic impact of this regulation under the standards established in Executive Order 12044. This assessment has confirmed that the regulation will not have a major economic impact as defined by that order.

A copy of the amended regulatory analysis assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, 52 Stat. 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354–360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Subchapter A of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 50, to read as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

Subpart A—General Provisions

Sec.
50.1 Scope.
50.3 Definitions.

Subpart B—[Reserved]

Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects

50.40 Applicability.
50.42 Purpose.
50.44 Restrictions on clinical investigations involving prisoners.
50.46 Composition of institutional review boards where prisoners are involved.
50.48 Additional duties of the institutional review boards where prisoners are involved.

Authority: Secs. 406, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n)

Subpart A—General Provisions

§ 50.1 Scope.

(a) This part applies to all clinical investigations regulated by the Food and Drug Administration under sections 505(i), 507(d), and 520(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. Additional specific obligations and commitments of, and standards of conduct for, persons who sponsor or

monitor clinical investigations involving particular test articles may also be found in other parts (e.g., Parts 312 and 812). Compliance with these parts is intended to protect the rights and safety of prisoner subjects involved in investigations filed with the Food and Drug Administration pursuant to sections 406, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 706, and 801 of the Federal Food, Drug, and Cosmetic Act and sections 351 and 354–360F of the Public Health Service Act.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 50.3 Definitions.

As used in this part:

(a) [Reserved]

(b) "Application for research or marketing permit" includes:

(1) A color additive petition, described in Part 71.

(2) A food additive petition, described in Parts 171 and 571.

(3) Data and information about a substance submitted as part of the procedures for establishing that the substance is generally recognized as safe for use that results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in §§ 170.30 and 570.30.

(4) Data and information about a food additive submitted as part of the procedures for food additives permitted to be used on an interim basis pending additional study, described in § 180.1.

(5) Data and information about a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in section 406 of the act.

(6) A "Notice of Claimed Investigational Exemption for a New Drug," described in Part 312.

(7) A new drug application, described in Part 314.

(8) Data and information about the bioavailability or bioequivalence of drugs for human use submitted as part of the procedures for issuing, amending, or repealing a bioequivalence requirement, described in Part 320.

(9) Data and information about an over-the-counter drug for human use submitted as part of the procedures for classifying these drugs as generally recognized as safe and effective and not misbranded, described in Part 330.

(10) Data and information about a prescription drug for human use submitted as part of the procedures for classifying these drugs as generally recognized as safe and effective and not misbranded, described in this chapter.

(11) Data and information about an antibiotic drug submitted as part of the procedures for issuing, amending, or repealing regulations for these drugs, described in Part 430.

(12) An application for a biological product license, described in Part 601.

(13) Data and information about a biological product submitted as part of the procedures for determining that licensed biological products are safe and effective and not misbranded, described in Part 601.

(14) Data and information about an in vitro diagnostic product submitted as part of the procedures for establishing, amending, or repealing a standard for these products, described in Part 809.

(15) An "Application for an Investigational Device Exemption," described in Part 812.

(16) Data and information about a medical device submitted as part of the procedures for classifying these devices, described in section 513.

(17) Data and information about a medical device submitted as part of the procedures for establishing, amending, or repealing a standard for these devices, described in section 514.

(18) An application for premarket approval of a medical device, described in section 515.

(19) A product development protocol for a medical device, described in section 515.

(20) Data and information about an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for these products, described in section 358 of the Public Health Service Act.

(21) Data and information about an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard, as described in § 1010.4.

(22) Data and information about an electronic product submitted as part of the procedures for granting, amending, or extending an exemption from a radiation safety performance standard, as described in § 1010.5.

Subpart B—[Reserved]

Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects

§ 50.40 Applicability.

(a) The regulations in this subpart apply to all clinical investigations involving prisoners as subjects that are regulated by the Food and Drug Administration under sections 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations involving prisoners that support applications for research or marketing permits for products regulated by the Food and Drug Administration.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects to the extent such research is limited or barred by applicable State or local law.

§ 50.42 Purpose.

Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to which this subpart is applicable.

§ 50.44 Restrictions on clinical investigations involving prisoners.

(a) Except as provided in § 50.44(b), clinical investigations regulated by the Food and Drug Administration under sections 505(i), 507(d), and 505(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration may not involve prisoners as subjects.

(b) Clinical investigations that are regulated by the Food and Drug Administration under sections 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, may involve prisoners as subjects only if the institution responsible for the conduct of the clinical investigation has certified to the Food and Drug Administration that the institutional review board has approved the clinical investigation under § 50.48; and

(1)(i) In the judgment of the Food and Drug Administration, the proposed clinical investigation involves solely research on practices both innovative and accepted, which have the intent and reasonable probability of improving, the health and well-being of the subjects;

(ii) In cases in which these studies require the assignment of prisoners in a manner consistent with protocols approved by the institutional review board to control groups that may not benefit from the research, the study may proceed only after the Food and Drug

Administration has consulted with appropriate experts, including experts in penology, medicine, and ethics, and has published notice in the **Federal Register** of its intent to approve such research; or

(2) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis, which is much more prevalent in prisons than elsewhere) provided that the Food and Drug Administration has consulted with appropriate experts, including experts in penology, medicine, and ethics, and has published notice in the **Federal Register** of its intent to approve such research; subject to the approval of the Food and Drug Administration, prisoners may participate in the research even though they are assigned, in a manner consistent with protocols approved by the institutional review board, to control groups that may not benefit from the research.

§ 50.46 Composition of institutional review boards where prisoners are involved.

In addition to satisfying any other requirements governing institutional review boards set forth in this chapter, an institutional review board, in carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the institutional review board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the institutional review board.

(b) At least one member of the institutional review board shall be a prisoner, or a prisoner advocate with appropriate background and experience to serve in that capacity, except that if a particular research project is reviewed by more than one institutional review board, only one institutional review board need satisfy this requirement.

§ 50.48 Additional duties of the institutional review boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for institutional review boards under this chapter, the institutional review board shall review clinical investigations covered by this subpart and approve such clinical investigations only if it finds that:

(1) The research under review represents one of the categories of research permitted under § 50.44(b) (1) and (2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the clinical investigation, when compared to the general living conditions, medical care, quality of food, amenities, and opportunity for earnings in prison, are not of such a magnitude that his or her ability to weigh the risks of the clinical investigation against the value of such advantages in the limited-choice environment of the prison is impaired;

(3) The risks involved in the clinical investigation are commensurate with risks that would be accepted by nonprisoner volunteers;

(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners; unless the principal investigator provides to the institutional review board justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that research project;

(5) Any information given to subjects is presented in language which is appropriate for the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the clinical investigation in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the clinical investigation will have no effect on his or her parole; and

(7) Where the institutional review board finds there may be need for followup examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The institutional review board shall carry out such other duties as may be assigned by the Food and Drug Administration.

(c) The institution shall certify to the Food and Drug Administration, in such form and manner as the Food and Drug Administration may require, that the duties of the institutional review board under this section have been fulfilled.

Effective date. This regulation shall become effective June 1, 1981.

Dated: May 27, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-16578 Filed 5-29-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-80-817]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I property improvement, mobile home loans, and combination and mobile home lot loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: May 19, 1980.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202–426–4667).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on mobile home loans and the property improvement loans have been lowered from 18.00 percent to 16.50 percent and the finance charges on combination loans for the purchase of a mobile home and a developed or undeveloped lot has been lowered from 17.50 percent to 16.00 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures.

A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart A—Eligibility Requirements—Property Improvement Loans

1. In § 201.4 paragraph (a) is amended to read as follows:

§ 201.4 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge exclusive of fees and charges as provided by paragraph (b) of this section which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 16.50 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart B—Eligibility Requirements—Mobile Home Loans

1. In § 201.540 paragraph (a) is amended to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 16.50 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

1. In § 201.1511 under paragraph (a), subparagraph (1) is amended to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.*

(1) 16.00 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C. May 12, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-16466 Filed 5-29-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Parts 203, 213, 234

[Docket No. R-80-816]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The change in the regulations decreases the FHA maximum interest rate on insured home mortgage loans and establishes a separate interest rate ceiling for home mortgage loans obtained by operative builders. This action by HUD is designed to bring the maximum interest rate on HUD/FHA-insured loans into line with current market conditions.

EFFECTIVE DATE: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202/426-4667).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter with respect to the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on FHA home mortgage insurance programs has been lowered from 13.00 percent to 11.50 percent, except that loans obtained under the operative builder provisions of 24 CFR 203.18(c)(2) are subject to a ceiling of 14.00 percent. The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

1. In § 203.20 paragraph (a) is amended to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum, except that:

(1) Where an application for commitment was received by the Secretary before May 15, 1980, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application;

(2) A mortgage executed by a builder (or such other entity as the Commissioner shall approve) of a dwelling which was approved for mortgage insurance (or for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs) prior to the beginning of construction or a dwelling which was completed less than one year preceding the date of the application for mortgage insurance may bear interest at a rate not to exceed 14.00 percent per annum.

* * * * *

2. In § 203.74 paragraph (a) is amended to read as follows:

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.50 percent per annum, except that where an application for commitment was received by the Secretary before May 15, 1980, the loan may bear interest

at the maximum rate in effect at the time of receipt of the application.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

1. In § 213.511 paragraph (a) is amended to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum, except that where an application for commitment was received by the Secretary before May 15, 1980, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

1. In § 234.29 paragraph (a) is amended to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum, except that:

(1) Where an application for commitment was received by the Secretary before May 15, 1980, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application;

(2) A mortgage executed by a builder (or such other entity as the Commissioner shall approve) of a dwelling which was approved for mortgage insurance prior to the beginning of construction may bear interest not to exceed 14.00 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., May 12, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-16465 Filed 5-29-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Parts 207, 213, 220, 221, 232, 236, 241, 242, 244

[Docket No. R-80-815]

Multifamily Housing Mortgage Insurance; Changes in Construction Financing Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: These regulation changes create a separate maximum interest rate for construction financing in the FHA multifamily mortgage insurance programs under Title II of the National Housing Act. This action is needed to meet the market for project construction loans. Such loans carry interest yields substantially higher than the interest rate ceiling on permanent FHA multifamily financing, which remains at 13.00 percent.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: George O. Hipps, Jr., Director, Office of Multifamily Development, 451 7th Street, S. W., Washington, D.C. 20410 (202–755–5720). (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Prior to this rule change, the interest rate on construction financing has been limited to the maximum interest rate established by the Secretary for the permanent mortgage. This limitation has resulted in excessive discount points charged to project developers as construction lenders adjust the yield above the current 13.00 percent interest rate ceiling. The regulation change to establish a two-tier interest rate system for construction and permanent financing is intended to provide relief from this problem.

This Secretary has determined that such changes must take effect immediately in order to meet the needs of the market and facilitate continued development of critically needed rental housing. Therefore, the Secretary has determined that advance notice and public comment procedures are not appropriate and good cause exists to make these amendments effective immediately.

A Finding of Inapplicability with respect to environmental impact has been made in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Dept. of HUD, 451 7th Street, Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 207.7(a) is amended to read as follows:

§ 207.7 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgage receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cut-off date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

Section 213.10(a) is amended to read as follows:

§ 213.10 Maximum interest rate.

(a) The mortgage or a supplementary loan shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, or the lender and the borrower, which rate shall not exceed 13.00 percent per annum with respect to mortgages or supplementary loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cut-off date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

Section 220.576(a) is amended to read as follows:

§ 220.576 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum with respect to loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after

February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

Section 221.518(a) is amended to read as follows:

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum. Interest shall be payable in monthly installments on the prinicipal amount of the mortgage outstanding on the due date of each installment.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 232.29 paragraph (a) is amended to read as follows:

§ 232.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

Section 236.15 paragraph (a) is amended to read as follows:

§ 236.15 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

Section 241.75 is amended to read as follows:

§ 241.75 Maximum interest rate.

The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum with respect to loans insured on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum. Interest shall be payable in monthly installments on the principal then outstanding.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

Section 242.33 paragraph (a) is amended to read as follows:

§ 242.33 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

Section 244.45 paragraph (a) is amended to read as follows:

§ 244.45 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after February 28, 1980; except that interest charged on construction financing prior to and including the cutoff date for cost certification shall not exceed 16.00 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., May 21, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 80-16464 Filed 5-29-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Part 232

[Docket Number R-80-703]

Nursing Homes and Intermediate Care Facilities Mortgage Insurance Eligibility Requirements Definitions

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends Part 232 to allow mortgage insurance for additional facilities for nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

EFFECTIVE DATE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: C. Edward Lewis, Jr., Chief, Health Facilities Branch, Elderly, Co-Operative and Health Facilities Division, Room 6126, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 426–7191. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: This final rule is being published to implement Section 312 of Pub. L. 95–557, Housing and Community Development amendments of 1978. On August 24, 1979 a proposed revision to the regulations for the Mortgage Insurance Program for Nursing Homes and Intermediate Care Facilities (24 CFR Part 232) was published in the **Federal Register** at 44 FR 49700 and 49701. Comments were invited until October 23, 1979. Comments were received from six interested parties. All comments were favorable, however, some comments were beyond the scope of the day-care program. One commentor stated general

approval for the day-care concept and suggested that the regulation make a provision for income received from day-care be used in offsetting debt service requirements. HUD will address this issue in administrative guidelines rather than in this regulation. There was an inquiry as to whether recovery homes, i.e., halfway houses, for alcoholics would be eligible. Halfway or recovery houses would not be eligible for the day-care provision unless they meet all other statutory and regulatory requirements of Section 232. Another commentor expressed approval of the day-care concept as an innovative alternative to more costly inpatient care, and urged that regulations be promulgated on another section of the National Housing Act which is not relevant to this rule. It was suggested by another commentor that social care facilities be included in the Section 232 program. Section 232 is a medical-nursing care program, and legislation would be necessary to establish a program of mortgage insurance for social care or domiciliary care facilities.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is listed as item number H-33-78 in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044. Accordingly, 24 CFR Part 232 is amended by revising paragraphs (i), (j), and (k) of § 232.1 to read as follows:

§ 232.1 Definitions.

* * * * *

(i) "Nursing Home" means a proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. In all such facilities, the nursing care and medical services must be prescribed by, or performed under general direction of persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(j) "Project" means a nursing home or intermediate care facility or combined nursing home and intermediate care facility which may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day, and which have been approved by the Commissioner under provisions of this subpart.

(k)"Intermediate care facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons, who, because of incapacitating infirmities, require minimum but continous care but are not in need of continous medical or nursing services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

* * * * *

(Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., May 23, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc 80-16467 Filed 5-29-80; 8:45 am]

BILLING CODE 4210-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim regulations: extension of time for comment.

SUMMARY: Interim regulations establishing procedures under which the Equal Employment Opportunity Commission will conduct investigations of employment discrimination complaints filed against certain federal agencies under Title VII of the Civil Rights Act of 1964, as amended, were published July 11, 1979 (44 FR 40498). The period allowed for comments on those interim regulations was scheduled to expire January 31, 1980. That comment period was subsequently extended until May 31, 1980, and is hereby further extended to September 12, 1980.

EFFECTIVE DATE: May 30, 1980.

COMMENT DATES: Comments will be accepted through September 12, 1980.

ADDRESS: Written comments should be addressed to Marie Wilson, Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Thomas L. Saltonstall, Director, Technical Guidance Division, Office of Field Services, Equal Employment Opportunity Commission, Room 4250, 2401 E Street, N.W., Washington, D.C. 20506 (202) 634-6855.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission has extended the deadline for comments on these interim regulations because of the complex nature of the procedures proposed. Furthermore, because of the extensive interest in the proposed procedures from both private organizations and federal agencies, and because the Equal Employment Opportunity Commission shall be issuing in September of 1980 an evaluation of the results of the investigations conducted pursuant to its federal sector Pilot Program, further time for comment is deemed appropriate.

For the Commission.

Dated: May 27, 1980.

Eleanor Holmes Norton,

Chair.

[FR Doc. 80-16460 Filed 5-29-80; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL 1502-4]

Motor Vehicle Recalls Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretive Rule.

SUMMARY: This rule sets forth EPA's interpretation regarding one aspect of a motor vehicle or motor vehicle engine manufacturer's recall liability under section 207(c)(1) of the Clean Air Act (Act). EPA interprets this section as requiring manufacturers to submit a plan

to remedy all vehicles within the class or category of vehicles subject to an ordered recall which experienced the nonconformity during their useful lives regardless of their age or mileage at the time of repair. The interpretation set out in this rule will provide guidance to vehicle and engine manufacturers to better enable them to submit acceptable remedial plans.

DATES: This rule is effective May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mike Randall, Manufacturers Operations Division (EN–340), Environmental Protection Agency, Washington, DC 20460 at (202) 472–9425.

PUBLIC DOCKET: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN–80–10 at the Central Docket Section of the U.S. Environmental Protection Agency, Room 2903B, Waterside Mall, 401 "M" Street, SW, Washington, DC 20460 and are available for review between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

SUPPLEMENTARY INFORMATION: Section 207(c)(1) of the Act provides in pertinent part:

> (1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202, when in actual use throughout their useful life (as determined under section 202(d)), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer.

Section 202(d)(1) of the Act defines the useful life of a light duty vehicle or a light duty vehicle engine as a period of use of five years or fifty thousand miles, whichever occurs first.[1]

In the past, manufacturers have not conditioned a vehicle's eligibility for a recall repair, at the manufacturer's expense, on the basis of the vehicle's age or mileage. Recently, however, some manufacturers have indicated that they will not repair, at their expense, nonconforming vehicles or engines which are beyond the vehicles' useful lives at the time those vehicles or engines are presented for recall repairs. These manufacturers have argued that the reference to useful life in section 207(c)(1) of the Act permits them to impose such a limitation in their remedial plans. As discussed more fully below, this interpretation is inconsistent with the language and purpose of the Act, and its implementation could have a serious negative impact on ambient air quality.

The recall program has two objectives: 1) To assure that manufacturers repair vehicles which are exceeding the emission standards if those vehicles have been properly maintained and used and the nonconformity occurs within the useful life of the vehicles, and 2) to encourage manufacturers to build durable emission-related components to assure that vehicles will not manifest excessive emissions during their useful lives. Both of these objectives are frustrated by an interpretation of useful life which limits manufacturers' liability only to vehicles which are within their useful life at the time of repair.

EPA is issuing an interpretive rule to clarify this aspect of a manufacturer's recall liability under the Act in order to provide guidance to all vehicle and engine manufacturers. This should help to prevent any delays with individual recalls resulting from misunderstandings regarding the manufacturer's recall liability.

In EPA's view, the term "useful life" in section 207(c)(1) refers to a limitation placed upon the Administrator, requiring him to base a recall order on a finding that vehicles do not conform to the regulations prescribed under section 202(a) of the Act within their useful lives, and does not refer to a time or mileage limitation beyond which recalled vehicles need not be repaired at the manufacturer's expense. In other words, as used in section 207(c) the term limits the basis for a determination of nonconformity but does not limit the scope of the remedy.

This conclusion is apparent from the language of the Act. Section 207(c)(1) provides that if the Administrator determines that a substantial number of vehicles of a given class or category are nonconforming "when in actual use throughout their useful life," he must notify the manufacturer "of such nonconformity" and require submission of a "plan for remedying the nonconformity of the vehicles or engines." The plan submitted by the manufacturer must "provide that the nonconformity of *any such vehicle* * * * be remedied * * *" (emphasis added). The language "any such vehicle" refers to vehicles in the class or category that the Administrator initially determines are subject to recall, and there is no indication that Congress intended to create an exception for nonconforming vehicles that are part of that class or category but have passed beyond their useful lives at the time of repair. The language of section 207(c)(1) permits the manufacturer to limit the scope of the remedial plan only on the basis of improper use or maintenance of particular nonconforming vehicles within the subject class or category. In other words, once the recall requirement is triggered, the manufacturer must submit a plan to remedy all properly used and maintained nonconforming vehicles in the subject class regardless of their age or mileage at the time of repair.[2]

The legislative history of the Act offers little guidance in this regard but is consistent with EPA's interpretation. Although Congress specified a 5 year/50,000 mile useful life for cars, it did so primarily to limit the industry's warranty liability in view of manufacturers' assertions that they could not guarantee compliance with emission standards for a longer period. Congress recognized that the actual life of a car is approximately ten years, rather than five, and was by no means indifferent to the problem of emissions from cars that have passed beyond their statutory useful lives but remain on the road for a number of years. Indeed, it expressed the hope that with proper operation and maintenance, the emission control systems on such vehicles would continue to provide some measure of emission control beyond each vehicle's useful life and thus minimize the vehicle's impact on air quality.[3] In view of this Congressional concern, it makes no sense to conclude that Congress intended to excuse a manufacturer from recall liability, for vehicles that have failed to comply with applicable standards during the statutory useful life simply because a particular vehicle has passed beyond the statutory useful life when presented for repair. Indeed, requiring repair of such vehicles furthers the Congressional intention by improving the vehicles' emission performance to the level they would have attained had they conformed

[1] With regard to all other types of motor vehicles and motor vehicle engines, section 202(d) provides the Administrator with discretion to determine the appropriate useful life.

[2] In EPA's view, the manufacturer is not responsible to remedy the nonconformity of a vehicle which, although part of the recall class, experienced the nonconformity only after expiration of the vehicle's useful life. Also, for those vehicles which are subject to repair at the manufacturer's expense, the manufacturer is only responsible to carry out the remedy contained in the approved plan and is not responsible to remedy any other nonconformities.

[3] S.R. No. 91–1196, 91st Cong., 2d Sess. 30 (1970).

originally with the standards during their useful lives.

If the reading of section 207(c)(1) advocated by several manufacturers were followed, anomalous results would occur and the effectiveness of the recall provision could be seriously undermined. For instance, the administrative process for recalls, which begins with an investigation of vehicles that may be subject to recall and ends with the manufacturer repairing the nonconforming vehicles, can consume a great deal of time.[4] During that time many nonconforming vehicles may exceed their useful lives. This problem is further complicated by the fact that many vehicles which cease to conform during their useful lives do not manifest any emission nonconformity until they have accumulated significant mileage. Thus, a useful life limitation on remedial repairs, such as that asserted by some manufacturers, could preclude the repair of many vehicles, particularly those which do not evidence a nonconformity until late in their useful lives. The problem could be even more acute where a recall is challenged in an administrative hearing since, by the time a hearing is concluded and subsequent appeals are exhausted, all vehicles involved may have passed beyond the end of their useful lives.[5] Additionally, an adoption of this interpretation would provide an incentive for greater delays in the administrative process in the future, thereby further limiting the number of vehicles which would receive the remedial repair.

For these reasons, interpreting section 207(c)(1) as imposing a useful life limitation on vehicles eligible for repair under a remedial plan could severely limit the number of nonconforming vehicles repaired pursuant to recall orders, could seriously impact ambient air quality, and would frustrate the intent of Congress. Accordingly, I conclude that section 207(c)(1) should be interpreted to require remedial plans to provide for remedying of nonconforming vehicles as set forth in the interpretive rule that appears below.

NOTE: This rulemaking constitutes a "nationally applicable regulation" under section 307(b)(1) of the Clean Air Act, as amended, 42 U.S.C. 7607(b)(1). Any judicial review of this action is, accordingly, governed by that provision.

Pursuant to section 307(d)(1)(N) of the Clean Air Act, as amended, 42 U.S.C. 7607(d)(1)(N), and section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), this interpretive rule is being promulgated as a final rule effective upon publication.

Under EPA's *Final Report Implementing Executive Order 12044*, 44 Fed. Reg. 30988 (1979), EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the order or wheher it may follow other specialized development procedures. EPA labels regulation of the latter type "specialized." I have reviewed this regulation and have determined that it is specialized and therefore not subject to the procedural requirements of Executive Order 12044.

Dated: May 22, 1980.

Barbara Blum,

Acting Administrator.

Accordingly, Part 85 of Title 40 of the Code of Federal Regulations is revised as follows:

1. By adding a note at the end of § 85.1803 as set forth below:

§ 85.1803 Remedial Plan.

* * * * *

Note.—An interpretive ruling regarding § 85.1803 is published in Appendix A to this subpart.

2. By adding Appendix A to subpart S as set forth below:

Appendix A—Interpretive Ruling for § 85.1803—Remedial Plans

The purpose of this rule is to set forth EPA's interpretation regarding one aspect of a motor vehicle or motor vehicle engine manufacturer's recall liability under section 207(c)(1) of the Clean Air Act, 42 U.S.C. 7641(c)(1). This rule will provide guidance to vehicle and engine manufacturers to better enable them to submit acceptable remedial plans.

Section 207(c)(1) requires the Administrator to base a recall order on a determination that a substantial number of in-use vehicles or engines within a given class or category of vehicles or engines, although properly maintained and used, fail to conform to the regulations prescribed under section 202 when in actual use throughout their useful lives. After making such a determination, he shall require the manufacturer to submit a plan to remedy the nonconformity of any such vehicles or engines. The plan shall provide that the manufacturer will remedy, at the manufacturer's expense, all properly maintained and used vehicles which experienced the nonconformity during their useful lives regardless of their age or mileage at the time of repair.

(Sections 207 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7541 and 7601(a))

[FR Doc. 80-16504 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

[4] This administrative process includes a number of different steps. The vehicles subject to an investigation usually undergo surveillance and confirmatory testing. Based on analysis of the test results the Administrator may issue a recall order. Under 40 CFR 85.1802(a), the manufacturer has at least 45 days to respond to the recall order by submitting a remedial plan, or the manufacturer may choose to challenge the Administrator's determination in an administrative hearing. If a remedial plan is submitted, it may prove to be deficient, in which case there may be lengthy negotiations before an acceptable plan is approved. Once an acceptable remedial plan is submitted and approved, the manufacturer must give notice of the recall campaign to the owners of the vehicles involved. Finally the vehicle owner brings the vehicle to a dealership for the actual repair.

[5] Of particular note is EPA's recall of 1975 Chrysler vehicles with 360 and 400 cubic inch displacement (CID) engines on December 8, 1976. This recall order is now under consideration by the U.S. Court of Appeals for the District of Columbia Circuit. A decision is expected by mid-1980 at the earliest, when many, if not all, of these vehicles will be beyond their useful lives.

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40 CFR Part 180

[FRL 1503-4; OPP-260034]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Editorial Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule makes nonsubstantive changes to a pesticide regulation. The amendment was requested by Monsanto Company. This rule reinstates three inert ingredients unintentionally dropped from the Code of Federal Regulations (CFR).

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. John Shaughnessy, Process Coordination Branch, Registration Division (TS-767), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202/426-9425.

SUPPLEMENTARY INFORMATION:

Polyoxyethylated sorbitol fatty acid esters, toluene sulfonic acid and six salts, and xylene sulfonic acid and six salts are three inert ingredients that were inadvertently dropped from the 1977 edition of Title 40, Part 180, Subpart D, § 180.1001(d) after having been published in the 1976 CFR. This omission is being corrected by reinstating the three dropped inert ingredients in § 180.1001(d) as they originally appeared, as set forth below.

Since this change is nonsubstantive in nature, merely corrects an omission, and editorially amends an existing regulation, notice and public rulemaking procedures pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), are not prerequisite to the promulgation of this regulation. This order is effective May 30, 1980.

Dated: May 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[30]0098

Part 180, Subpart D, § 180.000(d) is amended by alphabetically reinstating the following chemicals in the table as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * * * * * *		
Polyoxyethylated sorbitolfatty acid esters; the polyoxyethylated sorbitol solution containing 15% water is reacted with fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids; the poly (oxyethylene) content averages 30 moles.		Surfactants, related adjuvants surfactants.
* * * * * * *		
Toluene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.		Surfactants, related adjuvants of surfactants.
* * * * * * *		
Xylene sulfonic acid its ammonium calcium, magnesium, potassium, sodium and zinc salts.		Surfactants, related adjuvants of surfactants.
* * * * * * *		

[FR Doc. 80-16434 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-42

[FPMR Amendment H-123]

Property Rehabilitation Services and Facilities; Precious Metal Recovery

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation illustrates a new Standard form for use by Federal agencies to report on activities generating precious metals. This form replaces the current format used for reporting on these activities.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dee, Director, Property Rehabilitation Division (703-557-0795).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044.

1. The table of contents for Part 101-42 is amended by adding, revising, or deleting the following entries:

Subpart 101-42.4—101-42.48 [Reserved]

§§ 101-42.4800—101-42.4802 [Deleted]

Subpart 101-42.49 Illustrations of Forms

101-42.4900 Scope of subpart.

101-42.4901 Standard forms.

101-42.4901-291 Standard Form 291, Report of Activities Generating Precious Metals.

2. Section 101-42.301-1 is revised to read as follows:

Subpart 101-42.3—Recovery of Precious Metals and Critical Materials

§ 101-42.301-1 Guidelines for conducting agency surveys and reporting to GSA.

Each agency having activities that generate silver or other precious metals (including used hypo solution, scrap film, and other precious-metal-bearing scrap) shall survey each of those activities to obtain information regarding precious metals recovery and potential recovery and shall submit a consolidated semiannual report (based on fiscal year) on that information to the General Services Administration (DPR), Washington, DC 20406. The consolidated report shall be submitted within 45 calendar days after the end of each half fiscal year reporting period. Each agency shall designate an individual to be responsible for coordinating the surveys, implementing and improving recovery procedures, monitoring the recovery programs, and submitting the consolidated report to GSA. Section 101-42.4901-291 illustrates Standard Form 291, Report of Activities Generating Precious Metals (interagency report control number 1529-GSA-SA). The report shall contain specific information regarding the types of silver or other precious-metal-bearing scrap processed or generated; the number of activities generating silver or other precious-metal-bearing scrap and quantity generated; the estimated amounts potentially recoverable and method of estimation; the number of activities recovering precious metals from the scrap and quantity generated; the amount of precious metals recovered in troy ounces; the type of recovery equipment and method of disposition of recovered silver; the method of disposal if precious metals are not recovered; the explanation for any lack of recovery; the agency estimate of dollar savings for the report period; and any actions planned to maximize recovery.

3. Subpart 101-42.48 is deleted and reserved and §§ 101-42.4800—101-42.4802 are deleted, as follows:

Subpart 101-42.4—101-42.48 [Reserved]

§§ 101-42.4800—101.4802 [Deleted]

4. Subpart 101-42.49 is added to read as follows:

Subpart 101-42.49—Illustrations of Forms

§ 101-42.4900 Scope of subpart.

This subpart illustrates forms prescribed or available for use in connection with subject matter covered in this Part 101-42.

§ 101-42.4901 Standard forms.

(a) Standard forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The subsection number in this section corresponds with the Standard form number.

(b) The Standard forms illustrated in this § 101-42.4901 may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity. The requisition for Standard Form 291 should include the national stock number 7540-01-075-8167.

§ 101-42.4901-291 Standard Form 291, Report of Activities Generating Precious Metals.

(a) Page 1 of Standard Form 291.

(b) Page 2 of Standard Form 291.

(c) Page 3 of Standard Form 291.

Note.—The form illustrated in this § 101-42.4901-291 is filed with the original document and does not appear in this volume.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: May 21, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-16498 Filed 5-29-80; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Parts 3-1 and 3-7

Prohibition Against Use of HHS Funds to Influence Legislation or Appropriations

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its procurement regulations by establishing a new section and contract clause concerning the prohibition against use of HHS funds to influence legislation or appropriations.

The regulations incorporate the "anti-lobbying" provision contained in section 407 of the Title IV General Provisions of the Departments of Labor and Health, Education, and Welfare FY 1979 Appropriations Act (Pub. L. 95-480). Section 407, in part, prohibits the use of appropriated funds to pay the salaries or expenses of grantees and contractors, or their agents, incurred while engaging in activities to influence legislation or appropriations pending before the Congress.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Office of Procurement Policy, Office of Grants and Procurement, OASMB-OS, HHS, Washington, DC 20201 (202-245-0481).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the regulation prescribed in this amendment is based on a provision mandated by the Department's Appropriations Act, the public rulemaking process was deemed unnecessary in this instance. The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: May 23, 1980.

Murray N. Weinstein,

Acting Deputy Assistant Secretary for Grants and Procurement.

1. Under Subpart 3-1.3, General Policies, of Part 3-1, General, § 3-1.358, Prohibition against use of HHS funds to influence legislation or appropriations, is added as set forth below. In addition, the table of contents of Part 3-1 is amended to add the following:

PART 3-1—GENERAL

Subpart 3-1.3—General Policies

* * * * *

Sec.

3-1.358 Prohibition against use of HHS funds to influence legislation or appropriations.

* * * * *

§ 3-1.358 Prohibition against use of HHS funds to influence legislation or appropriations.

(a) This section provides guidance on the implementation of section 407 of the Title IV General Provisions of the Departments of Labor and Health, Education, and Welfare FY 1979 Appropriations Act (Pub. L. 95-480). Section 407, in part, prohibits the use of appropriated funds to pay the salaries or expenses of grantees and contractors, or their agents, incurred while engaging in activities to influence legislation or appropriations pending before Congress.

(b) The clause set forth in § 3-7.5028 implements this provision of section 407 and is to be included in every invitation for bids, request for proposals, contract, and small purchase funded in whole or in part under the FY 1979 Appropriations Act, or any succeeding appropriations act which contains the referenced provision.

2. Under Subpart 3-7.50, Special Contract Clauses, of Part 3-7, Contract Clauses, § 3-7.5028, Prohibition against use of HHS funds to influence legislation or appropriations, is added as set forth below. In addition, the table of contents of Part 3-7 is amended to add the following:

PART 3-7—CONTRACT CLAUSES

Subpart 3-7.50—Special Contract Clauses

* * * * *

Sec.

3-7.5028 Prohibition against use of HHS funds to influence legislation or appropriations.

* * * * *

§ 3-7.5028 Prohibition against use of HHS funds to influence legislation or appropriations.

The following clause is to be used in accordance with § 3-1.358:

Prohibition Against Use of HHS Funds To Influence Legislation or Appropriations

No part of any funds under this contract shall be used to pay the salary or expenses of any Contractor, or agent acting for the Contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

[FR Doc. 80-16502 Filed 5-29-80; 8:45 am]

BILLING CODE 4110-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5830]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part

59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood-prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date
Arkansas	Union	Huttig, town of	050208B	June 23, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 24, 1974 Oct. 17, 1975	June 4, 1980.
California	Orange	Anaheim, city of	060213B	June 27, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 26, 1974 Apr. 16, 1976	Do.
Do	Glenn	Willows, city of	060059B	June 10, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 26, 1974 Oct. 3, 1975	Do.
Colorado	Summit	Breckenridge, town of	080172B	July 25, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 24, 1974 June 4, 1976	Do.
Do	Weld	Eaton, town of	080180B	Mar. 3, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 10, 1974 Feb. 27, 1976	Do.
Connecticut	Tolland	Coventry, town of	090110C	Jan. 7, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Aug. 9, 1974 Feb. 27, 1976	Do.
Florida	Putnam	Palatka, city of	120273B	Jan. 20, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 19, 1974 Apr. 9, 1976	Do.
Illinois	St. Clair	Alorton, village of	170617B	Apr. 26, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974 June 18, 1976	Do.
Do	Cook	Dixmoor, village of	170082C	July 21, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974 Jan. 16, 1976 Mar. 17, 1978	Do.
Do	McHenry	Fox River Grove, village of	170477B	Apr. 17, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974 Jan. 30, 1976	Do.
Do	Lake	Grayslake, village of	170363C	Dec. 11, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974 Feb. 27, 1976	Do.
Do	Tazewell	North Pekin, village of	170653B	July 22, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Mar. 8, 1974 Oct. 24, 1975	Do.
Do	Lake	Round Lake Park, village of	170391B	July 21, 1975, emergency, June 4, 1980, regular, June 43, 1980, suspended.	Mar. 29, 1974 Oct. 24, 1975	Do.
Do	Cook	Westchester, village of	170170B	Nov. 24, 1972, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Oct. 7, 1973 Apr. 2, 1976	Do.
Indiana	Lake	East Chicago, city of	180130C	Feb. 26, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 12, 1974 Apr. 9, 1976 Apr. 15, 1977	
Do	Porter	Porter, town of	180208B	Oct. 16, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Dec. 28, 1973 Mar. 19, 1976	Do.
Do	Vigo	Unincorporated areas	180263A	June 28, 1980, emergency, June 4, 1980, suspended.	Jan. 3, 1975 June 23, 1978	
Iowa	Sac	Lake View, city of	190503A	Mar. 3, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 23, 1976	Do.
Kentucky	Nelson	Bloomfield, city of	210179A	Aug. 8, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 10, 1974	Do.
Louisiana	East Feliciana	Jackson, town of	220333A	Feb. 26, 1976, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Jan. 10, 1975	Do.
Maine	Kennebec	Chelsea, town of	230234A	Oct. 1, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Feb. 21, 1975	Do.
Massachusetts	Middlesex	Chelmsford, town of	250188B	Dec. 6, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Oct. 25, 1974 Oct. 8, 1976	Do.
Do	Franklin	Conway, town of	250114B	Dec. 16, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Aug. 2, 1974 Dec. 24, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Essex	Georgetown, town of	250081B	July 31, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 26, 1974 Dec. 3, 1976	Do.
Do	Dukes	Gosnold, town of	250071A	Sept. 29, 1977, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Dec. 20, 1974	Do.
Do	Plymouth	Lakeville, town of	250271B	Apr. 15, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Sept. 6, 1974 Aug. 20, 1976	Do.
Do	Worcester	Shrewsbury, town of	250332B	Apr. 11, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Sept. 6, 1974 Nov. 5, 1976	Do.
Do	Essex	Topsfield, town of	250106B	Sept. 26, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Sept. 13, 1974 July 23, 1976	Do.
Michigan	Oakland	Birmingham, city of	260168B	May 5, 1972, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 6, 1973 June 18, 1976	Do.
Do	Allegan	Casco, township of	260004A	Nov. 6, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Nov. 29, 1974	Do.
Do	....do	Laketown, township of	260253A	Nov. 27, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Jan. 3, 1975	Do.
Minnesota	Lac Qui Parle	Unincorporated areas	270239B	July 3, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Feb. 10, 1978	Do.
Mississippi	Panola	....do	280125B	Mar. 4, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Nov. 25, 1977	Do.
Missouri	Platte	Edgerton, city of	290291A	Oct. 7, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Dec. 20, 1974	Do.
Do	Dunklin	Kennett, city of	290129B	Nov. 23, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Mar. 29, 1974 Nov. 14, 1975	Do.
Montana	Lewis and Clark	East Helena, city of	300039A	May 23, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974	Do.
New Hampshire	Grafton	Lebanon, city of	330061A	Dec. 10, 1971, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Sept. 20, 1974	Do.
New Jersey	Union	Roselle Park, borough of	340473B	Apr. 25, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 22, 1977	Do.
Do	Middlesex	South River, borough of	340280B	June 18, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Apr. 5, 1974 Mar. 5, 1976	Do.
Do	Bergen	Wallington, borough of	340079B	June 18, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 14, 1974 June 4, 1976	Do.
New York	Rensslae	Brunswick, town of	361130B	Aug. 26, 1977, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Nov. 12, 1976	Do.
Do	Albany	Green Island, village of	360009B	Dec. 3, 974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Feb. 1, 1974	Do.
Do	Westchester	Mount Pleasant, town of	360919B	Dec. 26, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 3, 1974 Oct. 17, 1975	Do.
New York	Broome	Sanford, town of	360054B	July 25, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	July 26, 1974 Jan. 2, 1976	Do.
Do	Niagara	Youngstown, village of	360515B	Mar. 30, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Mar. 1, 1974 July 23, 1976	Do.
North Carolina	Guilford	Unincorporated areas	370111B	Apr. 30, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Jan. 17, 1975 June 23, 1978	Do.
Ohio	Lucas	Ottawa Hills, village of	390362B	Oct. 24, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Nov. 9, 1973 June 4, 1976	Do.
Do	....do	Toledo, city of	395373A	Dec. 18, 1970, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Oct. 8, 1976	Do.
Pennsylvania	Northampton	Bethlehem, township of	420980B	Jan. 23, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 14, 1974 Sept. 24, 1976	Do.
Do	Lancaster	Conoy, township of	420545B	July 6, 1973, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Oct. 12, 1973 Aug. 13, 1976	Do.
South Carolina	Abbeville	Abbeville, city of	450001B	Oct. 9, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	May 31, 1974 June 18, 1976	Do.
South Dakota	Moody	Trent, town of	460063A	Feb. 18, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Dec. 6, 1974	Do.
Texas	Wharton	El Campo, city of	480653B	July 17, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 7, 1974 May 14, 1976	Do.
Do	Tarrant	Fort Worth, city of	480596A	Sept. 17, 1971, emergency, June 4, 1980, regular, June 4, 1980, suspended.		Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Harris	Spring Valley, city of	480313B	July 31, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 28, 1974 Dec. 3, 1976	Do.
Do	Collin	Wylie, city of	480759A	May 18, 1977, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Nov. 12, 1976	Do.
Utah	Grand	Moab, city of	490072C	Sept. 17, 1974, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 21, 1974 Dec. 26, 1975	Do.
Vermont	Caledonia	Burke, town of	500025B	June 23, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 7, 1974 Dec. 3, 1976	Do.
Washington	Kine	Duvall, town of	530282A	Dec. 6, 1977, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Aug. 20, 1976	Do.
Do	Thurston	Tenino, town of	530302A	Feb. 18, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	June 27, 1975	Do.
Wisconsin	Jefferson and Dane	Cambridge, village of	550080B	Nov. 28, 1975, emergency, June 4, 1980, regular, June 4, 1980, suspended.	Dec. 17, 1973 May 14, 1976	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: May 19, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 80-16419 Filed 5-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii, call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Watertown, Town, Litchfield County (Docket No. FEMA-5778).	Naugatuck River	Downstream Corporate Limits	*282
			Downstream side of Chase Brass Dam	*289
			400' upstream of Chase Brass Dam	*293
			Approximately 890' upstream of Conrail Bridge	*294
			Approximately 100' downstream of Frost Bridge	*297
			Approximately 100' upstream of Frost Bridge	*302
			Approximately 3,000' downstream of Private Bridge	*308
			Downstream side of Private Bridge	*313
			Upstream side of Private Bridge	*318
			Conrail Bridge	*319
			Upstream Corporate Limits	*321

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Branch Brook	Downstream Corporate Limits	*320
			State Route 8 Bridge	*330
			Approximately 1,400' upstream of State Route 8 Bridge	*340
			Thomaston Road	*357
			Downstream side of Black Rock Dam	*382
			Upstream side of Wigwam Dam	*567
			Upstream Corporate Limits	*569
		Steele Brook	Downstream Corporate Limits	*358
			Parking Lot Bridge	*364
			Downstream side of Pin Shop Pond Dam	*380
			Upstream side of Pin Shop Pond Dam	*390
			Approximately 30' upstream of Main Street	*394
			Approximately 675' upstream of Main Street	*397
			Approximately 675' upstream of Main Street	*397
			Approximately 1,630' upstream of Main Street	*410
			Downstream side of Seymour and Smith Company Dam	*433
			Upstream side of Seymour and Smith Company Dam	*448
			Approximately 100' downstream of Bridge to Treatment Plant	*460
			Upstream of Bridge to Treatment Plant	*463
			French Street	*475
			Approximately 50' downstream of Abandoned Railroad Bridge	*479
			Approximatley 75' upstream of Abandoned Railroad Bridge	*483
			Upstream of Hemingway Pond Dam	*487
			Downstream of U. S. Route 6 and 202	*494
			Approximately 100' upstream of U. S. Route 6 and 202	*499
			Downstream of Northfield Road	*510
			Approximately 100' upstream of Northfield Road	*518
			Downstream of Dam	*537
			Approximately 50' upstream of Dam	*554
			Downstream of Dirt Farm Road Bridge	*545
			Upstream of Dirt Farm Road Bridge	*551
			Approximately 1,350' upstream of Dirt Farm Road Bridge	*563
			State Route 63	*581
	Maps available at the Town Planning and Zoning Office, Watertown, Connecticut.			
Florida	Edgewater (City), Volusia County, FEMA-5785.	South Canal	Northwestern side of Hamilton Drive along channel between Riverside Drive and U.S. Highway 1.	*8
		Indian River	Intersection of West Knapp Avenue and Riverside Drive	*8
			Intersection of Park Avenue and Riverside Drive	*8
			Intersection of Marion Avenue and Riverside Drive	*8
			Intersection of Boston Road and Riverside Drive	*8
		E Canal	Intersection of U.S. Highway 1 and channel	*8
			Intersection of Fern Palm Drive and channel	*9
			Approximately 40 feet upstream from the intersection of Florida East Coast Railroad and channel.	*10
	Maps available from City Hall, 103 North Riverside Drive, Edgewater, Florida.			
Florida	Fort Meade (City), Polk County, FEMA-5778.	Peace River	50 feet upstream from center of U.S. Highway 98	*85
		Lake (City Beach)	100 feet north of the intersection of 6th Street and French Avenue	*139
		Pond 1A	200 feet northwest of the intersection of Milman Street and Hendry Avenue.	*104
		Pond 1	50 feet north of the intersection of Hendry Avenue and Unter Din Linder.	*101
		Pond 2	350 feet southwest of the intersection of Unter Din Linder and Hendry Avenue.	*108
		Pond 3—Shallow Flooding	200 feet east of the intersection of Unter Din Linder and Hendry Avenue.	*93
		Pond 4—Shallow Flooding	600 feet south of Milman Street and Washington Avenue	*87
	Maps available from City Hall, 8 West Broadway, Fort Meade, Florida.			
Florida	Hillsborough County (Unincorporated Areas), FEMA-5748.	Alafia River	Intersection of river and center of Bell Shoals Road	*24
			Intersection of river and center of State Route 640	*31
		South Prong Alafia River	Intersection of river and center of State Route 640	*48
		North Prong Alafia River	Intersection of river and center of State Route 676	*54
		Delaney Creek	Intersection of creek and center of State Route 676	*19
		Ruskin Inlet	75 feet upstream from center of State Route 674	*12
		Rocky Creek	Intersection of creek and center of Seaboard Coast Line Railroad	*15
		Bullfrog Creek	Intersection of creek and center of Symmes Road	*19
		Hillsborough River	Intersection of river and center of 56th Street	*23
			Intersection of river and center of U.S. Route 301	*50
		Little Manatee River	100 feet upstream from center of U.S. Route 301	*22
			Intersection of river and center of Carlton Lake Road	*46
		Blackwater Creek	Intersection of river and center of unnamed road 4700 feet upstream of mouth.	*52
		Rice Creek	100 feet upstream from center of Balm Road	*13
		Cypress Creek	Intersection of creek and center of State Route 581	*35
		Gulf of Mexico	Intersection of Memorial Highway and West Buffalo Avenue (State Highway 576).	*10
			Intersection of Bayshore Road (State Route 45, U.S. Route 41) and Big Bend Road (State Route 672).	*11
			Intersection of Shell Point Road (State Route 670) and U.S. Route 41 (State Route 45).	*10
			Intersection of Cockroach Bay Road and State Route 674	*9
	Maps available at County Courthouse, 419 Pierce and Kennedy Streets, Tampa, Florida.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	Lake Hamilton (Town), Polk County, FEMA–5778.	Lake Hamilton	Along western corporate limits	*123
		Crystal Lake	500 feet south of the intersection of Gates Avenue and Fifth Street	*123
		Lake Sara	200 feet west of the intersection of Sample Avenue and Sixth Street	*123
		Lake Lee	400 feet south of the intersection of Omaha Street and Baeschlin Street.	*126
		Lake Gordon	400 feet northeast of the intersection of Gordon Drive and U.S. Highway 27A (State Route 17).	*126
		Lake Ida	400 feet southwest of the intersection of Sample Avenue and Lawson Street.	*126
		Lake Dora and Lake Christina	200 feet east of the intersection of Omaha Street and Cunningham Street.	*139
		Depressions 1 and 2	Intersection of Gunter Avenue and Rose Street	*139
	Maps available at Town Hall, 100 Smith Avenue, Lake Hamilton, Florida.			
Florida	Tampa (City), Hillsborough County (Docket No. FEMA–5798).	Hillsborough River	Intersection of river and center of 40th Street	*23
		Gulf of Mexico	Intersection of John F. Kennedy Boulevard and Hoover Boulevard	*10
			Intersection of Bayshore Boulevard and Interbay Boulevard	*11
			Intersection of Frank Adamo Drive (State Route 60) and 50th Street (U.S. 41).	*11
	Maps available from City Hall, City Hall Plaza, Tampa, Florida.			
Illinois	(V) Flossmoor, Cook County (Docket No. FEMA–5702).	Butterfield Creek	Just upstream of Dixie Highway	*636
			Just downstream of Vollmer Road	*655
		Butterfield Creek, Tributary No. 1	At confluence with Butterfield Creek	*645
			Just downstream of Vollmer Road	*652
		Butterfield Creek, Tributary No. 3	At confluence with Butterfield Creek	*652
			Just upstream of Oak Lane Road	*655
			Just upstream of Lake Drive	*658
			Just downstream of Illinois Central Gulf railroad	*660
		Butterfield Creek, Tributary No. 4	At confluence with Butterfield Creek Tributary No. 3	*654
			Just downstream of Oak Lane Road	*656
			Just upstream of Oak Lane Road	*659
			Just downstream of Illinois Central Gulf railroad	*663
		East Branch Cherry Creek	At northern corporate limit	*664
			Just upstream of Governors Highway	*670
			About 420 feet downstream of Homewood/Flossmoor High School driveway.	*681
			Just downstream of Kedzie Avenue	*685
		East Branch Cherry Creek Tributary.	At confluence with East Branch Cherry Creek	*671
			Just downstream of Governors Highway	*679
		South Leg West Branch Cherry Creek.	At northern corporate limit	*688
			Just downstream of Springfield Avenue	*694
			Just downstream of Crawford Road	*704
	Maps available at Village Hall, 2800 Flossmoor Road, Flossmoor, Illinois 60422.			
Illinois	(C) Highland Park, Lake County (Docket No. FEMA–5702).	Skokie River	Just upstream County Line Road	*632
			Just upstream Clavey Road	*635
			About 700 feet upstream Park Avenue West	*639
			About 1200 feet upstream Half Day Road	*642
			At upstream corporate limits	*651
		Middlefork North Branch Chicago River.	At downstream corporate limits	*650
			About 1000 feet upstream Deerfield Road	*654
			About 1,000 feet upstream Half Day Road at upstream limit of flooding affecting Highland Park.	*659
	Maps available at City Hall, City Engineer's Office, 1707 St. John's Avenue, Highland Park, Illinois 60035.			
Kentucky	Unincorporated Areas of Nelson County (FEMA–5773).	Rolling Fork	Just upstream of State Highway 31E	*472
		Pottinger Creek (Backwater flooding from Rolling Fork).	Just upstream of State Highway 247	*477
		Rowan Creek	Just upstream of State Highway 49 Bridge	*502
		Town Creek	Just upstream of Old Gilkey Run Road	*490
			Approximately 100 feet upstream of Louisville and Nashville Railroad	*575
		East Fork Simpson Creek	Just upstream of Country Road	*636
		Withrow Creek	Confluence of Withrow Creek and Withrow Creek Tributary	*487
		Withrow Creek Tributary	Kenneth Avenue Extended (Avenue located in the City of Bardstown)	*560
		Beech Fork	Confluence of Beech Fork and Withrow Creek	*485
	Maps available at the Nelson County Planning Commission, 113 East Steven Foster, Bardstown, Kentucky 40004.			
Kentucky	City of New Haven, Nelson County (FEMA–5773).	Rolling Fork	Mousers Alley (extended)	*470
			Approximately 500 feet downstream of U.S. Highway 31E	*472
	Maps available at Planning Commission Office, 113 E. Steven Foster, Bardstown, Kentucky 40004.			
Kentucy	Newport (City), Campbell County, FEMA–5778.	Ohio River	U.S. Highway 27 crossing the channel	*498
			Approximately 800 feet northwest from the intersection of County Highway 8 and Linden Avenue.	*499
		Licking River	At confluence with Ohio River	*498

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 600 feet southwest from the intersection of Ninth Street and Lowell Street.	*499
			Approximately 300 feet southwest from Lowell Street and Chessie System intersection.	*500
		Woodlawn Creek	Downstream side of the intersection of the channel and Memorial Parkway.	*516
			Upstream side of Wilson Road crossing over the channel	*518
		Woodlawn Tributary 2	Intersection of Lourdes Lane and Burnet Avenue	*517
			Intersection of Chesapeake Avenue and Grand Avenue	*517
Maps available at Newport Courthouse, 4th and York, Newport, Kentucky.				
Louisiana	Town of Carencro, Lafayette Parish (FEMA-5773).	Beau Basin	Just upstream of Armand Street	*41
			Just downstream of Belizare Street	*42
		Gaston Coulee	At Andre Street	*41
			At St. Anne St.	*41
Maps available at City Hall, Andre Street, Carencro, Louisiana 70520.				
Louisiana	Town of Church Point, Acadia Parish (FEMA-5773).	Bayou Plaquemine Brule	Just upstream of Louisiana Highway 95	*44
			Just upstream of Louisiana Highway 35	*45
Maps available at City Hall, 105 S. Main Street, Church Point, Louisiana 70525.				
Massachusetts	Billerica (Town), Middlesex County FEMA-5778.	Concord River	Area southeast from the end of Winthrop Street	*107
			Intersection of river and center of Pollard Street	*115
			Cul-de-sac at the end of Simmons Lane	*117
			Intersection of Riverview Road and Pembroke Street	*119
		Shawsheen River	Intersection of Hamilton Street and First Avenue	*93
			Cul-de-sac at the end of Shawsheen Road	*97
		Content Brook	50 feet downstream from center of Gray Street	*106
		Middlesex Canal	30 feet downstream from center of Pond Street	*110
		Jones Brook	Intersection of brook and center of Baldwin Road	*105
Maps available at Town Hall, Concord Road, Billerica, Massachusetts.				
Massachusetts	Town of Middleton, Essex County (Docket No. FI-5688).	Ipswich River	Corporate Boundary (Downstream)	*41
			Upstream, Peabody Street	*44
			Upstream, Maple Street	*46
			Upstream, South Main Street	*49
			Downstream, Boston Blacking Company Dam	*53
			Upstream, Boston Blacking Company Dam	*60
			Corporate Boundary (Upstream)	*60
		Tributary A to Ipswich River	Mouth of Tributary	*46
			1,400 feet downstream, Mount Vernon Street	*56
			Downstream, Mount Vernon Street	*66
			Upstream, Mount Vernon Street	*69
			Downstream, South Main Street Culvert	*80
			Upstream, South Main Street Culvert	*85
			Uptstream, Pleasant Street	*89
			Downstream, Middleton Pond Dam	*90
		Boston Brook	Mouth of Brook	*44
			Dam (Downstream side 500 feet below Mill Street)	*45
			Dam (Upstream side just below Mill Street)	*53
			Dam (Upstream 1,600 feet below Liberty Street)	*57
			100 feet upstream, Liberty Street	*59
			1,800 feet upstream, Liberty Street	*69
			5,150 feet upstream, Liberty Street (above railroad constriction)	*78
			2,600 feet downstream, Corporate Boundary (above railroad constriction).	*83
			1,800 feet downstream, Corporate Boundary (at access road)	*83
		Emerson Brook	Mouth of Brook	*44
			Downstream, Mill Street	*44
			Upstream, Dam	*54
			Upstream, Liberty Street	*59
Maps available at the office of the Building Inspector, Middleton, Massachusetts.				
Minnesota	Hutchinson (City), McLeod County, FEMA-5778.	South Fork Crow River	At the intersection of Second Avenue Southeast and Ontario Street	*1,040
			150 feet north of the intersection of School Road and Boulder Street	*1,045
Maps available from City Hall, 37 Washington Avenue West, Hutchinson, Minnesota.				
Missouri	(C), Cape Girardeau, Cape Girardeau County (Docket No. FI-5233).	Cape La Croix Creek	Mouth at Mississippi River	*354
			1,584 feet upstream of State Route 74	*357
			1,056 feet downstream of Bloomfield Road	*362
			1,320 feet upstream of Gordonville Road	*375
			1,056 feet downstream of Hopper Road	*377
			Just downstream of Hopper Road	*381
			792 feet downstream of U.S. Route 61 (upper)	*386
			Just upstream of U.S. Route 61 (upper)	*390
			Just upstream of County Highway W	*394
			About 1,600 feet upstream of County Highway W	*397
			About 1.0 mile upstream of County Highway W	*416
		Walker Branch	792 feet upstream of mouth	*366
			Just downstream of Independence Street	*370
			Just downstream of Broadway	*373
			317 feet downstream of Lombardo Street	*380
			Just downstream of Marietta Street	*386
			*106 feet downstream of Cape Rock Drive	*396
			Just downstream of Cape Rock Drive	*397

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Mississippi River	At eastern corporate limits	*353
			At western corporate limits	*359
Maps available at City Hall, P.O. Box 617, Cape Girardeau, Missouri 63701.				
Montana	Troy (Town), Lincoln County, FEMA-5765.	Callahan Creek	Area approximately 1,200 feet south-southeast of intersection of Riverside Drive and Third Street.	*1,883
			25 feet upstream from center of U.S. Highway 2	*1,905
Maps available at Town Hall, 3rd and Kootenai Streets, Troy, Montana.				
New Hampshire	Londonderry (City), Rockingham County, FEMA-5701.	Beaver Brook	Downstream Corporate Limits	*177
			State Route 128-60 feet upstream from centerline	*197
			Rankins Dam—10 feet downstream from centerline	*198
			Rankins Dam—100 feet upstream from centerline	*207
			Kendall Pond Road Bridge—200 feet upstream from centerline	*219
			Interstate 93 Southbound—100 feet downstream from centerline	*232
		Black Brook	Mammoth Road (State Route 128)—70 feet downstream from centerline.	*233
			Mammoth Road (State Route 128)—100 feet upstream from centerline.	*242
			Young Road—at centerline	*262
			First Dam upstream from Adams Road—50 feet upstream from centerline.	*304
			Second Dam upstream from Adams Road—50 feet downstream from centerline.	*307
			Second Dam upstream from Adams Road—50 feet upstream from centerline.	*314
			Pillsbury Road—at centerline	*326
		Tributary J	South Road—at centerline	*221
			State Route 128 (Mammoth Road)—at centerline	*223
		Tributary C	Capitol Hill Drive (first crossing)—100 feet downstream from centerline.	*234
			Capitol Hill Drive (first crossing)—at centerline	*242
			Capitol Hill Drive (second crossing)—60 feet downstream from centerline.	*247
			Capitol Hill Drive (second crossing)—at centerline	*256
			Nashua Road (State Route 102)—50 feet downstream from centerline	*269
			Nashua Road (State Route 102)—135 feet upstream from centerline	*279
			Pillsbury Road—65 feet downstream from centerline	*305
		Tributary D	Downstream Corporate Limits	*245
			Nashua Road Culvert (State Route 102)—at downstream face	*272
			Nashua Road Culvert (State Route 102)—at upstream face	*282
			Londonderry Road—50 feet upstream from centerline	*290
			Ash Street Extension—at downstream side	*320
		Shields Brook	Coteville Road—30 feet upstream from centerline	*301
			Rockingham Road (State Route 28)—75 feet downstream from centerline.	*308
			Rockingham Road (State Route 28)—65 feet upstream from centerline.	*313
			Sub-Station Access Road (first crossing)—at centerline	*333
			Scobie Pond Road—75 feet downstream from centerline	*352
		Upper Beaver Brook	Rockingham Road (State Route 28)—125 feet downstream from centerline.	*314
			Rockingham Road (State Route 28)—160 feet upstream from centerline.	*319
			Boston and Maine Railroad (first crossing)—100 feet upstream from centerline.	*332
		Cohas Brook	Downstream Corporate Limits	*227
			Auburn Road—350 feet downstream from centerline	*260
		Little Cohas Brook	Industrial Drive—100 feet upstream from centerline	*193
			Boston and Maine Railroad (first crossing)—25 feet upstream from centerline.	*232
			Boston and Maine Railroad (second crossing)—120 feet upstream from centerline.	*264
			Litchfield Road—80 feet downstream from centerline	*307
		Tributary E	Stokes Road—at centerline	*266
			Boston and Maine Railroad (first crossing)—160 feet downstream from centerline.	*266
			Boston and Maine Railroad (first crossing)—160 feet upstream from centerline.	*271
			Boston and Maine Railroad (second crossing)—150 feet upstream from centerline.	*277
			Clark Road—at centerline	*281
		Nesenkeag Brook	West Road—at centerline	*183
			Elwood Road—85 feet upstream from centerline	*229
			Dan Hill Road—75 feet upstream from centerline	*238

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			High Range Road—30 feet upstream from centerline	*272
			Nashua Road (State Route 102) (first crossing)—at centerline	*274
			Parmenter Road—80 feet upstream from centerline	*276
			Nashua Road (State Route 102) (second crossing)—75 feet upstream from centerline.	*290
		Tributary H	Wiley Hill Road—at centerline	*236
Maps available at Town Office, 268 Mammoth Road, Londonderry, New Hampshire.				
New York	Town of Henrietta, Monroe County (Docket No. FEMA-5725).	Genesee River	Downstream Corporate Limits (New York State Highway 252)	*523
			New York Thruway (Interstate 90)	*529
			New York State Highway 253	*530
			Confluence with Oatka Creek	*531
			Upstream Corporate Limits	*532
		Red Creek	Downstream Corporate Limits	*521
			Jefferson Road (Interstate 252)	*522
			Conrail Railroad (formerly Erie-Lackawanna Railroad) (Downstream)	*522
		East Branch, Red Creek	Conrail Railroad (formerly Lehigh Valley Railroad) (Downstream)	*525
			U.S. Highway 15	*526
			Calkins Road (Upstream)	*530
			Conrail Railroad (formerly Lehigh Valley Railroad) (Upstream)	*532
			Lehigh Station Road (Downstream)	*532
			New York Thruway (Interstate 90) (Upstream)	*537
			Erie Station Road (Upstream)	*553
		Middle Branch, Red Creek	Mouth of Middle Branch, Red Creek	*525
			Conrail Spur	*525
		East Stem, Middle Branch, Red Creek.	Bailey Road	*527
			Vollmer Parkway (Upstream)	*530
		West Stem, Middle Branch, Red Creek.	Confluence with Middle Branch, Red Creek	*525
			Bailey Road	*525
			Beckwith Street	*525
			Conrail (Upstream)	*530
			Lehigh Station Road (Upstream)	*532
		West Branch, Red Creek	Downstream Corporate Limits	*523
			Lowenthal Road	*523
			Perkins Road	*523
			Wiltsie Road	*523
			Bailey Road (Downstream Elevation)	*523
Maps available at the Town Hall, Henrietta, New York				
New York	Massena, Village, St. Lawrence County (Docket No. FEMA-5778).	Grass River	Downstream Corporate Limits	*166
			Parker Avenue	*174
			700' downstream of dam	*180
			Main Street	*185
			Upstream Corporate Limits	*187
Maps available at the Village Hall, Massena, New York.				
New York	Ogdensburg, City, St. Lawrence County (Docket No. FEMA-5773).	Oswegatchie River	Lake Street	*249
			Ogdensburg Dam (Downstream)	*255
			Ogdensburg Dam (Upstream)	*265
			Upstream Corporate Limits	*266
Maps available at the Office of Planning and Development, City Hall, Ogdensburg, New York.				
North Carolina	Town of Haw River, Alamance County (FEMA-5713).	Haw River	Just upstream of Southern Railway	*506
		East Back Creek	Just upstream of Southern Railway	*515
			Just upstream of U.S. Highway 70 (East Main Street)	*517
		Haw River Tributary "A" (Backwater Flooding from Haw River).	Just upstream of Long Street	*507
Maps available at Town Hall, 403 E. Main Street, Haw River, North Carolina 27258.				
North Carolina	City of Lumberton, Robeson County (FEMA-5773).	Lumber River	Just downstream of Chippens Street	*115
			Approximately 350 feet upstream of Alamac Road	*119
			Just upstream of Interstate 95	*124
		Fivemile Branch	Just upstream of Interstate 95	*125
		Meadow Branch	Just upstream of Interstate 95	*125
			Just downstream of U.S. Highway 301	*132
		Pole Cat Branch	Just upstream of Walnut Street	*129
			Just downstream of U.S. Highway 301	*131
		Ivey Branch	Just upstream of U.S. Highway 301	*130
Maps available at City Hall, 501 E. 5th Street, Lumberton, North Carolina 28358.				
North Carolina	Town of Mebane, Alamance County (FEMA-5773).	Mill Creek	Just upstream of State Highway 119	*570
		McAdams Creek	Just upstream of State Route 1997 Extended	*606
		Lake Michael Tributary	Just upstream of State Route 1306	*612
		Eastside Creek	Just upstream of State Highway 119	*593
			Just upstream of State Route 1996	*613
		Haw Creek	Just upstream of Interstate Highway 85	*604
Maps available at Town Hall, 106 E. Washington Street, Mebane, North Carolina 27302.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(V), Lower Salem, Washington County (Docket No. FEMA-5702).	East Fork Duck Creek	At southwest corporate limits, about 1,000 feet downstream of State Route 821.	*652
			Just downstream of State Route 821	*653
			Just downstream of Route T-38	*654
			Approximately 400 feet upstream of Route T-38	*655
			Approximately 1,500 feet upstream of Route T-38	*656
			At northeast corporate limits, about 2,200 feet upstream of Route T-38.	*657
	Maps available at the Village Hall, P.O. Box 112, Lower Salem, Ohio 45745.			
Pennsylvania	Maxatawny, Township, Berks County (Docket No. FEMA-5773).	Sacony Creek	Upstream Kutztown/Maxatawny Corporate Limits	*406
			Private Lane which intersects Deysher Road Upstream	*409
			Deysher Road crossing	*410
		Little Sacony Creek	Conrail crossing	*443
			Bowers Road crossing	*453
			Fleetwood Road crossing Upstream	*462
			Approximately 400 feet upstream of Fleetwood Road crossing	*469
			Upstream Corporate Limits	*475
	Maps available at the Maxatawny Township Municipal Building, Maxatawny, Pennsylvania.			
Pennsylvania	Noyes, Township, Clinton County (Docket No. FI-5624).	West Branch Susquehanna River	Downstream Corporate Limits	*660
			Confluence of Hall Run	*671
			Confluence of Kettle Creek	*690
			Upstream Corporate Limits	*718
		Drury Run	Conrail (Downstream side)	*665
			Conrail (Upstream side)	*672
			Robbins Road	*689
			Limit of Detailed Study approximately 3,700 feet upstream of Robbins Road.	*761
		Kettle Creek	Conrail	*690
			Limit of Detailed Study 8,500 feet upstream of Conrail Bridge	*711
	Maps available at the Noyes Township Building, Shintown, Pennsylvania.			
Pennsylvania	Phoenixville, Borough, Chester County (Docket No. FEMA-5773).	Schuylkill River	Downstream Corporate Limits	*101
			State Route 113 upstream	*106
			Upstream Corporate Limits	*110
		French Creek	Confluence with Schuylkill River	*102
			State Route 113 (Upstream)	*109
			Paradise Street (Downstream)	*113
			Upstream Corporate Limits (Downstream)	*118
	Maps available at the Phoenixville Municipal Building, 140 Church Street, Phoenixville, Pennsylvania.			
Pennsylvania	Royersford, Borough, Montgomery County (Docket No. FEMA-5773).	Schuylkill River	Downstream Corporate Limits	*113
			100' upstream Main Street Bridge	*115
			Conrail Bridge	*116
			Upstream Corporate Limits	*118
	Maps available at the Borough Hall, Royersford, Pennsylvania.			
Pennsylvania	Schuylkill, Township, Chester County (Docket No. FEMA-5773).	Schuylkill River	Downstream Corporate Limits	*93
			Pawling Road	*96
			Downstream of Conrail	*97
			Upstream of Conrail	*98
			Upstream Corporate Limits	*101
		Pickering Creek	Confluence with Schuylkill River	*100
			State Route 23	*100
			Upstream side of Pickering Dam	*110
			6,850 feet upstream of Pickering Dam	*112
			Downstream of White Horse Road	*114
			Upstream of White Horse Road	*115
			Downstream of Creek Road	*128
			Upstream of Creek Road	*130
			Upstream Corporate Limits	*132
	Maps available at the Schuylkill Township Building, 801 Valley Park Road, Schuylkill, Pennsylvania.			
Pennsylvania	South Park, Township, Allegheny County (Docket No. FEMA-5757).	Peters Creek	Approximately 1,700 feet downstream of Norfolk & Western Railway	*820
			Approximately 650 feet upstream of Norfolk & Western Railway	*825
			Approximately 170 feet downstream of Snowden Road	*830
			Approximately 2,000 feet upstream of Snowden Road	*840
			Approximately 850 feet downstream of Chessie Railroad	*842
			Approximately 400 feet upstream of Chessie Railroad	*855
		Lick Run	Approximately 650 feet downstream of Norfolk & Western Railway	*822
			Approximately 100 feet upstream of Norfolk and Western Railway	*831
			Approximately 1,100 feet upstream of Norfolk & Western Railway	*839
			Approximately 1,900 feet upstream of Norfolk & Western Railway	*847
			Approximately 2,800 feet upstream of Norfolk & Western Railway	*857
			Approximately 2,200 feet downstream of Snowden Road	*867
			Approximately 900 feet downstream of Snowden Road	*875
			Approximately 1,100 feet upstream of Snowden Road	*885
			Approximately 450 feet downstream of Wallace Road	*895

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 520 feet upstream of Wallace Road	*904
			Approximately 180 feet downstream of Private Road to U.S. Bureau of Mines.	*912
			Approximately 100 feet downstream of McElheny Road	*922
			Approximately 1,200 feet upstream of McElheny Road	*930
			Approximately 1,150 feet downstream of Wilson Road	*940
			Approximately 80 feet downstream of Wilson Road	*949
			Cochrans Mill Road (Downstream Side)	*958
			Approximately 700 feet downstream of Hough Drive	*968
			Approximately 1,250 feet upstream of Hough Drive	*978
			Curry Hollow Road (Downstream Side)	*985
			Curry Hollow Road (Upstream Side)	*992
			Approximately 600 feet upstream of Curry Hollow Road	*993
	Maps available at the South Park Township Building, South Park, Pennsylvania.			
Rhode Island	Richmond, Town, Washington County (Docket No. FEMA-5778).	Wood River	3,250 feet downstream of Woodville Road	*54
			Upstream of Woodville Road	*55
			Upstream of Dam upstream of Woodville Road	*60
			Upstream of Hope Valley Road	*68
			Upstream of Interstate Route 95	*69
			Upstream of Old Hope Valley Road	*72
			Upstream of Dam upstream of Old Hope Valley Road	*80
			Upstream of State Route 3	*83
			Upstream of Bridge Street	*88
			Upstream of Dam upstream of Bridge Street	*100
			Upstream of Skunk Hill Road	*101
			Upstream of Old Nooseneck Hill Road	*110
			Upstream of Dam upstream of Old Nooseneck Hill Road	*115
	Maps available at the Office of the Assessor, Richmond, Rhode Island.			
South Carolina	City of Forest Acres, Richland County (FEMA-5773).	Gills Creek	Just upstream of Forest Drive (State Highway 12)	*169
			Just downstream of Forest Lake Dam	*172
			Just upstream of Forest Lake Dam	*179
		Pen Branch	Just upstream of Belt Line Boulevard	*197
			Just upstream of Budon Court	*216
		Orphanage Branch	Just upstream of Sunnyside Drive	*212
		Eightmile Branch	Just downstream of Gamewell Drive	*172
			Just downstream of Javrec Court	*181
			Approximately 75 feet downstream from Covenant Road	*197
			Just upstream of Covenant Road	*202
			Just upstream of Deerfield Drive	*218
		Tributary E-1	Just upstream of Roberts Spring Road	*204
			Just upstream of Barnes Spring Road	*217
	Maps available at City Administrator's Office, 5205 Trenholm Road, Forest Acres, South Carolina 29206.			
Tennessee	City of Pegram, Cheatham County (Docket No. FEMA-5778).	Harpeth River	Just upstream of County Road	*509
			Just downstream of Interstate 40	*514
			Just upstream of Riverview Drive	*525
	Maps available at City Hall, P.O. Box 86, Pegram, Tennessee 37143.			
Tennessee	Town of South Carthage, Smith County (FEMA-5769).	Cumberland River	Just upstream of State Highway 25	*486
			Confluence of Cumberland River and Caney Fork River	*486
		Caney Fork River	Just upstream of U.S. Highway 70N	*487
	Map available at City Hall, Route 2, P.O. Box 52, Highway 53, South Carthage, Tennessee 37030.			
Texas	City of Lockhart, Caldwell County (FEMA-5773).	Town Creek	Just upstream of East Market	*478
			Just upstream of North Commerce Street	*495
			Just downstream of North Blanco Street	*510
			Just upstream of Stueve Road	*536
	Maps available at City Hall, 308 W. San Antonio Street, Lockhart, Texas 78644.			
Virginia	Henry County (Unincorporated Areas) (Docket No. FI-4137).	Leatherwood Creek	Confluence with Smith River	*607
			Va. Route 650 (Upstream)	*649
			Va. Route 620 (Upstream)	*664
			Southern Railway (Upstream)	*664
			U.S. Route 58 (Upstream)	*683
			Confluence of Camp Branch	*683
			Confluence of West Fork Leatherwood Creek	*687
			Confluence of Bear Branch	*736

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		West Fork Leatherwood Creek	Confluence with Leatherwood Creek	*687
			Confluence of Reservoir No. 2 Branch	*714
			Va. Route 57 (Upstream)	*728
			Confluence of Wet Branch	*746
			Reservoir No. 3 Dam	*747
		Wet Branch	Confluence with West Fork Leatherwood Creek	*746
			Va. Route 628 (Upstream)	*746
			Reservoir No. 4 Dam	*751
		Reservoir No. 2 Branch	Confluence with West Fork Leatherwood Creek	*714
			Va. Route 57 (Upstream)	*716
			Va. Route 720 (Upstream)	*719
			Va. Route 655 (Upstream)	*771
			Reservoir No. 2 Dam	*772
		Jones Creek	Southern Railway (Upstream)	*723
			U.S. Highway Business 220	*729
			Private Drive upstream of U.S. Business 220	*732
			Va. Route 667 (Upstream)	*737
			Upstream Corporate Limits	*742
		Beaver Creek	Confluence with Smith River	*716
			Va. Route 57 (Upstream)	*716
			Southern Railway (Downstream)	*718
			Norfolk and Western Railway	*720
			Confluence of Jones Creek	*723
			U.S. Highway Business 220 (Upstream)	*728
			Confluence of Little Beaver Creek	*742
			Irrigation Structure	*742
			Private Drive 1,480 feet downstream of Va. Route 108 (Upstream)	*753
			Va. Route 108 (Upstream)	*760
			Va. Route 714 Upstream	*772
			Martinsville Reservoir Dam	*775
		Hairston Branch	Confluence with Little Beaver Creek	*759
			Va. Route 663 (Downstream)	*780
		Little Beaver Creek	Confluence with Beaver Creek	*742
			Va. Route 108 (Upstream)	*749
		Daniels Creek	Confluence with Smith River	*724
			Va. Route 57 (Upstream)	*731
			Private Drive 1,800 feet upstream of Va. Route 57 (Upstream)	*752
			Private Drive 4,100 feet upstream of Va. Route 57 (Upstream)	*775
			Va. Route 1142 (Upstream)	*788
			Wheeler Avenue (Upstream)	*805
			Va. Route 609 (Upstream)	*813
			Coffman Drive (Upstream)	*823
			Redd Boulevard (Upstream)	*832
			Eliza Reamy Avenue (Upstream)	*838
			West Paul Street (Upstream)	*850
			U.S. Highway Business 220 (Upstream)	*856
			Sarah Avenue (Upstream)	*856
		Reed Creek	Confluence with Smith River	*729
			Norfolk and Western Railway (Upstream)	*740
			Downstream Crossing U.S. Highway 220 Bypass (Upstream)	*741
			Confluence of Little Reed Creek	*741
			Va. 57 Route (Upstream)	*745
			U.S. Highway Business 220	*756
			Va. Route 609 (Upstream)	*782
			Private Road 4,900 feet upstream of Va. Route 609	*797
			Va. Route 665 (Upstream)	*854
			Va. Route 657 (Upstream)	*922
		Little Reed Creek	Confluence with Reed Creek	*741
			Va. Route 606 (Upstream)	*741
			Edgewood Road (Upstream)	*747
			Va. Route 57 (Upstream)	*749
			Private Drive 1,100 feet upstream of Va. Route 57 (Upstream)	*752
			Dyer Road (Upstream)	*765
			Meadow Lane (Upstream)	*773
			Private Drive 1,800 feet upstream of Meadow Lane (Upstream)	*788
			Private Road 2,650 feet upstream of Meadow Lane (Upstream)	*790
			Private Road 1,500 feet downstream of Va. Route 669 (Upstream)	*811
			Va. Route 669 (Upstream)	*833
			Private Road upstream of Va. Route 669	*898
		Town Creek	Confluence with Smith River	*790
			Va. Route 603 (Upstream)	*793
			Downstream crossing Norfolk and Western Railway Upstream	*800
			Confluence of Grassy Fork Creek	*820
			Va. Route 604 (Upstream)	*868
			Upstream crossing Norfolk and Western Railway (Upstream)	*874
			Va. Route 606 (Upstream)	*882
			County Boundary	*890
		Smith River	Downstream County Boundary	*563
			Va. Route 622 (Upstream)	*576
			Va. Route 636 (Upstream)	*595
			Confluence of Leatherwood Creek	*608
			Confluence of Marrowbone Creek	*623
			Norfolk and Western Railway downstream of Va. Route 966 (Upstream).	*665
			Va. Route 966 (Upstream)	*670

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Martinsville Dam (Downstream)	*675
			Martinsville Dam (Upstream)	*704
			Confluence of Grassy Creek	*709
			Confluence of Beaver Creek	*716
			Norfolk and Western Railway (Upstream)	*723
			Jordan Creek Confluence	*724
			New Va. Route 609 (Upstream)	*724
			U.S. Highway Bypass 220 (Upstream)	*729
			Alternate Va. Route 57 (Upstream)	*739
			Va. Route 1228 (Upstream)	*748
			Church Street (Upstream)	*752
			Main Street (Upstream)	*755
			Riverside Drive (Upstream)	*758
			Va. Route 666 (Upstream)	*764
			Confluence of Town Creek	*790
			Va. Route 674 (Upstream)	*791
			Philpott Dam (Downstream)	*817
		Blackberry Creek	Confluence with Smith River	*747
			Alternate Va. Route 57 (Upstream)	*748
			Private Drive 2,800 feet upstream of Alternate Va. Route 57 (Upstream).	*761
			Private Drive 2,000 feet downstream of Va. Route 780 (Upstream)	*777
			Va. Route 780 (Upstream)	*787
			Va. Route 698 (Upstream)	*814
			Va. Route 779 (Upstream)	*830
			Va. Route 676 (Upstream)	*850
			Confluence of Hales Pond Creek	*875
			Private Drive 15,850 feet upstream of Va. Route 676 (Upstream)	*1,066
			Va. Route 832 (Upstream)	*1,160
			Va. Route 687 (Upstream)	*1,166
			Private Drive 3,200 feet upstream of Va. Route 687	*1,185
			County Line	*1,198
		Rangely Creek	Confluence with Jordan Creek	*740
			U.S. Highway Bypass 220 (Upstream)	*744
			Va. Route 683 (Upstream)	*811
			Private Drive 1,500 feet upstream of Va. Route 683 (Upstream)	*817
			Confluence of Valley Drive Creek	*822
			Private Drive 1,500 feet upstream of confluence with Valley Drive Creek.	*833
		Jordan Creek	Confluence with Smith River	*724
			Va. Route 682 (Upstream)	*724
			Upstream crossing Norfolk and Western Railway (Upstream)	*726
			Va. Route 684 (Upstream)	*729
			Va. Route 1163 (Upstream)	*734
			Private Drive 1,450 feet upstream of Va. Route 1163 (Upstream)	*738
			Confluence of Rangely Creek	*740
			U.S. Highway Bypass 220 (Upstream)	*745
			Confluence of Meadows Creek	*802
			Confluence of Bassett Branch	*813
			Va. Route 683 (Upstream)	*830
		Meadows Creek	Confluence with Jordan Creek	*802
			Private Road 10,200 feet above mouth	*860
		Grassy Creek	Confluence with Smith River	*708
			U.S. Highway Bypass 220 (Upstream)	*842
			Abandoned Road (Upstream)	*862
			Va. Route 875 (Upstream)	*891
			U.S. Highway 58 (Upstream)	*894
		Little Marrowbone Creek	Confluence with Marrowbone Creek	*692
			Va. Route 1313 (Upstream)	*696
			Va. Route 641 (Upstream)	*735
			Private Drive 1,100 feet upstream of Va. Route 641 (Upstream)	*743
		Marrowbone Creek	Confluence with Smith River	*623
			Va. Route 641 (Upstream)	*624
			Fisher Dam (Downstream)	*641
			Fisher Dam (Upstream)	*658
			Norfolk and Western Railway (Upstream)	*680
			Va. Route 782 (Upstream)	*686
			U.S. Highway 220 (Upstream)	*692
			Confluence of Little Marrowbone Creek	*692
			Va. Route 687 (Upstream)	*711
			Va. Route 688 (Upstream)	*730
			Base of Marrowbone Reservoir Dam	*739
		Camp Branch	Confluence with Leatherwood Creek	*683
			Va. Route 9964 (Upstream)	*683
			Va. Route 630 (Upstream)	*683
			Reservoir No. 6 Dam	*700

Maps available for review at the Office of the County Administrator, Collinsville, Virginia.

Washington	Clallam County, Unincorporated Area, FEMA-5773.	Dungeness River	Intersection of river and Woodcock Road	*83
			Intersection of river and U.S. Highway 101	*248
		Morse Creek	75 feet upstream of intersection of creek and Chicago, Milwaukee, St. Paul and Pacific Railroad Bridge.	*56
			Intersection of creek and Four Seasons Road	*110

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Elwha River	40 feet upstream of intersection of river and Elwha Road	*72
			Intersection of river and Washington Highway 112	*100
		Indian Creek	Intersection of creek and U.S. Highway 101	*495
		Whiskey Creek Tributary	50 feet upstream of intersection of tributary and State Highway 112	*356
		Clallam River	50 feet downstream of intersection of river and Weel Road	*19
		Bogachiel River	Confluence with Calawah River	*90
		Calawah River	Intersection of river and U.S. Highway 101	*221
		Elk Creek	10 feet downstream of intersection of creek and County Road	*351
		Soleduck River	Intersection of river and downstream crossing of U.S. Highway 101	*223
			100 feet upstream of intersection of river and Maxfield Road	*272
			Intersection of river and upstream crossing of U.S. Highway 101	*404
		Lake Creek	Intersection of creek and Tyee Street	*397
		Tumwater Creek	150 feet upstream of intersection of creek and U.S. Highway 101	*171
		Ennis Creek	30 feet upstream of intersection of creek and County Road	*88
		White Creek	Intersection of creek and corporate limits of the City of Port Angeles	*322
		Valley Creek	Intersection of creek and the corporate limits of the City of Port Angeles.	*150
		Dry Creek	Intersection of creek and the corporate limits of the City of Port Angeles.	*199
		Mill Creek	75 feet upstream of intersection of creek and U.S. Highway 101 (Town of Forks corporate limits).	*298
		Warner Creek	40 feet upstream of intersection of creek and U.S. Highway 101 (Town of Forks corporate limits).	*301
		Ford Creek	75 feet upstream of intersection of creek and Peterson Road	*320
			Intersection of Peterson Road and East Division Street	#1
		Straight of Juan de Fuca	Intersection of Jamestown Road and Cemetery Road	*12
		Lake Pleasant	100 feet upstream of Tyee Street	*399
	Maps available from Clallam County Courthouse, 223 East 4th, Port Angeles, Washington.			
Washington	Fife (City), Pierce County, FEMA-5773.	Wapato Creek	Intersection of 12th Street East and channel	*10
			Intersection of Goldau Road and 20th Street East	*15
			Approximately 140 feet upstream from intersection of 54th Avenue East and channel.	*18
			West of the intersection of Valley Avenue and the southern corporate limits.	*20
	Maps available from City Hall, 5209 Pacific Highway East, Fife, Washington.			
West Virginia	Summers County (Docket No. FI-5419).	Beech Run	Upstream of State Route 3	*1,373
			.48 mile upstream of confluence adjacent to Beech Run Church	*1,435
			1.03 miles upstream of confluence adjacent to cemetery	*1,500
			2.16 miles upstream of confluence	*1,777
		Big Creek	Upstream of Chessie System	*1,404
			.35 mile upstream of confluence	*1,434
			.55 mile upstream of confluence	*1,467
		Blue Lick Creek	Confluence with Greenbrier River	*1,462
			Upstream of County Route 17	*1,497
			.81 mile upstream of confluence	*1,575
		Bradshaw Creek	Upstream of confluence with Wheel Run	*1,537
			1.59 miles upstream at Private Road	*1,564
			Upstream of State Route 12	*1,597
		Brooks Branch	Confluence with New River	*1,338
			Downstream of State Route 20	*1,351
			.367 mile upstream of confluence	*1,392
		Buggy Branch	Confluence with Greenbrier River	*1,520
			.45 mile upstream of confluence	*1,520
		Fisher Creek	Confluence with Mill Creek	*1,733
			.65 mile upstream of confluence	*1,850
			1.15 miles upstream of confluence	*1,954
			1.725 miles upstream of confluence	*2,091
		Greenbrier River	Upstream State Route 107	*1,377
			Upstream State Route 13	*1,393
			Confluence of Big Creek	*1,404
			Confluence of Powley Creek	*1,412
			Upstream State Route 3	*1,415
			Confluence of Wolf Creek	*1,436
			Confluence of Kissinger Run	*1,445
			Confluence of Blue Lick Creek	*1,461
			Confluence of Hungard Creek	*1,503
			Confluence of Buggy Branch	*1,520
			At confluence of Griffith Creek	*1,540
		Griffith Creek	Downstream of State Route 3	*1,540
			Downstream County Route 7 at mile .75	*1,602
			Downstream Private Road at mile 1.29	*1,672
		Hungard Creek	Downstream State Route 3	*1,503
			.9 mile upstream of confluence	*1,506
			100 feet downstream of State Route 6	*1,541
		Kates Branch	Confluence with New River	*1,325
			Downstream of State Route 20	*1,344
			.4 mile upstream of confluence	*1,400
			.625 mile upstream of confluence	*1,449
		Kissinger Run	Confluence with Greenbrier River	*1,445
			.3 mile upstream of confluence	*1,453
		Laurel Creek	Downstream of State Route 20	*1,280
			.85 mile upstream of confluence	*1,404
			1.84 miles upstream of confluence	*1,485

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lick Creek	Confluence with New River	*1,274
			Upstream of State Route 20	*1,283
			Upstream of Private Road crossing	*1,353
			.45 mile upstream of Private Bridge	*1,382
			2.8 miles upstream of Private Bridge	*1,470
			Confluence of Mill Creek	*1,545
		Madam Creek	Confluence with New River	*1,365
			Upstream of State Route 3	*1,374
			Upstream Private Drive .69 miles upstream of confluence	*1,435
			Upstream Private Drive 1.09 miles upstream of confluence	*1,470
			Downstream Private Drive 1,865 miles upstream of confluence	*1,529
			Upstream County Route 3/21	*1,556
			Upstream County Route 12/2	*1,626
			Upstream Private Drive .41 mile upstream of County Route 12/2	*1,694
			1 mile upstream County Route 12/2 adjacent to Martha Chapel	*1,800
			Downstream Private Road 4.805 miles upstream of confluence with New River.	*2,099
			5.025 miles upsteam of confluence with New River	*2,178
		Meadow Creek	Confluence with New River	*1,254
			Upstream Chessie System	*1,257
			Upstream County Route 7	*1,276
			.6 mile upstream of County Route 7	*1,359
			.81 mile upstream of County Route 7	*1,382
		Mill Creek	Confluence with Lick Creek	*1,545
			Upstream County Route 4	*1,549
			Upstream Private Road .66 mile upstream of County Route 4	*1,608
			Upstream of downstream State Route 20 crossing	*1,739
			.0125 mile upstream of upstream State Route 20 crossing	*2,021
		New River	Downstream County Boundary	*1,242
			Confluence of Meadow Creek	*1,254
			Confluence of Lick Creek	*1,274
			Confluence of Kates Branch	*1,325
			Confluence of Madam Creek	*1,365
			Confluence of Greenbrier River	*1,376
		Pipestem Creek	1.32 miles upstream of confluence	*1,534
			1.85 miles upstream of confluence	*1,590
			2.5 miles upstream of confluence adjacent to Greenbrier River	*1,656
			2.8 miles upstream of confluence	*1,685
		Powley Creek	County Route 13	*1,412
			.23 mile upstream of confluence	*1,440
			.29 mile upstream of confluence	*1,455
		Stinking Lick Creek	Upstream County Route 33/3 at Jeep Trail	*1,541
			.96 mile upstream from County Route 33/3	*1,571
			1.42 miles upstream from County Route 33/3	*1,607
		Tributary No. 1 to New River	Upstream Chessie System	*1,257
			Upstream County Route 7	*1,272
			Upstream County Route 7/2	*1,331
			About 1 mile upstream County Route 7/2	*1,355
		Wheel Run	Confluence with Bradshaw Creek	*1,535
			Upstream County Route 21/2	*1,544
			Upstream Private Road at .2 mile upstream of confluence	*1,577
			.39 mile upstream of confluence	*1,621
		Wolf Creek	Upstream State Route 12	*1,436
			.135 mile upstream of State Route 12	*1,444

Maps available at the County Commissioner's Office, County Courthouse, Hinton, West Virginia.

(National Flood Insurance Act of 1968 (title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: May 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-16421 Filed 5-29-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

Administration of Grants; Grantee and Subgrantee Audits

Correction

In FR Doc. 80–16020 appearing on page 35328, in the issue of Tuesday, May 27, 1980, make the following correction. On page 35329, in the first column, add the following footnote to the end of the document:

[1] OMB Circulars A–102 and A–110 are available on request from the Office of Management and Budget, Publications Room, New Executive Office Building, Washington, D.C. 20503. Here is a summary of some of the main provisions concerning non-Federal audits in those two circulars:

(1) Each recipient must have itself audited by non-Federal auditors at least every two years.

(2) The recipient's auditors must meet certain standards of independence.

(3) The audit is to be performed on an organization-wide basis, with appropriate sampling of grant-related transactions. Awarding parties may not impose grant-by-grant (or subgrant-by-subgrant) audit requirements.

BILLING CODE 1505–01–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility for Legal Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; Revised Appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document revises specified income levels to reflect amendments to the Official Poverty Threshold as defined by the Office of Management and Budget.

EFFECTIVE DATE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Linda Hanten, Legal Services Corporation, 733 15th Street, N.W., Suite 700, Washington, D.C. 20005, (202) 272–4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of Corporation Regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. The revised figures equivalent to 125% of the Official Poverty Threshold are as follows:

Legal Services Corporation Poverty Guidelines

Appendix A of Part 1611 is revised to read as follows:

For All States Except Alaska and Hawaii

Size of family unit:	Maximum income
1	$4,738
2	6,263
3	7,788
4	9,313
5	10,838
6	12,363

For family units with more than six members, add $1,525 for each additional member in a family.

For Alaska

Size of family unit:	Maximum income
1	$5,950
2	7,850
3	9,750
4	11,650
5	13,550
6	15,450

For each family unit with more than six members, add $1,900 for each additional member in a family.

For Hawaii

Size of family unit:	Maximum income
1	$5,463
2	7,213
3	8,963
4	10,713
5	12,463
6	14,213

For family units with more than six members, add $1,750.00 for each additional member in a family.

Dated: May 24, 1980.

Mario Lewis,

General Counsel, Legal Services Corporation.

[FR Doc. 80–16393 Filed 5–29–80; 8:45 am]

BILLING CODE 6820–35–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[S.O. No. 1289; Amdt. 5]

Burlington Northern Inc. Authorized to Operate Over Tracks of Union Pacific Railroad Co. at Sterling, Colo.

May 23, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 5 to Service Order No. 1289.

SUMMARY: This amendment extends the effectiveness of service Order No. 1289, until August 31, 1980, permitting the Commission time to consider Burlington Northern's permanent authority application without interruption of the temporary authority.

EFFECTIVE DATE: 11:59 p.m., May 31, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840.

Upon further consideration of Service Order No. 1289 (42 FR 63423; 43 FR 24694, 56671; 44 FR 31982, and 45 FR 26965), and good cause appearing therefor:

§ 1033.1289 [Amended]

It is ordered,

§ 1033.1289 *Burlington Northern Inc. authorized to operate over tracks of Union Pacific Railroad Company at Sterling, Colorado,* Service Order No. 1289 is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1980, unless modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–16458 Filed 5–29–80; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 45, No. 106
Friday, May 30, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Stay-in-School Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of personnel management proposes to revise excepted service regulations which authorize appointments under the Stay-in-School Program, to limit the program to students pursuing an education no higher than the baccalaureate level and performing duties no higher than the GS–4 level or equivalent under the Federal Wage System. The revision would provide agencies with more defined guidelines and clarify the original intent of the program.

DATE: Comments will be considered if received on or before July 29, 1980.

ADDRESS: Send or deliver written comments to Arch S. Ramsay, Associate Director for Staffing, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 6F08, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:
James R. Poole, 202–632–5677.

SUPPLEMENTARY INFORMATION: Since the removal of the maximum age limit in October, 1978, interpretation of the Stay-in-School Program's intent has varied widely. The amendment would provide agencies with more defined guidelines and clarify the original intent of the Program.

For the sake of clarity and uniform interpretation, the restrictions on renewing or making initial appointments under the authority would be rephrased. OPM has determined that this is a significant regulation for the purposes of EO 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the U.S. Office of Personnel Management proposes to revise § 213.3102(w) to read as follows:

§ 213.3102 Entire Executive Service.

* * * * *

(w) Part-time or intermittent positions, the duties of which involve work of a routine nature up to the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by students appointed in furtherance of the president's youth Opportunity Stay-in-school Campaign or when filled by mentally retarded or severely physically handicapped students, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 16 hours in any calendar week, except that students may work full-time during any period in which their school is officially closed, not to exceed 40 hours in any calendar week which falls within a vacation period.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees need the earnings from the employment to continue in school, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However,* such appointments may be made for additional periods of not to exceed 1 year each, if the conditions for initial appointments are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No *new* appointments may be made between May 1 and August 31, inclusive.

(5 U.S.C. 3301, 3302, EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc 80–16210 Filed 5–29–80; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 591

Allowances and Differentials

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: OPM is proposing to increase the daily mileage allowance schedule and the public transportation offset amount to reflect increases in automobile operating costs and increases in public transit costs.

DATE: Written comments will be considered if received no later than July 29, 1980.

ADDRESS: Send or deliver written comments to Jerome D. Julius, Assistant Director for Pay Programs, Office of Personnel Management, 1900 E Street, N.W., Room 3353, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:
Richard J. Carney (202) 632–6327.

SUPPLEMENTARY INFORMATION: The daily mileage allowance schedule is used to compute employee allowance entitlement in commuting to those eligible remote duty posts where daily commuting by motor vehicle is practicable. This allowance schedule is based on the costs of operation (but not ownership) of an automobile. OPM believes that an increase in the allowance schedule is warranted because of increases in costs of gasoline, oil, tires, maintenance and repairs. Based on changes in public transportation costs in selected cities around the country, OPM proposes also to increase to $1.08 the public transportation offset amount of those commuting situations in which employees use agency-provided transportation and for which a fee is charged. The current amount is 70 cents for each round trip and may be found in subchapter S3–6(1)(a) of Book 591, FPM Supplement 990–2. OPM has determined that this is a significant regulatory change for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to amend Appendix A of Subpart C of Part 591 of the Title 5, Code of Federal Regulations, to read as follows:

Appendix A of Subpart C.—*Daily Transportation Allowance Schedules, Commuting Over Land by Private Motor Vehicle to Remote Duty Posts*

	Degree		
	A	B	C
Round trip distance in excess of 50 miles:			
Up to 9 miles	$0.40	$0.42	$0.44
10 to 19	1.40	1.47	1.54
20 to 29	2.40	2.52	2.64
30 to 39	3.40	3.57	3.74
40 to 49	4.40	4.62	4.84
50 to 59	5.40	5.67	5.94
60 to 69	6.40	6.72	7.04
70 to 79	7.40	7.77	8.14
80 to 89	8.40	8.82	9.24
90 to 99	9.40	9.87	[1]10.00
100 to 109	[1]10.00	[1]10.00	10.00
110 to 119	10.00	10.00	10.00
120 to 129	10.00	10.00	10.00
130 to 139	10.00	10.00	10.00
140 to 149	10.00	10.00	10.00
150 to 159	10.00	10.00	10.00
160 to 169	10.00	10.00	10.00
170 and over	10.00	10.00	10.00

[1]Under the statute, $10 a day is the maximum allowance.
Authority: 5 USC 5942: EO11609.

[FR Doc. 80-16191 Filed 5-29-80; 8:45 am]

BILLING CODE 63250-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Ch-XXVIII

Food Grading Policy

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The United States Department of Agriculture (USDA) announces options for possible proposed changes in its food grading policy. The positions are the result of (1) the Department's analysis and evaluation of its 1979–1980 survey on Consumer Perceptions of the USDA Food Grading Program, (2) consideration of several other reports and studies on this issue, (3) the Department's deliberation on this policy, and (4) a series of meetings with industry and consumer representatives. This notice is intended to prompt comment from the public on the options the Department is considering. It further serves to announce a series of public hearings to hear oral testimony on these positions and issues. These hearings will be informal in nature; anyone interested in this issue is encouraged to attend and express their views.

DATES: Written comments must be received by the Department on or before August 28, 1980. Public hearings will be held July 1, 1980; July 16, 1980; and August 7, 1980. See section under Supplementary Information for further details.

ADDRESSES: Written comments should be sent to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, D.C. 20250, (202) 447–7163. Public hearings will be held in Ames, Iowa; St. Petersburg, Florida; and San Francisco, California. See section under Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: H. Connor Kenneth, Jr., Director, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3932, South Agriculture Building, Washington, D.C. 20250, (202) 447–4476.

SUPPLEMENTARY INFORMATION: This document reports on various rulemaking options that the Department of Agriculture (USDA) is considering for improvements on its food grading policy. Also cited is the documentary evidence related to this issue as well as the Department's 1979–1980 study on Consumer Perceptions on the USDA Food Grading Program. The Department is committed to full public participation in its deliberations concerning its policy. To this end, it seeks in this Notice to invite public comments and input on the costs and benefits of the proposed initiatives. While this issue does not lend itself to a simple solution or analysis, the Department is committed to implementing a policy that is consistent with the program's original purpose of facilitating trading and marketing of agricultural products while addressing the legitimate needs of consumers. The options delineated in this document are intended to indicate the Department's current thinking on this complex issue.

Public Hearings

The Department will hold three informal public hearings to gather oral comments on this notice. Public hearings will be held on the following dates, times, and locations:

Date: July 1, 1980
Place: Fisher Theater, Iowa State University Ames, Iowa
Time: 9 A.M. to 5 P.M.
Date: July 16, 1980
Place: Multi-Service Senior Center, 330 Fifth Street, North St. Petersburg, Florida
Time: 10 A.M. to 8 P.M.
Date: August 7, 1980
Jack Tar Hotel, 1101 Van Ness Avenue, San Francisco, California
Time: 10 A.M. to 8 P.M.

Anyone interested in presenting to the Department his/her views on the information provided in this notice is encouraged to attend and to testify. If you would like to testify, write to Penny Gentilly, Deputy Director, Public Participation, Room 1168-South Agriculture, FSQS, USDA, Washington, D.C. 20250, or call (202) 447–7804. Your request must be received at least 2 weeks before the hearing at which you would like to speak.

In addition, each hearing will include an open mike period when individuals will have the opportunity to make informal comments. Spanish translators will also be available when appropriate.

Comments

The Department is asking for comments on the following food grading options. We want to consider your thoughts and ideas in making decisions, and we are committed to informing you on how the government operates in the rulemaking process and how to comment to us. If after reading the proposal you do not understand it or do not know how to comment, let us know. For technical information about the options, contact Mr. H. C. Kennett, Jr. at the address or telephone number listed above. For information on how to participate, contact Ms. Penny Gentilly, Deputy Director of Public Participation, Policy and Program Planning, Room 1168, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7804. If you decide to send in written comments, send two copies to the Regulations Coordination Division and include the date and page number of this issue of the **Federal Register.** Comments should be kept as brief and to the point as possible. If you are commenting on specific provisions of the options, cite section or paragraph numbers. Give specific and substantive reasons for any stated position. The content of the comment is important, not the length of the statement or the number of signatures attached. All comments will be carefully analyzed and will be considered in the development of final proposals. If you would like to express your views during the public hearings, contact Ms. Penny Gentilly so arrangements can be made. Transcripts will be made of all comments that are orally presented.

All comments submitted on this document will be available for public inspection at the Office of the Regulations Coordination Division, Food Safety and Quality Service (FSQS), in Room 2637-South Building, during regular business hours.

Background

Grading is a means to categorize or sort raw agricultural and manufactured products into different levels of quality. The distinctions between two or more grade categories take place within a product group, such as one apple from another apple, rather than across products, such as apples versus oranges. Criteria are established for each grade designation of a given product, commonly referred to as a grade standard. Historically, the characteristics that define these grade standards have been agreed upon by the cooperation of government and industry. More recently, broader public input has helped shape grade standards.

Most raw foods vary naturally in quality. Fruit picked from the same tree, for instance, may show a range of color, shape, maturity, and defects such as scars or various kinds of decay. Other raw foods reveal similar levels of quality in their natural state. With manufactured products, such as butter and canned vegetables, the processor presents his product to try to meet the requirements of a particular grade standard—a uniform level of quality—which is then graded by a government representative.

Therefore, U.S. grade standards, established by USDA for products under its jurisdiction, define these grades or levels of quality. Quality in general refers to the presence and level of desirable characteristics of a product, but the precise definition of quality depends on each product itself. Each food or food group has its own characteristics that affect quality and, therefore, its own precise standards. Most grade standards primarily reflect the sensory and aesthetic attributes of a given food. For example, the quality of canned pears of a similar variety is based on color, uniformity of size and symmetry, freedom from defects, texture, and tenderness. Similarly, the U.S. grades for butter are determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color, and salt. Nutritional aspects of a product are not currently part of any grade standard. In most instances, the nutritional value is the same for all grades within a specific product. Likewise, areas such as pesticide and fertilizer usage or additives used within graded products are not criteria for grade standards, and their regulation is controlled through other governmental mechanisms.

Food grading should not be confused with food inspection. Grading refers to the quality of a product based upon certain attributes or standards established by USDA in cooperation with the affected industry. It is a voluntary program under Federal law which is applicable to meats, poultry, eggs, certain dairy products, fresh and processed fruits and vegetables and related foods. USDA grading services assure that foods meet the requirements of the grade stated. Grading services are available in all States and all major production area, processing plants, and destination markets like New York, Chicago, and Los Angeles. Federal law does not require that all foods be retail grade labeled even though they have been officially graded. However, if an official U.S. grade name or grade shield is used, the product must be officially graded.

USDA is also responsible for the routine mandatory inspection of meat and meat products,[1] poultry and poultry products,[2] and egg products [3] when these items are prepared for commerce. These are mandatory services that are designed to assure that these products are not adulterated or misbranded when inspected and sold or otherwise distributed in commerce.[4] Meat and poultry cannot be graded for quality until they have been inspected and passed for wholesomeness.

The Department first established food grade standards in 1917 starting with potatoes. The Food Production Act of the same year encouraged development and use of standards to expedite the movement of foodstuffs for the military and U.S. allies. In its development of food grades and a grading service, the government also hoped to facilitate the transportation of food from rural production areas to urban distribution and market centers for the civilian population.

This encouragement of agricultural marketing reflected the country's changing population and economic trends at the turn of the century. As urban areas grew in size and significance, urban wholesale buyers found they could not examine products before buying them because of the buyers' distances from production areas. Attempts to communicate with farmers, packers or processors on poor quality often produced disagreements. The lack of a useful language to define quality between buyers and sellers contributed to this discord.

Another problem existed with pricing in different wholesale markets. While one region would quote a price for "good" quality, another region offered a different rate for the same quality product. Farmers did not know which market would give the best price if they did not know what each meant by "good." The need for an impartial arbiter became a government problem because no non-governmental group or organization then existed to serve this function for industry.

Therefor, Federal food grades were established primarily to facilitate the marketing of agricultural products and to make wholesale transactions clearer and more efficient. Producers also desired grades because they would reflect consumer preferences through the marketing system in the form of price differentials, which would serve to inform them of the quality level in greatest demand. By having a common language that could be used nationally, transactions would be simplified and time saved by wholesalers. Cost reduction could be transferred to consumers, thereby strengthening acceptance and demand. As this tool found its way in the marketplace, more commodity producers and buyers requested the Department to establish wholesale standards and grades for their products.

Although the Department initiated a voluntary grading service during the 1920's, in 1946 Congress enacted the Agricultural Marketing Act (7 U.S.C. 1621–1627) giving USDA its present authority for the standardization of food quality grades, and establishing a voluntary grading program. As stated in the Act, the Secretary of Agriculture is directed and authorized:

> To inspect, certify, and identify the class, quality, quantity and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection.[5]

In 1977, the food grading functions within the Department were transferred

[1] 21 U.S.C. 601 *et seq.*

[2] 21 U.S.C. 451 *et seq.*

[3] 21 U.S.C. 1031 *et seq.*

[4] Adulteration and misbranding are defined in the statutes establishing the inspection requirements, 21 U.S.C. 453(g), (h); 601(m), (n); 1033(a), (1).

[5] 7 U.S.C. 1622(h).

to FSQS. But unlike the mandatory inspection programs for meat, poultry, eggs, and their products, use of USDA grades and grading services remain voluntary. It is provided to eligible food packers, processors and wholesalers and other qualified applicants who request and pay for it.

Although grade standards were originally developed to aid in wholesale trading, various packers and processors gradually began to use the U.S. grade names on labels or packaging at the retail level. The butter industry began grade labeling its product in 1924. Retail cuts of beef followed in 1927, and eggs, poultry and fresh and processed fruits and vegetables came soon afterwards.

Because grade definitions or "standards" were developed on a product-by-product basis, the grade names for each food product are different. Each food industry—for instance meat, poultry, apples, and potatoes—was concerned with only its own product and the grade terms to which it was accustomed. In many cases, USDA adopted names that were already in use in the wholesale trade or within different States.

Although wholesale grade names have come to be used in marketing certain foods at retail, considerable disparity exists in where and how these grades are used. While most of the fresh beef graded at packing plants retains its grade at the retail level, this is considerably less true for processed fruits and vegetables. For example, 70–75 percent of the fresh beef sold to shoppers is grade labeled with an official USDA grade. For processed fruits and vegetables the figure is three percent. Two other products also illustrate this disparity. Ninety percent of the turkeys available to consumers carry a USDA grade, while the figure for eggs is 40 percent.

Futhermore, the grade names are different for the various commodity food groups, with words, letters and numbers utilized in the standards. Even the top grade for a given food is expressed differently, as in U.S.D.A. Grade "AA" for butter, "U.S. No. 1" for most fresh fruits and vegetables, and "U.S.D.A. Prime" for meat. Information about the criteria used to determine these grades, as well as the meaning of the various grade names, is rarely known or understood by consumers in retail purchases.

The last significant change in the USDA grading program regarding nomenclature occurred in 1976 when the Department adopted a uniform grade nomenclature policy for fresh fruits, vegetables, nuts and other special products. The policy [6] requires that when standards covering 82 commodities are issued, revised or amended, only the classifications "U.S. Fancy, 1, 2, or 3" may be used. Prior to this, there were many different grade names for the products in this group. The name changes take place per commodity as the grade standards require modification. Of the 153 standards currently in effect, 109 conform to the requirements of this policy.

Congressional interest in grade standards and retail grade labeling has heightened in the last few years. Numerous food grading bills containing provisions that were apparently designed to help consumers in food purchasing during times of rising food costs have been introduced.[7] Some bills sought to make grade names uniform for all foods, others called for grade standards to incorporate nutritional factors of a product, and still other bills limited revising standards for a particular product, primarily beef.

The most recent bill is S. 1651, the Department of Agriculture Nutrition Labeling and Information Act, introduced by Senator George McGovern (D-S.D.), Chairman of the Nutrition Subcommittee of the Committee on Agriculture, Nutrition and Forestry. The bill, among other things, would authorize the development of a uniform retail grade name system and a consumer information/education program.

Current Grade Nomenclature

The Department provides grading services for dozens of products in all commodity food groups. Included in these groups are meats, poultry, eggs, dairy products (such as butter, instant nonfat dry milk and certain cheeses), fresh and processed fruits and vegetables, and related items like juices, jams, and honey. Since grade names were developed on a product-by-product basis, it is understandable that the grade nomenclature system is so diverse. Examples of this diversity are shown in the following table:

Table 1.—*Examples of Certain Graded Products and Their Top Three USDA Grades*

	Top grade	Second grade	Third grade
Product:			
Beef	Prime	Choice	Good.
Fresh Apples [8]	Extra Fancy	Fancy	No. 1.
Poultry	Grade A	Grade B	Grade C.
Eggs	Grade AA	Grade A	Grade B.
Instant nonfat dry milk	Extra		
Canned Cranberry Sauce [9]	Grade A	Grade C	Grade D.
Butter and some Cheeses	Grade AA	Grade A	Grade B.
Fresh Potatoes [8]	Extra No. 1	No. 1	No. 2.
Canned Peaches [9]	Grade A	Grade B	Grade C.

[8] Grade names for fresh fruits and vegetables are primarily U.S.D.A. Fancy, No. 1, and No. 2. However, there are numerous exceptions to this order and these names.

[9] Grade names for processed fruits and vegetables are primarily U.S.D.A. A, B, and C. The grade names U.S.D.A. Fancy, Choice, and Standard also are used in conjuction with or separate from these names. However, the grade names gradually are changing to U.S.D.A. A, B, and C exclusively.

It is unlikely that consumers see most of these grade names at retail stores; usually only the top or second grades are normally available. Each industry varies in its philosophy as to whether to use grade labeling at retail as a promotional tool. Nevertheless, the existence of many different grade names in the retail marketplace, as well as the emergence of the consumer movement in the last decade, has prompted calls from multiple sources [10] for the Department to create a simplified, uniform grade nomenclature policy whose purpose would be to give point-of-purchase food quality information to consumers.

Previous Reports and Studies on Food Grading

A number of previous reports and studies have addressed the issue of the retail food grade system and its relevance to consumer needs.

A. In the June 1966 Report of the National Commission on Food marketing titled "Food From Farmer to Consumer," the following suggestions appeared in the "Service to Consumers" section:

[6] 41 FR 21335

[7] See Appendix I

[10] See section "Previous Reports and Studies on Food Grading."

1. "Consumer grades should be developed and required to appear on all foods for which such grades are feasible, that are sold in substantial volume to consumers, and that belong to a recognized product category."

2. "The grades should prominently appear on consumer packages if the product is ordinarily sold in such packages by manufacturers. Except for foods for which other nomenclature is well established, the grades should be in the form A, B, C * * *."

The Commission also concluded that while the primary purpose of the suggestions was to inform consumers, they might also serve to reduce excessive use of grade promotion by the food industry.

B. In its final report in 1969, the White House Conference on Food, Nutrition, and Health stated: "Grading standards as they now exist are largely in terms of physical factors. Nutritive content has not played an important role. There is also a lack of uniformity in nomenclature that results in confusion."

The report recommended that a standardized, simple system be designed that is consistent for all foods that are graded. Furthermore, grading standards should be reviewed, it stated, to evaluate their utility in measuring food quality attributes that are relevant to consumers. The report also suggested that grading standards consider the nutritive content of a product where appropriate.

C. USDA Marketing Research Report No. 876, titled "Consumers' Knowledge and Use of Government Grades for Selected Food Items" was published in April 1970. Based on a national telephone sample, the report concluded that (1) most consumers had little knowledge of the existence of U.S. grades, but those who were aware found them helpful in their buying decisions, (2) many consumers believed that all foods had USDA grades and they already purchased graded foods, (3) many consumers confused grade and inspection marks, and (4) respondents preferred letters, followed by words, as the most easily understood grade terms.

D. In the June 1974 Report of the National Nutrition Policy Study, the Senate Select Committee on Nutrition and Human Needs accepted the following recommendations of the study's consumer panel:

1. The nomenclature for U.S. quality grades needs to be simplified and made uniform. The present grade system was acknowledged to be confusing for consumers.

2. Where wholesale grades are used by growers and processors in trading, mandatory retail grades should be required.

3. Grade standards should be changed to reflect nutritional considerations and eating quality rather than uniform appearance and color.

The report concluded that both wholesalers and consumers benefit from use of grades at the retail level. Consumers have accepted and shown confidence in products currently grade labeled—such as beef, poultry and juice concentrates—while producers and processors have been encouraged to improve quality in order to receive a higher quality grade and subsequent price.

E. The General Accounting Office (GAO) in a January 1975 report, "Food Labeling: Goals, Shortcomings, and Proposed Changes," recommended: "To assist consumers trying to use the USDA grading system, we recommend that the Secretary of Agriculture revise existing regulations to make designations uniform and easier for consumers and industry to understand."

This recommendation was based on GAO conclusions that the USDA grade nomenclature is too complex and technical for consumers to understand and grade designations vary from product to product. Yet those consumers who did understand the system found it a valuable tool in comparing the value of food products.

F. The Office of Technology Assessment (OTA) issued a report in June 1977 to the Congress titled "Perspectives on Federal Retail Food Grading." In discussing the issue of grade designation or nomenclature, the report concluded in its findings:

> There are unsettled questions regarding the optimum terminology for grades of fresh fruits and vegetables and processed foods [including butter, cheese and canned and frozen fruits and vegetables]. However, no reasons have been found for not instituting uniform designations for these products, regardless of the terminology chosen.

Regarding the issue of combining sensory characteristics and nutritional criteria into the grade standards, the report found that retail grade criteria should not reflect this combination.

> Problems include an inverse relationship between sensory and nutritional characteristics and the time lag necessary to establish nutritional content and grade and label the product.

OTA concluded that the most appropriate way to convey nutrition information to consumers was through the use of nutritional labeling, changes in select grade standards, and increased nutritional education programs.

G. The December 1979 Roper Report (80–1) queried its sample of 2,003 adults nationwide on their awareness of government quality grades on foods and how often they look for these grades. The results indicate that the present grading system is of marginal usefulness to the respondents, though awareness and use of grading on some products was higher than on others.

For example, 93 percent of the respondents believed meat was graded for quality by the government while 58 percent thought this was so for eggs. Yet of those who thought meat was graded, only 31 percent stated they look for a grade almost every time they shop. The figure for eggs was 19 percent.

The figures for fresh and processed fruits and vegetables are considerably lower. Twenty-four percent believe canned fruits and vegetables are government graded and four percent said they look for a grade almost every time they shop for these products. The numbers for fresh fruits and vegetables are 19 percent and 4 percent, respectively.

Other authors have studied the Department's grading program from a consumer perspective and found it problematic. In her book *The Supermarket Trap*,[11] Jennifer Cross concluded that "for the consumer the whole system of USDA grades is chaotic." She went on to suggest that a simple and consistent system like A, B, C would be a significant improvement. Similarly, in his book *Consumer Information Systems and Consumer Policy*,[12] Hans B. Thorelli characterizes the quality grading program in the following manner: "Quite notorious are the grading schemes of the U.S. Department of Agriculture (their terminology must be unified!)." Over the years, other consumer writers have voiced similar observations and recommendations for improvement.

1979–80 Survey on Consumer Perceptions of the USDA Food Grading Program

To supplement previous studies on food grading, USDA sponsored a survey on Consumer Perceptions of the USDA Food Grading Program. This research was conducted in two phases in November 1979 and January 1980. The first phase, a series of focus group interviews around the country, was conducted by James A. Clark and Associates, Washington, D.C. Phase two was a national telephone survey of 1,200 primary food purchasers conducted by Chilton Research Services, Radnor, Pennsylvania. The goal of the survey

[11] Jennifer Cross, *The Supermarket Trap*, Indiana University Press, 1976.

[12] Hans B. Thorelli, *Consumer Information Systems and Consumer Policy*, Ballinger Publishing Co., Cambridge, Mass., 1977.

was to find out the extent of consumer information on and perceptions of the grading program and how the program could be made more useful to them. The Department will make available its report on each phase of the survey to itnerested parties. Those wishing to receive either or both of these reports should contact Ms. Penny Gentilly, whose address is given in the Comment section near the beginning of this document. A summary of the survey results is presented below.

Focus Group Interviews

The purpose of the focus group interviews was to obtain qualitative, indepth understanding of the nature and extent of consumer knowledge of commodity food grading and to identify issues to be examined in the telephone survey. Ten sessions were conducted in cities and towns across the United States. The 139 individuals who participated were the major food purchasers for their households. The participants were selected with the assistance of market research organizations in the selected locales. Each interview session involved a mix of participants with respect to variables such as age, education, household size, sex, marital status, occupation, income and social/ethnic background.

1. *Current Use of the Grade System.* Participants rarely found much usefulness in the present grade system. This is because of a lack of awareness about the program and the inability of the system to serve their needs. Grades are seldom used as a criteria in purchasing and many people claimed they never see grades on the foods they buy. Yet they expressed the belief that a grading program could be helpful to consumers, especially with items that are difficult to evaluate for quality at purchase, such as canned, frozen, packaged, or generically-labeled foods, and products costly in the food budget like meat and poultry. The majority of consumers interviewed clearly indicated a desire for a grading system that they could understand and utilize.

2. *Confusion Between Inspection and Grading.* The participants rarely understood the difference between food inspection (a wholesomeness and safety concept) and food grading (a quality designation). They thought that both programs were mandatory for all food products and were unsure who was responsible for each program.

3. *Food Selection and Purchase Criteria.* Price and quality were two attributes most often mentioned as determinates in food buying. In most areas the price of food was the greatest concern, but many people stated that the quality of food often overrode price considerations. Other factors frequently mentioned were freshness, appearance, brand, store appearance and convenience, and ingredient/nutrition labeling. Grade was rarely mentioned as a criterion in food selection.

4. *Improving the Grade Program for Consumers.* Participants spontaneously claimed that a simple, uniform grade name system would be beneficial to them in food purchasing. Suggestions most often offered were "A–B–C" or "1–2–3," but the comments suggest that any method would be acceptable, so long as it was easy to remember and consistent for all products. The consumers also wanted more information about the system: what criteria the grades are based on, and where to look for grades in their retail markets. The helpfulness of a government-sponsored, objective grade system as a piece of information for use in purchasing decisions was emphasized.

5. *Nutrition Considerations.* Ingredient and nutrition considerations in food buying were considered important factors by about 25/35 percent of the participants at each session, because of dietary, health, and lifestyle concerns. Of all those queried, most did not want grading to reflect nutritional criteria. Rather, they felt nutrition information would best be provided by means of separate nutrition/ingredient labeling. Participants felt this would enable those who desire such information to obtain it without confusing further the grade standards.

Telephone Survey

The telephone survey was designed to permit quantitative assessment of consumer use of the USDA grading system. A national probability sample of 1,242 major food purchasers was drawn by random digit dialing to test hypotheses about consumer awareness, confusion, and use of USDA grades. Statistically weighted to permit both national and regional projections, the results are accurate within ±3 percent at the 95 percent confidence level. The quesitionnaire was fully pretested and bias limited through the use of random starts and a mixture of aided and unaided recall questions.

Preliminary analysis of the findings is divided into the following areas which reflect general classes of testable hypothesis:

—Consumer awareness and knowledge about the USDA food grading system.

—Consumer use or application of the food grading system.

—Consumer recommendations for making the grading system more useful in the purchase of food products.

—Consumer recommended strategies for providing food grade information.

Consumer Awareness and Knowledge of USDA Grades

Table 2 illustrates that consumers are aware that certain products are graded. Consistent with the findings of previous surveys, a majority of eligible respondents [13] knew beef, chicken, eggs and butter were graded. However, consumers are less certain about whether canned vegetables and apples are graded. Response distributions are almost evenly divided between yes, no and don't know for these two commodities. Some measure of confusion is evident. Responses on the two products which are not graded, bacon and bread, further demonstrate consumer confusion of food grading. A majority of the respondents evidently believe most meat products are graded and, therefore, assume incorrectly that bacon is graded. On the other hand, more consumers than not recognized correctly that bread is not graded. Still, the data on bread suggests that 33.8 percent of the consumers did not know whether bread was graded while 23.6 percent thought it was graded.

Table 2.—*Consumer Awareness of USDA Grades* [13]

	Yes	No	Don't Know
Beef	1,090 (93.6)	17 (1.5)	57 (4.9)
Chicken	945 (80.3)	95 (8.1)	136 (11.6)
Eggs	782 (65.0)	216 (18.0)	205 (17.0)
Bacon	770 (73.4)	109 (10.4)	170 (16.4)
Butter	409 (57.8)	105 (14.8)	194 (27.4)
Canned Vegetables	399 (37.5)	307 (28.9)	357 (33.6)
Apples	338 (30.3)	390 (34.9)	389 (34.8)
Bread	289 (23.6)	522 (42.6)	414 (33.8)

The depth and substance of consumer knowlege about food grading as tested with a series of questions requiring increasing increments of knowledge. For instance, 63 percent of the respondents correctly knew that the U.S. Department of Agriculture grades food products. Moreover, slightly more than half the respondents knew that the purpose of USDA food grades was to measure quality. However, over three-quarters of the respondents erroneously thought the grading program was mandatory. A similar number (74 percent) could *not* correctly identify the shield as the appropriate symbol used by the USDA to show that a product is graded.

The most stringent test of knowledge was an unaided recall question asking respondents to name the grades of

[13] Only respondents who had purchased these products in the past year are included.

various food products. Table 3 demonstrates the degree of specific food grade knowledge consumers bring to the purchase of food.

Table 3.—*Correct Knowledge of USDA Food Grades*

Product	Top grade	Percent	Second grade	Percent	Third grade	Percent
Beef	Prime	23.1	Choice	19.0	Good	3.1
Chicken	A	23.8	B	8.6	C	6.0
Eggs	AA	14.7	A	12.5	B	6.4
Butter	AA	11.7	A	8.6	B	3.4
Canned Vegetables	A	12.8	B	7.5	C	6.3
Apples	Extra Fancy	1.2	Fancy	.9	No. 1	0.0

When Table 3 is compared with Table 2, it becomes apparent that although consumers know that certain products such as beef are graded, they do not know the specific grades of the products. For example, 94 percent of the respondents knew beef was graded, but only 23.1 percent could name Prime as the highest grade, 19 percent could name Choice and only 3 percent could correctly name Good as the third grade of beef. Consumer ignorance of specific food grades suggests that consumers are not using the system effectively to purchase food.

Consumer Use of Food Grades

Consumer use of USDA grades was approached in three ways within the survey. First, the consumer was asked to place themselves in the context of a food store and then requested to identify characteristics or factors they considered when they purchased particular food products. Since certain food product grades might be construed as being of more use than others (products which are concealed or partially concealed by packaging), particular attention was directed toward product variation.

Table 4.—*Characteristics Considered When Purchasing Food*[14]

	Brand	Quality	Price	Ingredients	Size	Nutrition	Grade	Type/kind
Butter	45.51	29.0	43.1	10.5	6.1	4.5	3.0	6.1
Beef	3.41	69.6	54.6	3.4	11.9	4.6	7.5	21.0
Chicken	14.11	65.1	45.5	1.3	36.7	3.3	2.5	24.9
Apples	11.11	81.1	33.5	0.4	24.3	2.8	2.1	36.7
Bacon	23.91	38.2	47.0	3.8	11.8	4.2	0.5	8.0
Canned Vegetables	59.81	27.5	53.2	8.8	11.6	4.2	0.9	12.7
Bread	33.81	60.7	30.9	16.3	10.5	8.7	0.5	35.9
Eggs	6.91	2.6	42.7	0.4	68.7	2.3	10.9	5.1

[14]Multiple mentions were possible; therefore, percentages exceed 100 percent. Data represented in Table 4 are based upon net consumer mentions of each characteristic.

Note in Table 4 that grade is not considered as an important characteristic or factor when consumers purchase food; nonetheless, quality appears to be one of the most important characteristics. This seems to indicate that assessment of quality is important but that consumers do not use the grade system to determine quality.

The second method of assessing consumer use of food grades was simply to ask the food purchaser, "In what ways are food grades useful to you?" The breakdown of the responses highlights the contradiction seen above. Almost 54 percent of the respondents claim that grades are a useful indicator of quality, flavor, texture, appearance, and freshness. But as Table 3 indicates, consumers may claim utility of grades, but the fact is they do not actually use grades as a measure of quality.

In the third instance, consumers were given concrete information on food grades as a preface to a question requesting them to rate grades from very useful to not at all useful. The mean response was between very and somewhat useful. These data, in conjunction with previous responses, suggest that consumers are exaggerating the actual use of food grades. The data points out one important fact. Consumers do look for quality but evidently do not use grades as an aid to locating quality.

Remedies

To find out what strategies the Department of Agriculture could employ to improve the utility of the food grade system for the consumer, respondents were asked to express in their own words "What could be done to make food grading more helpful to you?" Although 27 percent did not know, several suggestions received considerable responses. For instance, 18.4 percent suggested that the consumer should be educated, while 15 percent argued that the grade should be larger and clearer on the product label. Only 12 percent claimed they were satisfied with the present system.

When consumers were given fixed alternative remedies, their responses indicate a preference for more information on food grading, uniform grade names across all products and expanding food grading to all products. Table 5 illustrates the responses.

Table 5.—*Remedies To Improve the Utility of the Food Grade System*

	Very helpful	Somewhat helpful	Not at all helpful
Providing information on the meaning of grades	69.7	24.6	4.6
Using uniform grade names	81.4	14.5	3.2
Grade all food products	63.1	28.2	7.2
Provide more grade levels of food products	32.5	29.1	35.7

Consumers were also asked by what mechanisms or techniques food grade information could be most effectively communicated to them. When the responses were clustered, television was selected by 48.8 percent of the respondents, signs in food stores was selected by 40.9 percent of the respondents and magazines and newspapers received support from 35 percent of the respondents. Other mentions of some significance include radio at 12.4 percent and school programs at 15.5 percent. Because multiple mentions were permitted, these percentages could be deceiving. However, it is apparent that consumers prefer television, signs in stores, and newspaper and magazines as a vehicle for food grade information.

Options Under Consideration

The issue of changing the grading system to better serve consumers has been the subject of study and discussion by numerous organizations and the Department in the last 20 years. Invariably, some kind of standardization among the different sets of grade names is the primary recommended action, acompanied by a program to inform and educate the public about the grading

system. These reports have argued that not only consumers would benefit from uniform grade names, but industry would as well due to greater consumer use of the grade system and continual demand for high quality products. The reports also stated that wholesale trading could be simplified by introducing a uniform system for all products.

For the most part, consumer groups and writers have strongly supported the concept of a uniform grade nomenclature for the Department's food grading programs.

Conversely, certain industries have opposed changes in grade terminology because it could mean disruption, readjustment, and added expense for them. They fear that implementing a uniform grade nomenclature policy would result in misinterpretation and public confusion. Furthermore, a few industries claim they have devoted substantial advertising budgets linking a specific U.S. grade with their brand name.

In developing the various options on this matter, the Department has considered the views of the public, the feasibility to consumers, industry, and the government, and the potential public benefits.

We believe that a consumer information/education campaign will be necessary to implement whichever position the Department ultimately adopts. Past studies and the 179–80 Consumer Perception Study firmly support this need. As you review the options below, keep in mend that the Department will develop an information/education program to support the concept(s) with the greatest merit.

The following options are currently under consideration by the Department. They address the goal of achieving a uniform nomenclature for retail grade names and other possibilities for retail grade labeling. In order to obtain the public's views, the Department is soliciting comments on the following five options. We also welcome other suggestions for improving the grading program. Based upon the information received, the Department will assess which, if any, option or combination of options should be proposed for their consideration.

Options A and B

1. Use present grade names—USDA Prime, Choice, and Good, for meat.

2. Change gradually the grade names for fresh fruits and vegetables to U.S. Fancy, 1, 2, and 3 as new grade standards are established or old ones are revised (this is present policy).

3. Use U.S. Grades A, B, C (Option A) or U.S. Grades AA, A, B (Option B) for all other graded foods—i.e., poultry, eggs, butter, certain cheeses, instant nonfat dry milk, and processed (canned, frozen and dried) fruits and vegetables and related products.

These two options share a number of advantages. USDA research has shown that consumers recognize and understand the presently used grade names for meat. Also, grade names for fresh fruits and vegetables already are gradually being standardized. Using either option would reduce to three the number of grade designation groups for all foods. This simplification compared to the present system could result in greater consumer acceptance and use of the grading system.

An additional advantage of Option A is it would cause no readjustment for the poultry and processed fruit and vegetable industries.

Similarly, Option B would cause no readjustment for the dairy and egg industries. Another advantage of this option is the second grade designation, U.S. Grade A, could have less negative connotations to consumers than U.S. Grade B. More producers might grade lable their products under this option because of the possible positive connotations of U.S. Grade AA and U.S. Grade A to consumers.

Options A and B pose two common disadvantages. First, using U.S. Grade AA or U.S. Grade A for instant nonfat dry milk conflicts with the Food and Drug Administration's (FDA) traditional Grade A for fluid milk. Secondly, the goal of achieving uniform grade names in retail grade labeling is not realized by either of these options.

Additionally, under Option A the dairy and egg industries would lose their U.S. Grade AA designation, resulting in possible commercial disruption. The affected industries claim this disruption would occur due to the longstanding association of their products with U.S. Grade AA. If the grade is changed to U.S. Grade A, they fear consumers familiar with the former designation will be confused by the new system. Another concern is that U.S. Grade A might imply reduction in quality while the price remains unchanged. Lastly, U.S. Grades B and C or 2 and 3 could have negative connotations to the buying public, resulting in less retail grade labeling by producers, processors, and retailers.

Option B would require the poultry and processed fruit and vegetable industries to change their grade names. The potential for commercial disruption discussed above could also occur under this plan. Furthermore, consumers could be confused or misled by "upgrading" current U.S. Grade A products to U.S. Grade AA without an increase in quality.

Option C

Adopt grade names U.S. Grade A, B and C or U.S. Grade AA, A, and B for all graded foods.

This option offers consumers the advantage of simple, uniform grade names for all graded foods. Implementing a uniform nomenclature for retail grade labeling is consistent with the findings of the previous reports and studies cited earlier plus the 1979–1980 USDA consumer perceptions survey on food grading. Grade designations using the letters A, B or C have been recommended by consumers and investigators alike as a desirable grading system. With simple and uniform grade names, consumers are likely to accept and utilize this guide in their food selections. Producers, processors, and retailers may find certain marketing advantages given this consumer interest.

On the other hand, Option C would require all industries with graded products, except poultry and processed fruits and vegetables who use U.S. Grades A, B, and C or dairy and egg who use U.S. Grades AA, A, and B, to readjust to new grade designations. The affected industries might resist these changes because they fear commercial disruption due to consumer confusion. These packers and producers believe that current grade names are associated with their products and understood by the food purchaser. Therefore, they are likely to oppose implementing this option. Industry resistance could result in a significant decrease in official grading of food products.

Another concern is the potential misleading effect current descriptive terms like "choice" or "fancy" could have on the consumer if this option is adopted. These terms could be used without the "U.S." designation unless specifically outlawed.

Finally, the disadvantage of using U.S. Grade A or U.S. Grade AA for instant nonfat dry milk described under Options A and B also applies here.

Option D

1. Retain most present grade names and develop a separate consumer grade certification program utilizing colored grade shields signifying different quality levels to convey quality information to consumers. (Factors such as color blindness in the population and psychological impact of different colors would be considered.)

2. Maintain current nomenclature for wholesale purposes while working towards greater uniformity.

Under this option, different color U.S. grade shields would indicate the different quality levels for all graded food products. For example, a blue shield would signify the top quality grade, a red shield the second quality, and a white shield the third quality of a product. The consumer would look for the color grade shield that indicates the desired quality level. The producer, packer, and retailer could continue to use the current grade names for commercial transactions, and could choose whether to carry these names through to retail grade labeling.

The advantages of Option D are threefold. It creates a simple and uniform grade system for consumers that is consistent for all graded products. Also, industry is allowed to keep the traditional grade names currently in use. Finally, implementing this option could lead to a greater variety of products graded as producers, packers, and retailers develop marketing strategies incorporating the simplifed consumer grade system.

The major disadvantage to this option is it might initially increase the cost of graded products slightly. Current grade labeling would gradually have to be changed to reflect the color grade shield scheme. New labels and signs depicting this color system may cost producers, packers, and retailers slightly more to produce. Furthermore, as with any new grade labeling system, some inevitable confusion for industry, retailers and consumers would likely occur in the initial stages of implementation.

The four options discussed above are concerned with various alternatives for communicating more clearly the intent of the food grading program. The following option addresses the question of whether there should be a mandatory grade label disclosure system.

Option E

Keep the present voluntary grading system but require grade designation at the retail level to be mandatory. That is, if a product is graded and labeled at the wholesale or packer level, then the product must display that grade name at retail point of purchase.

This option would assure consumers whether a product has been quality graded by the USDA. Currently, a producer, processor, packer, or retailer has the option of grade labeling their product once it has been officially graded. Under this option, if a product is officially graded, then the product must display this grade on its packaging or signs at point of purchase by the retail consumer. Of course, products not graded by the government would be unaffected by this proposal. These items would continue to be marketed and sold under other existing quality assurances, such as brand name or direct consumer inspection.

The advantage of this option is that greater information would be available to consumers for making food purchasing decisions. Price and value comparisons between grade labeled and other foods could help consumers purchase foods to meet their needs. The proposal offers consumers direct access to the government's quality certification program.

There are primarily three disadvantages to this option. It would likely be opposed by most segments of the affected industries. They believe the marketing of lower graded products would be more difficult due to the potential negative connotations to consumers. If compelled to disclose grades at retail, a number of producers, processors and packers might discontinue grading services.

Secondly, the price of graded food products could increase slightly for items not presently retail grade labeled. This would be due to package or placard redesign to accommodate the grade designation. Also, expanded compliance and surveillance actions would be required to monitor that grade labeling was proper and correct.

Lastly, the goal of achieving uniform grade names for all graded foods is not addressed by this option. While consumers could have more information in making purchasing decisions, the fundamental problem of improving the usefulness of the grading system remains unresolved.

The following table summarizes the essential aspects of these options:

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Table 6 - Options Under Consideration by Major Food Commodities Graded by USDA

MAJOR FOOD COMMODITIES GRADED BY USDA

Options Under Consideration	MEAT	POULTRY	EGGS	DAIRY		FRUITS AND VEGETABLES	
				BUTTER, CHEESE	INSTANT NON-FAT DRY MILK	FRESH	PROCESSED
CURRENT GRADE NAMES	**Prime, Choice, Good**	**A, B, C**	**AA, A, B**	**AA, A, B**	**EXTRA**	**Fancy, No. 1, and No. 2***	**Fancy or A, Choice or B, and Standard or C****
OPTION A and OPTION B	Prime, Choice, Good	A, B, C	A, B, C	A, B, C	A, B, C	Fancy, No. 1, No. 2	A, B, C
		AA, A, B	AA, A, B	AA, A, B	AA, A, B		AA, A, B
OPTION C	A, B, and C or AA, A and B----------For All Graded Foods----------						
OPTION D	Develop separate consumer grade system using different color U.S. grade shields to signify different quality levels. -----For All Graded Foods----------						
OPTION E	Keep present grade names and require mandatory retail grade labeling of a product if it is officially graded. -----For All Graded Foods----------						

NOTE: Where applicable, grade designations given indicate the top three official USDA grade names.

*These are primarily the grade names. There are numerous exceptions to this order and these names.

**Currently, either the descriptive or letter grade is in use. However, the grade names are gradually being changed to A, B, and C exclusively.

BILLING CODE 3410-DM-C

Positions Not Under Consideration

The Department has at this time rejected certain options previously under consideration. Based on our analysis, we believe implementaton of the following positions are beyond current objectives and infeasible. These rejected options are outlined below. They will be reexamined in the future if necessary.

Position 1

Drop entire USDA grade program; allow State and trade associations to develop their own grade standards and terminology.

Pro: Less Federal intervention in private sector.

—Reduction in Federal expenditures.

Con: Would require amending Agriculture Marketing Act.

—Major disruption of wholesale commerce likely would result.

—Might be very difficult, if not impossible, for various industries to operate on a national basis with varying standards in different States. State standards could be used as trade barriers.

—There would be no objective third-party certification of quality.

—No protection of public from claims and manipulation about product quality.

Position 2

Keep present grade names but incorporate nutritional criteria into the grade standards to better serve consumer interest.

Pro: Could promote nutritional awareness among consumers and act as a source of nutrition information and education.

Con: The issue of incorporating nutritional criteria in grade standards in complex and requires a more thorough explanation than the other Positions. The fundamental problem goes back to the purpose of grading, which is to sort out large amounts of a product into categories according to certain quality characteristics. This sorting takes place within a food commodity group, not across commodities.

In most cases, the nutritional value within a given product group is the same. Therefore, assigning a nutrient value or score for all products graded is contrary to the concept of grading. For example, the nutrient content of the different grades of eggs is virtually identical, thereby making this factor inappropriate for grading because is does not discriminate within the product line. Similar comparisons can be made for other graded products.

Another general problem concerns the fact that good nutrition depends on the total diet, which is made up of a wide variety of foods. Nutritionists point out that different foods provide different nutrients, and no one food should be expected to provide the full spectrum of nutrients necessary for good health. A given product is nutritious only in its combination with other foods that contribute to a nutritious diet. Therefore, assigning an overall nutrition score as a grading criterion would not be a helpful nutrition education tool for the public and could be very misleading.

Lastly, the 1979–80 survey on Consumer Perceptions of the USDA Food Grading Program found little interest in including nutrition criteria into the grade standards. Their preference was to obtain this information through nutrition/ingredient labeling and information/education programs. This finding also coincides with the recommendation of the OTA study.

The Department does recognize that in certain commodity groups, grade standards may be related to nutritional value and may even run counter to current nutrition and disease prevention principles. A review of grade standards commensurate with Departmental guidelines and recent scientific evidence will be undertaken in the future.

Position 3

Seek funds from Congress to make the grading program a mandatory function. Implement a uniform nomenclature policy.

Pro: Would satisfy consumer interest for uniform grade system and reduce grading costs to industry.

—Present discrepancy between officially graded products and privately graded or ungraded products would be eliminated.

—Provides equal treatment among commodity groups.

—Public program funded by "public funds."

—Potential for significant consumer information system in food purchasing.

Con: Cost would be extremely high—disproportionately large personnel requirements to cover all precessors, producers, etc. Present system paid almost entirely by users.

—Strongly opposed by food industry.

—Implementation could be difficult, particularly in small volume plants.

—Grading service pushed into performing policing action.

—Require amending Agricultural Marketing Act.

—No indication that consumers desire a mandatory system.

Request for Economic Information

Before taking specific action to propose changes in its food grading policy, the Department wants public comment on these options. One area of interest is the economic implications of the various options. The Department considers this area important to its analysis and decisionmaking. Therefore, before the Department selects a specific course of action, it will analyze the economic impact of the proposed alternatives.

The Department is asking the public for information, data, or analyses to help predict and quantify the economic impact of these options on industry and consumers. This information may be related to packaging and/or labeling, product type, marketing, distribution and advertising, characteristics of firms or establishments, price and availability of foodstuffs in the retail marketplace, total cost of food marketbasket to consumers, and so on. The economic impact on the Department will be developed and considered along with submissions provided by the public comment pursuant to this Notice. Comments on other consumer issues are welcomed as well.

Request for Comments/Notice of Public Hearings

The Department is providing a 90-day comment period and will hold public hearings to gather views on the options and positions discussed in this Notice. Oral testimony and written submissions are important for providing public opinion concerning how the Department should proceed on this matter. Any additional information relevant to this issue not covered in this document is particularly requested. The Department, therefore, welcomes comments on the options herein for achieving a uniform grade designation policy and other grade label changes, including their desirability, cost, and feasibility.

It is hoped that public hearings will provide all interested parties—farmers, agricultural cooperatives, processors, retailers, trade associations, State agencies and associations, as well as individual consumers and consumer groups—with an opportunity to testify.

The public hearings will be held before representatives of USDA on July 1, 1980, July 16, 1980, and August 7, 1980. For further information on Public Hearings, see section under Supplementary Information. Written comment should be submitted to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 2637, South Agriculture Building,

Washington, D.C. 20250, (202) 447–7163. Written submissions will also be accepted at the hearings for participants who want additional information included in the record. The docket number found in brackets at the heading of this document should be identified with submissions. The submissions may be seen in the office of the Regulations Coordination Division during regular business hours.

Done in Washington, D.C., on: May 27, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

Appendix I.—*Bills Affecting Federal Food Grades in the 94th, 95th, and 96th Congresses*

Bill	Sponsor	Title	Committee
		94th Congress	
H.R. 42	Rosenthal	Nutritional Labeling Act	Interstate and Foreign Commerce.
H.R. 472	Gude	Nutritional Grading	Interstate and Foreign Commerce.
H.R. 836	Peyser	Nutritional Grading	Interstate and Foreign Commerce.
H.R. 995	Rosenthal	Truth in Food Labeling Act	Interstate and Foreign Commerce.
H.R. 1367	Price	Consumer Food Grading Act	Agriculture.
H.R. 3011	Karth	Consumer Food Grading Act	Agriculture.
H.R. 3547	Rosenthal	Marketing Practices Disclosure Act.	Interstate and Foreign Commerce.
H.R. 3986	Oberstar	Marketing Practices Disclosure Act.	Interstate and Foreign Commerce.
H.R. 4401	Harrington	Food Labeling Act	Interstate and Foreign Commerce.
H.R. 5266	Peyser	Beef Grading Restriction	Agriculture.
H.R. 6606	Rosenthal	Consumer Food Labeling Act	Interstate and Foreign Commerce.
H.R. 9268	Rosenthal	Consumer Food Labeling Act	Interstate and Foreign Commerce.
H.R. 10776	Richmond	Consumer Beef Grading Act	Agriculture.
		95th Congress	
H.R. 42	Rosenthal	Nutrition Labeling Act	Interstate and Foreign Commerce.
S. 1251	Humphrey	Child Nutrition Act	Agriculture Subcommittee on Nutrition.
		96th Congress	
H.R. 42	Rosenthal	Nutrition Labeling Act	Interstate and Foreign Commerce.
S. 1651	McGovern	Nutrition Labeling and Information Act.	Agriculture Subcommittee on Nutrition.

[FR Doc. 80—16429 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–DM–M

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

Animal Welfare

AGENCY: Animal and Plant Health Inspection, USDA.

ACTION: Notice of public meetings.

SUMMARY: The purpose of this notice is to inform all interested persons that the Department will hold public meetings to solicit comments and to give the public an opportunity to participate in discussions regarding the regulations and standards which were promulgated under the Animal Welfare Act (7 U.S.C. 2131–2156) and which may be found in parts 1, 2, and 3 of Chapter I of Title 9 of the Code of Federal Regulations. Two such meetings will be held and interested persons will have the opportunity to participate and to submit comments either orally or in writing.

DATES: July 1, 1980—College Park, Md. July 10, 1980—Kansas City, Mo.

ADDRESS: (1) Tuesday, July 1, 1980, at the University College Building, Center for Adult Education, Room 1105, University of Maryland, University Boulevard and Adelphi Road, College Park, MD 20782, 301–454–4712, 9:30 a.m. to 3:30 p.m.; (2) Thursday, July 10, 1080, at the Holiday Inn City Center, 1301 Wyandotte, Kansas City, MO 64105, 816–221–8800, from 9:30 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, VS, APHIS, USDA, Room 703, Federal Building, 6505 Belcrest Road, College Park, MD 20782, 301–436–7833.

SUPPLEMENTARY INFORMATION: Dr. Dale F. Schwindaman will serve as chairman at the public meetings. The procedure to be followed will not be a formal one, and individual presentations will not be scheduled in advance.

Opportunity to comment will be afforded first to those persons who, prior to or at the time of their appearance at the meeting, submit such comments in writing for the panel's consideration and for the record. Individuals making presentations may verbally summarize or emphasize certain points of their written comments. The chairman or other persons at the meetings may ask questions relating to the oral and written presentations. The time for oral presentations may be limited to approximately 5 minutes by the chairman in order to give all persons at the meetings an opportunity to be heard.

All written and oral comments will be made a part of the record for the Department consideration and will be available for public inspection during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) in a manner convenient to the public business.

Done at Washington, D.C. this 21st day of May

Pierre A. Chaloux, VMD,

Deputy Administrator Veterinary Services.

[FR Doc. 80–16528 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA–R–80–09]

Alaska North Slope Crude Oil Entitlements; Change in Hearing Schedule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of change in hearing schedule.

SUMMARY: On May 8, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a Notice of Proposed Rulemaking (45 FR 31682, May 13, 1980; 45 FR 33643, May 20, 1980) proposing alternative amendments to the Mandatory Petroleum Allocation Regulations modifying the treatment of Alaska North Slope (ANS) crude oil under the entitlements program, 10 CFR 211.67. The June 2, 1980 public hearing scheduled for Seattle, Washington is hereby cancelled, and the hearing on that date will be held in Los Angeles, California.

DATE: The hearing will be held on June 2, 1980.

ADDRESS: Hearing location: Holiday Inn—Convention Center, Windsor

Room, 1020 Figueroa, Los Angeles, California 90015. Requests to speak at the hearing should be submitted to: Department of Energy, San Francisco Regional Office, 333 Market Street, San Francisco, California 94111, Attention: Terry Osborne (telephone: 415–454–7027).

FOR FURTHER INFORMATION CONTACT:

Robert Gillette (Hearings Procedures), Economic Regulatory Administration, Room 2214–B, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3757.

David A. Welsh (Office of Petroleum Operations), Economic Regulatory Administration, Room 6212–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3873.

Daniel J. Thomas (Petroleum Pricing Regulations), Economic Regulatory Administration, Room 7302, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3202.

William Funk or Christopher M. Was (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6736 or 252–6744.

Issued in Washington, D.C., May 23, 1980.

F. Scott Bush,

Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

[FR Doc. 80–16433 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

10 CFR Part 490

[Docket No. CAS–RM–79–110]

Emergency Building Temperature Restrictions; Amendment of Regulations

Correction

In FR Doc. 16042 appearing at page 35788 in the issue of Tuesday, May 27, 1980, please make the following correction:

On page 35791, in the first column, in the third line under *Public Hearing* and directly following "Room 2105", add "2000" M Street.

BILLING CODE 1505–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 772 3041]

Bill Crouch Foreign, Inc., d.b.a. Bill Crouch Imports, Inc.; Correction.

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Thursday, May 22, 1980. Appendix A to the consent agreement was inadvertently omitted.

DATE: The correction is effective May 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Gregory E. Hales, FTC/SSR, Washington, D.C. 20580. (202) 724–1185.

SUPPLEMENTARY INFORMATION: In FR Doc. 80–15757, appearing in **Federal Register** issue for Thursday, May 22, 1980, 45 FR 34296, Appendix A should have appeared immediately following the Consent Agreement and preceding the Anaylsis of Proposed Consent Order To Aid Public Comment. Appendix A reads as follows:

Appendix A

Important Notice

You Are Entitled to a Refund

Certified Mail—
Return Receipt Requested
(Name)
(Address)

Dear (Name):

Bill Crouch Foreign, Inc. ("Crouch Foreign") has entered into a Consent Agreement with the Federal Trade Commission. The Agreement resulted in a Final Order issued by the Commission on (date). Part of the Agreement provides that Crouch Foreign will refund some freight charges collected from its customers who bought new Honda Accord automobiles.

The Consent Agreement was for settlement purposes only. It was not an admission by Crouch Foreign that the law had been violated.

The Commission Order identifies the customers eligible for refunds and the methods for making refunds. (You can get a free copy of the Order by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580. Refer to "Bill Crouch Foreign, Inc., Docket No. ——.").

Under the provisions of the order, the Commission found that you are entitled to a refund of $——. A check in this amount will be mailed to you by the Commission as soon as you sign the enclosed Receipt and Waiver form and return it to the Commission in the stamped, self-addressed envelope which is also enclosed.

By signing and returning the Receipt and Waiver form to the Commission and by accepting and negotiating the check which you will receive, you will be waiving your rights at law or in equity to proceed individually against Bill Crouch Foreign, Inc. regarding the acts of practices which are the subject of the Commission's order.

Bill Crouch Foreign, Inc.

J. J. Kuske,

President.

In Order to Receive a Refund This Form Should be Returned to the Federal Trade Commission in the Enclosed Stamped, Self-Addressed Envelope

Receipt and Waiver

I hereby acknowledge that by accepting and negotiating refund check No. —— in the amount of $——, I waive all of my rights, claims, or causes of action against Bill Crouch Foreign, Inc., its officers, agents, successors, assigns, affiliated or predecessor corporations, arising out of the acts and practices which have been the subject of the Federal Trade Commission's Final Order issued (date) against Bill Crouch Foreign, Inc. I understand that I am entitled to receive a free copy of the Final Order issued by the Commission by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580, and referring to "Bill Crouch Foreign, Inc., Docket No. ——."

Dated this —— day of ————, 1979.

Name ————.

Carol M. Thomas,

Secretary.

[FR Doc. 80–16461 Filed 5–29–80; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 260

[Docket No. RM80–59]

Proposed Rulemaking To Revise Annual Report for Public Utilities and Licensees (Class C and Class D): Form No. 1–F, and Annual Report for Natural Gas Companies (Class C and Class D): Form No. 2–A

Issued May 23, 1980

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission gives notice that it proposes to revise its annual reports, Form No. 1–F, "Annual Report for Utilities and Licensees (Class C and Class D)" (18 CFR 141.2), and Form No. 2–A, "Annual Report for Natural Gas Companies (Class C and Class D)" (18 CFR 260.2). The proposed amendments would eliminate certain data elements which the Commission no longer needs to carry out its regulatory functions. The proposed changes are a product of the Commission's ongoing effort to eliminate unnecessary reporting burdens.

DATE: Comments are due by July 22, 1980.

ADDRESS: Comments to this Notice should be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM80–59.

FOR FURTHER INFORMATION CONTACT:

James Kitchen, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 3408N, Washington, D.C. 20426 (202) 357–9212.

Elaine M. Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 3405N, Washington, D.C. 20426 (202) 357–9190.

Revisions of Form No. 1–F, Annual Report for Public Utilities and Licensees (Class C and Class D and Form No. 2–A, Annual Report for Natural Gas Companies (Class C and Class D).

I. Background

The Federal Energy Regulatory Commission (Commission) is engaged in an ongoing effort to eliminate unnecessary reporting burdens. This rulemaking, to amend Form No. 1–F, "Annual Report for Public Utilities and Licensees (Class C and Class D)", and Form No. 2–A, "Annual Report for Natural Gas Companies (Class C and Class D)" [1] is part of that effort and reflects an evaluation of data needed by the Commission to carry out its regulatory functions. The proposed revisions for the Form Nos. 1–F and 2–A should result in a significant reduction in respondent burden.

Form No. 1–F collects information annually from privately owned electric utilities. The data primarily include Balance Sheet, Income Statement, and related items.

Form No. 2–A collects information annually from natural gas companies. The data primarily include natural gas operating revenues, expenses, and sales.

The Commission has reviewed Form Nos. 1–F and 2–A in light of its regulatory responsibilities, and has determined that it no longer needs certain elements of the data collected. The proposed deletions would cause an estimated 63 percent reduction in the reporting burden for Form No. 1–F and an estimated 28 percent reduction for Form No. 2–A.

[1] A Class C electric utility or natural gas company is one having annual electric or gas operating revenues of $150,000 or more but less than $1,000,000. A Class D electric utility or natural gas company is one having annual electric or gas operating revenues of $25,000 or more but less than $150,000.

The Energy Information Administration (EIA), however, may decide on behalf of itself or other sponsors within the Department of Energy to continue the collection of some data proposed for deletion herein. If the EIA should make such a determination, the Commission would issue a Final Rule based on this Notice with a delayed effective date. This would provide EIA (or any other potentially interested agency) a period of time in which to justify the need for the data and receive the approval for collection of such data under the agency's own authority.

II. Summary of Revisions

The following is a brief description of the proposed revisions to each of the forms:

a. *Form No. 1–F* [2]

The Commission proposes in this rulemaking to eliminate 509 of the 811 data items now prescribed on Form No. 1–F (approximately 63 percent). Of the 509 items, 448 would be deleted by elimination of reporting requirements for the following schedules:

Schedule:	Page no.
Security Holders and Voting Powers	3
Officers and Directors	3
Accumulated Provision for Depreciation and Amortization of Utility Plant	6
Capitol Stock	6
Long-Term Debt	6
Electric Sales Data for the Year	7
Sales of Electricity for Resale	7
Electric Operation and Maintenance Expenses	7
Purchased Power	11
Utility Plant	11
Generating Station Statistics	12
Transmission Line Statistics	12
Transmission Lines Added During Year	12
Investment Tax Credits Generated and Utilized	13
Accumulated Deferred Investment Tax Credits (Account 255)	14
Expenditures for Certain Civic, Political, and Related Activities	15

The remaining 61 data items would be eliminated by deleting the "Increase and (Decrease)" data requirements of the Comparative Balance Sheet (columns (d) and (h), schedule pages 4 and 5, respectively).

The data which would be retained are currently reported on the following schedules:

Schedule:	Page no.
General Information	[3] 1
Comparative Balance Sheet (columns a, b, c, e, f, g)	4 (a, b, c) 5 (e, f, g)
Statement of Income for the Year	8, 9
Statement of Retained Earnings	10
Attestation	

[3] A change would be made on page 1 to require that the completed form shall be sent to EIA rather than to the Commission.

b. *Form No. 2-A* [4]

The Commission proposes to eliminate 254 of the 907 data itmes now prescribed on Form No. 2–A (approximately 28 percent). These reductions in reporting burdens would be accomplished by: (1) deletion of the Prinicpal Business and Address column of the "Officers and Directors Schedule" (column c, schedule page 3); (2) elimination of the "Increase and (Decrease)" data requirement from the Balance Sheet (columns (d) and (h), schedule pages 4 and 5, respectively); and (3) deletion of the following schedules:

Schedule:	Page no.
Investment Tax Credits Generated and Utilized	15
Accumulated Deferred Investment Tax Credits (Account 255)	16
Expenditures for Certain Civic, Political and Related Activities	17
Service Interruptions Occurring on the Pipeline System	18

Data which would be retained on Form No. 2–A are currently reported on the following schedules:

Schedule:	Page no.
General Information	[1] 1
Security Holders and Voting Powers	3
Officers and Directors (columns a, b, d)	[2] 3
Comparative Balance Sheet (columns a, b, c, e, f, g)	4 (a, b, c) 5 (e, f, g)
Accumulated Provisions for Depreciation, Depletion and Amortization of Utility Plant	6
Capital Stock	6
Long-Term Debt	6
Gas Sales Data for the Year	7
Gas Operation and Maintenance Expenses	7
Statement of Income for the Year	8, 9
Statement of Retained Earnings	10
Sales for Resale—Natural Gas (Account 483)	11
Gas Purchases (Accounts 730, 731—Class C)	12
Utility Plant Natural Gas Companies	13
Gas Account—Natural Gas	14
General Information Concerning Plant and Operations	14
Attestation	—

[1] A change would be made on page 1 to require that the completed form shall be sent to EIA rather than to the Commission.

[2] A change would be made to the instructions in the Officers and Directors Schedule whereby the requirement to list the addresses of the officers and directors would be deleted and a requirement to "(list officers first) whose salaries are $50,000 or more", would be added.

III. Comment Procedures

The Commission invites interested persons to submit written comments on this proposal. Copies of all comments will be furnished to the EIA for its use. The Commission specifically requests that the comments address the following questions:

1. Do the proposed revisions or eliminations of required data affect any Commission or State regulatory functions?

2. Is there any reason for continued collection of the data for the purposes of another Federal agency? Suggestions for the continued collection of data which has been proposed for elimination from the present Form Nos. 1–F and 2–A should identify the proper agency and the purpose for collection of the data.

[2] Attachment A

[3] Attachment B.

[4] Attachment B.

Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should refer to Docket No. RM80–59. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EST, July 22, 1980, will be considered by the Commission prior to promulgation of final regulations. Pursuant to 44 U.S.C. 3501–3511, these proposed revisions will be considered by the Office of Management and Budget for lultimate clearance. Interested persons wishing to have their comments considered during the clearance process should submit copies of their comments to the Commission and to the Clearance Office of Regulatory Policy and Report Management Divisions, Office of Management Division, Office of Management and Budget, Washington, D.C. 20503. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 N. Capitol Street, N.E., Washington, D.C. 20426.

[Natural Gas Act, as amended, 15 U.S.C. 717–717w; Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267 (September 15, 1977)]

In consideration of the foregoing, the Commission proposes to revise Form No. 1–F, "Annual Report for Public Utilities and Licensees (Class C and Class D)," prescribed by Section 141.2, Chapter 1, Title 18 of the Code of Federal Regulations and Form No. 2–A, "Annual Report for Natural Gas Companies (Class C and Class D)," prescribed by § 260.2, Chapter I, Title 18 of the Code of Federal Regulations as set forth in Attachments A and B.

In addition, in consideration of the foregoing, the Commission proposes to amend Parts 141 and Part 260 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below. By direction of the Commission.

Kenneth T. Plumb,

Secretary.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. In § 141.2, the section heading and paragraph (c) are revised to read as follows:

§ 141.2 FERC Form No. 1–F, Annual Report for Public Utilities and Licensees (Class C and Class D).

* * * * *

(c) This annual report contains the following schedules:

Identification.
General Instructions.
General Information.
Comparative Balance Sheet.
Statement of Income for the Year.
Statement of Retained Earnings.
Attestation.

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

2. In § 260.2 the section heading and paragraph (c) are revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual Report for Natural Gas Companies. (Class C and Class D)

* * * * *

(c) This annual report contains the following schedules:

Identification.
General Instructions.
General Information.
Security Holders and Voting Powers.
Officers and Directors.
Comparative Balance Sheet.
Accumulated Provisions for Depreciation, Depletion and Amortization of Utility Plant.
Capital Stock.
Long-Term Debt.
Gas Sales Data for the Year.
Gas Operation and Maintenance Expenses.
Statement of Income for the Year.
Statement of Retained Earnings.
Sales for Resale—Natural Gas.
Gas Purchases.
Utility Plant Natural Gas Companies.
Gas Account—Natural Gas.
General Information Concerning Plant and Operations.
Attestation.

* * * * *

[FR Doc. 80–16356 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–85–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

Correction

In FR Doc. 80–8789 appearing on page 21076 in the issue of Monday, March 31, 1980, insert the following between "§§ 482, 483; LR–171–79" and "§§ 664, 170A, 25.2522, LR–42–73" on page 21079:

1954 code section and file No.	Subject and draftsman and reviewer	Office in which pending and status	Priority
§§ 482, 483; LR–221–78	Inc. Tax—Part 1—Imputed interest rates (Schmalz/Fischer—ITC-Langbein).	ITC—9/27/79 Draft of notice to TLC & T:C 11/20/79 Comments from TC	1
§§ 512 (a) (3), 501 (c)(7), (9) LR–1744.	Inc. Tax—Part 1—Social clubs—Unrelated business income (TRA 1969, §—121 (b)(1)) (Mix/Fischer-TLC-Sims).	EO—5/13/71 Notice pub. 8/31/71 Hrg. held 11/27/79 T.D. recirculated for formal approval 1/4/80 Comments from TLC.	2
§ 527; LR–16–75	Inc. Tax—Part 1—Political organizations (Pub. L. 93–625)/Felton—TCL-Krupsky).	LR—11/24/76 Notice pub.; 2/24/77 Hrg. held 7/18/79 T.D. ret'd. to LR for revision	1
§§ 528, 6012; LR–165–76	Inc. Tax—Part 1—Treatment of Homeowners Associations (TRA 1976, § 2101) (Mix/Fischer—TLC-Sims).	Commr.—1/9/79 Notice pub. 12/28/79 T.D. to Commr. for formal approval	3
§ 532; LR–125–78	Inc. Tax—Part 1—To apply accumulated earnings tax to corps. accumulating E&P to avoid income tax on certain foreign corp. shareholders (Klein/Felton—TCL-Sims/Dolan).	LR—9/18/79 Notice to CC/DED for formal approval	3
§§ 541–45, 551–55; LR–680	Inc. Tax—Part 1—Various sections of the Code affecting personal holding cos. (§ 225, in part), RA 1964; also P.L.'s 89–809, § 104 (h), 206; 91–172, § 101 (j)(16); TRA 1976, §§ 211, 2106).	TLC—9/5/68 Notice pub. 11/3/78 draft of rev. notice to TLC & T:C; 11/30/78 Comments from TC.	2
§§ 584 (a)(1), (c) (1)(A) & (B), (c)(2), (e), 6032; LR–133–76.	Inc. Tax—Part 1—Tax treatment of common trust funds (P.L.'s 94–414, § 1; 94–455; TRA 1976, §§ 2138 (a), 1402 (b), 1901 (b), 2131 (d)) (Schreiner/Coulter—TLC-Sims).	TLC—6/25/79 Notice fwd. for formal approval; 7/30/79 Approved by T:1 Awaiting approval by TLC.	2
§ 593 (b) (3), (4), (5); LR–152–73	Inc. Tax—Part 1—Reserves for losses on loans of mutual savings banks, etc. (TRA 1969, § 432 (a)) (Thompson-Coulter—TLC-Koppelman).	LR—In LR for prep of notice	3
§§ 612, 613; LR–1148	Inc. Tax—Part 1—Restoration of depletion deductions on bonus and advanced royalties in certain cases (Woo/Bromell—TLC-Koppelman).	LR—12/6/79 Notice ret'd. to LR for revision	1

1954 code section and file No.	Subject and draftsman and reviewer	Office in which pending and status	Priority
§ 613; LR–2073	Inc. Tax—Part 1—Percentage depletion deduction—To clarify rules relating to determination of gross income from the property in the case (Woo-Bromell—TLC-Koppelman).	TLC—5/3/73 Partial draft of notice to TLC & T:C Comments from T:C	1
§ 613 (b) LR–2072	Inc. Tax—Part 1—Percentage depletion rates (TRA 1960, § 501); Also P.L. 89–809, §§ 207, 208, 209 (Woo/Bromell—TLC-Schuldinger).	TLC & T:C:—12/12/78 Rev. draft of notice to TLC & T:C	1
§§ 613A, 703 (a), 705 (a); LR–105–75.	Inc. Tax—Part 1—Supplementary rules on limitations on percentage depletion for oil & gas (TRA 1975, § 501; TRA 1976, §§ 1901 (a)(86), 2115) (Woo/Bromell—TLC-Schuldinger).	TLC—5/13/77 Notice pub.; 8/31/77 Hrg. held 8/2/78 Draft of T.D. to TLC & T:C; 9/78 comments from T:C.	1
§ 642 (g); LR–183–76	Inc. Tax—Part 1—Certain expenses of estates (TRA 1976, § 2009 (d)) (Waltuch/Smith—TLC-Sorensen).	TLC & Tech—11/28/79 Rev. draft of notice to TLC & Tech	3
§§ 644, 641 (b); LR–188–76	Inc. Tax—Part 1—Special rule for property transferred at less than fair market value (TRA 1976, § 701 (e)) (RA 1978, § 701 (p)) (Kusma/Smith—TLC-Sorensen).	LR—In LR for prep of notice	2

BILLING CODE 1505–01–M

26 CFR Part 1

[LR–272–76]

Special Rule for the Deduction of Certain Charitable Contributions of Inventory and Other Property; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to a special rule for the deduction of certain charitable contributions of inventory and other property as added by the Tax Reform Act of 1976.

DATES: The public hearing will be held on July 15, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by July 1, 1980.

ADDRESS: The public hearing will be held in the Chief Counsel's Conference Room, Room 4132, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–272–76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 170(e)(3) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Thursday, March 20, 1980, at page 18030 (45 FR 18030).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by July 1, 1980. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive on improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 80–16495 Filed 5–29–80; 8:45 am]

BILLING CODE 4830–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–20

Interpretative Guidelines on Employment Discrimination and Reproductive Hazards

AGENCY: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Extension of comment period for proposed rulemaking.

SUMMARY: In order to provide an opportunity for the enforcement agencies to elicit further comments on the proposed Guidelines on Employment Discrimination and Reproductive Hazards (45 FR 7514) published February 1, 1980, the period for submission of written comments is extended for thirty days.

DATE: Written comments should be received by July 2, 1980.

ADDRESSES: Written comments may be addressed to: Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506. All public comments may be reviewed from 9:30 a.m. to 4:30 p.m., Monday through Friday, at the Library (Room 2303), Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Frederick D. Dorsey, Director, Office of

Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, 202–634–7060.

Joseph Hogan, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, 202–523–9426, or James D. Henry, Associate Solicitor, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210, 202–523–8235.

SUPPLEMENTARY INFORMATION: The agencies are extending the comment period in order to elicit additional comment from the public on the proposed Guidelines on Employment Discrimination and Reproductive Hazards published in the **Federal Register** on February 1, 1980 (45 FR 7514).

Signed at Washington, D.C. this 23rd Day of May, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Ray Marshall,

Secretary of Labor.

Donald Elisburg,

Assistant Secretary, Employment Standards Administration.

Weldon Rougeat,

Director, Office of Federal Contract Compliance.

[FR Doc. 80-16424 Filed 5-29-80; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, VII

33 CFR Ch. II

36 CFR, Ch. III

Improving Government Regulations: Semiannual Agenda of Regulations

May 30, 1980.

AGENCY: Department of Defense.

ACTION: Publication of the Semiannual Agenda of Regulations, significant and nonsignificant, under review or development by the Department of Defense and its components.

SUMMARY: In November 1978, the Department of Defense published its initial Semiannual Agenda of Significant Regulations and the Department plan for implementing E.O. 12044, "Improving Government Regulations." The Department, although not considered in the category of a regulatory agency, and largely exempt from the the provisions of the E.O., nevertheless instructed several programs designed to meet its spirit and intent.

The original agenda in November 1978 and later agendas contained many regulations selected for review and public participation that were primarily internal in nature, defense mission oriented, but not of the regulatory economic nature as intended under the E.O. Therefore, these regulations, although limited in public and economic impact, were published in an effort to increase public knowledge and to allow participation in the Department's rulemaking process. These consolidated agendas of regulations are but one part of the Department's overall efforts toward regulatory reform. Other programs continue to be pursued by Department components that are tailored to suit their individual mission needs and statutory requirements.

This fourth DoD agenda contains overviews of Department programs, and a list of regulations that are significant and appropriate for public review and comments. These efforts were made to meet the goals and objectives of E.O. 12044 and the Department plan for Improving Regulations.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD Regulatory Improvement and general Semiannual Agenda information, contact Cololnel Peter H. Karalus, telephone 202–695–4281 or write: Directorate for Organizational and Management Planning, OASD(C), Pentagon, Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION: The semiannual Agenda format is divided into sections to reflect the various DoD organizational structures and management arrangements. Included are: the Office of the Secretary of Defense (OSD), the Department of the Army, Navy, and Air Force. Each component section contains the following information:

Part I: Status of Regulations Previously Reviewed (Agnedas of May 1979 and Nov. 1979).

Part II: Regulations Under Development.

Part III: Regulations Requiring Regulatory Analysis.

Individual component variations may be found in the agenda format due to the separate mission functions and responsibilities of the Defense components involved.

DATES: The Department of Defense will publish its next Semiannual Agenda on November 30, 1980. It will contain an update to this and previous agendas to include regulations under development and/or regulatory analysis, if appropriate. This Agenda is published by authority of the Secretary of Defense.

May 28, 1980.

David O. Cooke,

Deputy Assistant Secretary of Defense (Administration).

Office of the Secretary of Defense

Improving Government Regulations; Semiannual Agenda

ACTION: Semiannual Agenda of regulatory and procedural documents under development or published by the Office of the Secretary of Defense.

SUMMARY: The charts below list DoD regulatory policy documents (DoD Directives and DoD Instructions) that may effect aegments of the public, are issued under 5 U.S.C. 552 and 1 CFR § 305.76–2, and are submitted in compliance with section 2, E.O. 12044. The Office of the Secretary of Defense maintains a systmatic review program with special emphasis on those policy and regulatory documents that have not been updated for 10 years or longer (sunset review). None of the documents listed below require a regulatory analysis, since their provisions are primarily for internal DoD direction and do not impose regulatory obligations on the public.

FOR FURTHER INFORMATION CONTACT: Where a contact officer is indicated, contract that individual. For other information on the Agenda, contact Mrs. Margete S. Healy, telephone 202–697–4111, or write to Directives Division, C&D, WMS, Room 2A286, Pentagon, Washington, D.C. 20301.

Part I—*Status of Regulations Previously Reviewed (June 1, 1979—Oct. 31, 1979)*

[Period Nov. 1, 1979—Apr. 30, 1979]

CFR No.	Title	DoD Directive/DoD Instruction	Status
32 CFR Part 41	Enlisted Administrative Separations	1332.14	Additional modifications to document required.
32 CFR Part 65	Nomination of Chaplains for the Armed Forces	1304.19	Published 45 FR 3905, 1/21/80.
32 CFR Part 115	Assignment to and Transfer Between Reserve Categories, Discharge from Reserve Status, Transfer to the Retired Reserve, and Notification of Eligibility for Retired Pay.	1200.15	Additional modification to document required.

Part I—*Status of Regulations Previously Reviewed (June 1, 1979—Oct. 31, 1979)* —Continued

[Period Nov. 1, 1979—Apr. 30, 1979]

CFR No.	Title	DoD Directive/DoD Instruction	Status
32 CFR Part 157	Dissemination of DoD Technical Information	5200.12	Published 45 FR 17987, 3/20/80.
32 CFR Part 169	Commercial and Industrial Activities	4100.15	Published 45 FR 17138, 3/18/80.
32 CFR Part 169a	Operation of Commercial and Industrial Activities	4100.33	Published 45 FR 22924, 4/4/80.
32 CFR Part 179	Use of Contractor and Government Resources for Maintenance of Materiel	4151.1	Informally coordinated; being prepared for formal coordination and issuance as proposed rule.
32 CFR Part 196	Work Breakdown Structures for Defense Materiel Items	5010.20	Final manuscript is being processed.
32 CFR Part 209	Metric System of Measurement	4120.18	Published 45 FR 17574, 3/14/80.
32 CFR Part 238	Armed Forces Community Relations	5410.19	Published 45 FR 21228, 4/1/80.
32 CFR Part 244	Honorary Awards to Private Citizens and Organizations	1432.2	Additional modifications to document required.
32 CFR Part 300	Nondiscrimination in Federally Assisted Programs	5500.11	Submitted to the Justice Department for approval of proposed rule February 1980.

Part IA—*Existing Regulations Selected for Review*

CFR No.	Title	DoD directive or DoD instruction	Reason selected	Contact Officer
32 CFR Part 40	Standards of Conduct	5500.7	Update. To be revised to conform with the provisions of the OPM Ethics Office.	D. Ream, 697-3272.
32 CFR Part 42	Interception of Wire and Oral Communications for Law Enforcement Purposes.	5200.24	Update. Final manuscript is being coordinated	Col. R. Webb, 697-9678.
32 CFR Part 151	Status of Forces Policies and Information	5525.1	Update. Published 45 FR 20465, 3/8/80	M. Olson, 697-8343.
32 CFR Part 194	International Coproduction Dual Production Programs and Agreements.	2000.9	Update. Final manufacript in preparation for proposed rule.	Col. R. Carlberg, 697-9351.
32 CFR Part 237	Community Relations	5410.18	Withdrawn. Existing directive considered valid	Ltc R. Egenmaier, 695-2709.
32 CFR Part 245	Plan for the Secretary Control of Air Traffic and Air Navigation Aids.	5030.36	Update. Changes in Plan are being processed	Co. S. Gilbert, 697-7183.
32 CFR Part 286	Availability to the Public of Department of Defense Information. New title: DoD Freedom of Information Act Program.	5400.7	Update. Published 45 FR 28323, 4/29/80	Col. R. Farris, 697-1180.
32 CFR Part 296	Publication of Proposed and Adopted Regulations Affecting the Public.	5400.9	Update. Internal DoD comments are being evaluated for inclusion in a proposed rule to be published in the FR shortly.	A. Effron, 695-1078.
Additional regulations not cited before:				
32 CFR Part 156	Dod Personnel Security Program	5200.2	Update. Published 45 FR 19227, 3/25/80	W. Fedor, 697-3969.
32 CFR Part 164	Contract Cost Performance funds Status and Cost/Schedule Status Reports.	7000.10	Update. Published 45 FR 20469, 3/23/80	R. Kemps, 695-0706.
32 CFR Part 294	Obtaining Information from Financial Institutions: Right to Financial Privacy Act of 1978.	5400.12	Required by the Act. Published 45 FR 17575, 3/19/80.	Maj. W. Goforth, 694-3027.

Part II—*Regulations Planned or Under Development*

CFR No.	Title	Legal basis	Purpose	Comment date	Contact officer
32 CFR Part 56 (DoD 1100.xx)	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.	Pub. L. 93-112 § 504	Implement the law	Nov. 13, 1979 (Proposed rulemaking published 44 FR 58750, 10/11/79).	C. Haughton, Jr., 695-0106.
None (DoD 4165.62)	DoD Implementation of Personnel Parking Facilities Program.	OMB Circular A-118, 40 U.S.C. 490.	Implement OMB Circular A-118	Notice published 44 FR 75442, 12/20/79.	F. Roche, 697-7227.
32 CFR Part 199 (DoD 6010.8-R)	Implementation of the Civilian Health and Medical Program of the Uniform Services (CHAMPUS) CAT Scanning.	10 U.S.C. 1079, 1086	To expand certain health benefits	Published 45 FR 14034, 3/4/80	LTC L. Rowlette, 695-6281.
32 CFR Part 143 (DoD 1354.1)	DoD Policy on Organizations That Seek to Represent Members of the Armed Forces In Negotiation or Collective Bargaining.	10 U.S.C. 976	Implement Pub. L. 95-610	Will be submitted as a proposed rule June 1980.	

Department of the Army

Improving Government Regulations; Semiannual Agenda

ACTION: Publication of the Department of the Army's Fourth Semiannual Agenda of Regulations as required under E.O. 12044 and implemented under the DoD plan for Improving Government Regulations.

SUMMARY: The Department of the Army continues to review and evaluate the need for the development of new regulations and to improve existing regulations in support of the President's Executive Order 12044, Improving Government Regulations and the DoD Implementation Plan. This agenda reports on the areas under consideration in that review and on specific actions taken since the publication of the third agenda in the **Federal Register** issue of November 30, 1979 (44 FR 68864).

FOR FURTHER INFORMATION CONTACT: Mr. J. B. Hudson, 202-697-6900 or write: Office of the Administrative Assistant, OSA, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: This agenda includes regulations which support the National Defense effort as well as the civil works activities of the Corps of Engineers published in Titles 32 and 33 of the Code of Federal Regulations.

Accordingly, the following information is provided concerning Army amendments to the Code of Federal Regulations:

Department of the Army—Semiannual Agenda

[Period December 1, 1979—May 30, 1980]

Part I—Status of Existing Regulations Reviewed (Agenda November 30, 1979)

CFR No.	Title	Public comments and coordination	Status
32 CFR 552.30 thru 552.74	Acquisition of Real Property and Interests Therein	No comments received in response to Proposed Rule in 43 FR 59328, Dec. 19, 1978.	Not date for publication of Final Rule has been established.
32 CFR 503	Apprehension and Restraint	Revision will be published as a Rule	Pending outcome of proposed Senate bill 1221, 96th Congress.
32 CFR 534	Military Court Fees	Regulation will be published as a Rule	Review is being coordinated. Estimated date for publication in November 1980.
32 CFR 536	Claims Against the United States	No comments received	Final Rule published in 45 CFR 6543, January 29, 1980.
32 CFR 645	Real Estate Annexation	To be published as a Final Rule	Not date for publication of Final Rule has been established.
32 CFR 657	Facilities Engineering Pest Control Services	To be published as a Final Rule	Not date for publication of Final Rule has been established.

Part I—Status of Existing Regulations Reviewed (Agenda May 30, 1980)

32 CFR 630	Military Absentee and Deserter Apprehension	Regulation has ben recodified and was renumbered 32 CFR 536.30 thru 536.35. It was published as a Proposed Rule in 45 FR 6566, January 29, 1980.	Final Rule will be published in November 1980.
32 CFR 651	Implementation of Procedures of National Environmental Policy Act.	Proposed Rule published in 45 FR 1015, January 4, 1980.	Final Rule will be published in November 1980.

Department of the Army—Semiannual Agenda

[Period December 1, 1979—May 31, 1980]

Part II—Regulations Under Development (Previously Reported on May 30, 1979 Agenda)

CFR No.	Title	Legal Basis	Status
32 CFR 504	AR 190-xx, Obtaining Information from Financial Institutions.	12 U.S.C. 3401 (Right to Financial Privacy Act of 1978).	Proposed Rule will be published in November 1980.

The Department of the Army has no regulations under review or being developed which would require a regulatory analysis in accordance with the criteria established by E.O. 12044 and the DoD plan for Improving Government Regulations.

Part III—Civil Works Regulations Under Review

CFR No.	Title	Public comments and coordination	Status
33 CFR 321	Permits for Dams and Dikes in Navigable Waters of the United States.	These regulations are a "set" concerning the Army permit process for civil construction projects. Meetings with Federal Agencies have been held on these regulations that will be published as proposed regulations in June/July 1980. These meetings were held with the Departments of Interior, Energy, Transportation, Commerce, Agriculture and the Environmental Protection Agency. Appropriate comments have been incorporated in the proposed regulations. In addition to publishing the proposed regulations in the Federal Register, the proposed regulations will be directly mailed to National Environmental groups, federal and state agencies and major developmental organizations. Meetings at local levels, to be hosted by the 34 District Engineers, are being arranged. Additional public meetings will be arranged as requirements are generated. Meetings will be held in the 50 states, the commonwealths and trust territories including Guam, Northern Marianas, Virgin Islands, Puerto Rico, and the Marshall Islands.	Final rules originally scheduled for publication by January 1980 have ben delayed pending further review based on recent court findings. New publication date targeted for July 1980.
33 CFR 322	Permits for Structures of Work in or Affecting Navigable Waters of the United States.		
33 CFR 322	Permits for Discharges of Dredged or Fill Material into Waters of the United States.		
33 CFR 324	Permits for Ocean Dumping of Dredged Material		
33 CFR 325	Processing of Department of Army Permits		
33 CFR 326	Enforcement		
33 CFR 327	Public Hearings		

Part IV—Civil Works Regulations Under Development

33 CFR 325	Historic Preservation (Appendix C under Development).	Draft regultions jointly structured by Army and the President's Council on Historic Preservation. Public comments are now being solicited and meetings with state agencies in particular are being arranged where appropriate by District Engineers. This annex was also directly mailed to federal and state agencies and environmental groups.	Proposed rules published 3 April 1980.

Department of the Navy

Improving Government Regulations; Semiannual Agenda

The Department of the Navy published its first regulatory review agenda in November 1978. Since Navy regulations are primarily directed toward supporting the Navy mission and its people, they do not normally impact upon the public directly. Agenda regulatory reviews contain regulations which are primarily "in-house" in nature and not under the criteria expressed in Executive Order 12044 or the DOD plan. In keeping with the spirit and intent of the Executive Order, the Navy will continue to publish regulations that may be of interest to the general public and

provide an opportunity for public comment.

The Department of the Navy has promulgated several other regulatory reform programs.

A Navy directive was issued which instituted a "sunset" clause directing that no reporting requirement shall exceed two years and one-time reports to less than two years shall cite an expiration date.

Each Navy command issuing directives must conduct a least an annual review to ensure:

(a) that the system's requirement and standards are being met; and

(b) that all effective directives which the organization has issued are reviewed to determine whether those directives should be cancelled, updated, revised, or consolidated, as appropriate.

A recent zero-based review of directives, reports, forms, and publications by the Chief of Naval Operations has resulted in 698 cancellations of administrative issuances.

On 3 and 4 March 1980, the Air Force Academy Executive Writing Course was presented for personnel of the Office of the Chief of Naval Operations and other Washington area offices. Total attendance was 350.

The goals and objectives of the Executive Order 12044 and the DOD plan for Improving Government Regulations are being actively pursued throughout the Department of the Navy.

Department of the Navy—Semiannual Agenda

[Period November 30, 1979 through May 30, 1980]

Part I.—Status of Regulations Previously Reviewed (Agenda November 30, 1978)

CFR No.	Title	Public comments and consideration*	Status	Contact officer
32 Part 705	Public Affairs Regulations	Published as final rule	Revision appeared in the Federal Register on February 1, 1979. Regulation dropped from agenda.	
32 Part 714	Officer Personnel	Recommended for deletion	Notice of deletion appeared in Federal Register on April 24, 1979. Regulation dropped from agenda.	
32 Part 715	Support of Dependents and Paternity Complaints.	Published as final rule	Revision appeared in the Federal Register on July 19, 1979. Regulation dropped from agenda.	
32 Part 716	Death Gratuity	Published as final rule	Revision appeared in the Federal Register on May 2, 1979. Regulation dropped from agenda.	
32 Part 718	Missing Person Act	Published as final rule	Revision appeared in the Federal Register on April 16, 1979. Regulation dropped from agenda.	
32 Part 725	Disposition of Cases Involving Physical Disability.	To be published as final rule	Under revision due to change in basic requirements.	LCDR M. W. Kirkpatrick, NCPB, Tel. 696-4366.
32 Part 729	Navy and Marine Corps Military Personnel Security Program.	Published as final rule	Revision appeared in the Federal Register on April 24, 1979. Regulation dropped from agenda.	
32 Part 730	Administrative Discharges and Related Matters Concerning Separations from the Naval Service.	To be published as final rule	Revision will be submitted to the Office of the Federal Register by July 31, 1980.	Mr. Minic, NMPC, Tel. 694-3613.
32 Part 744	Policies and Procedures for the Protection of Proprietary Rights in Technical Information Proposed for Release to Foreign Governments.	Published as final rule	Revision appeared in the Federal Register on May 29, 1979. Regulation dropped from agenda.	
32 Part 751	Personnel Claims	Published as final rule	Revision appeared in the Federal Register on June 13, 1978. Regulation dropped from agenda.	

Status of Regulation Previously Under Development (Agenda May 30, 1979)

32 Part 724	Naval Discharge Review Board Manual.	To be published as final rule	Revision appeared in the Federal Register on November 21, 1979. Regulation dropped from agenda.	

Status of Regulations Previously Under Development (Agenda November 30, 1979)

32 Part 701.1	Availability to the Public of Department of the Navy Records.	To be published as a proposed rule.	Revision will be completed by 30 July 1980	Mr. Donald Carr, OPNAV, Tel: 697-1459.
32 Part 701.100	Personal Privacy and Rights of Individuals Regarding Their Personal Records.	To be published as a proposed rule.	Revision will be completed by 30 July 1980	Ms. Gwen Rhoads, OPNAV, Tel: 694-2004

Part II.—Regulations Under Development

The Department of the Navy has no regulations under development that meet the criteria of Executive Order 12044 or the DOD plan.

Part III.—Regulations Requiring Regulatory Analysis

The Department of the Navy has no regulations previously reviewed or under development during this period requiring analysis.

*No public comments received.

Department of the Air Force

Semiannual Agenda; 1 December 1979–30 May 1980

ACTION: Publication of the Department of the Air Force fourth semiannual agenda of significant regulations as required under Executive Order 12044 and implemented under the DOD plan for Improving Government Regulations.

SUMMARY: The fourth semiannual agenda lists regulations currently under revision or development within the Department of the Air Force. The agenda informs the public of the actions taken on those regulations previously listed and the reform currently underway within the Department. The regulations are non-significant in nature and do not impact upon the public as defined under the Executive Order criteria, but gives the public an opportunity to comment on those regulations of interest to them. In keeping with the goals and objectives of the Executive Order and the DOD plan for Improving Government Regulations, the Department requires all regulations be reviewed annually for their essentiality, currency and accuracy, and to insure they are written in clear and concise language. Air Force Regulation 5–1 gives the policies, procedures, and standards that govern management of regulations throughout the Air Force. The Department is striving to keep current those regulations presently in the Code of Federal Regulations (CFR) and to delete those that are not applicable to the general public. Five regulations have been deleted from the CFR since the 30 November 1979 agenda was published. A total of 27 have been deleted since implementation of the Executive Order. The regulations currently under review or development do not require a regulatory analysis since they do not have a major economic effect on the general economy. Although not a regulatory agency, the goals and objectives of the Executive Order and the DOD plan for Improving Government Regulations are being actively pursued throughout the Department of the Air Force.

CONTACT: Where a contact person is indicated, contact that individual. For other information concerning the agenda, contact Mrs. Carol M. Rose, telephone (202) 697–1861 or write, Department of the Air Force, AS/DASJR, Pentagon, Washington, D.C. 20330.

Department of the Air Force—Semiannual Agenda

[December 1, 1979—May 30, 1980]

Part I—Status of Regulations Previously Reviewed

CFR No.	Title	Final status
32 CFR 806	Air Force Freedom of Information Act Program	Publication of this regulation will depend on when DOD Directive 5400.7, which the Air Force must supplement, is published.
32 CFR 813	Schedule of Fees for Copying and Searching Records and Other Documentary Material.	Published in the Federal Register as final rule 12 December 1979 (44FR71827).
32 CFR 865	Personnel Review Boards	Publication of this regulation will depend on when DOD Directive, currently under revision, is published.
32 CFR 953	Violations of Public Trust in Contract, Procurement, and Other Matters.	Published as a proposed rule in the Federal Register 1 August 1979 (44 FR 45193), and as a final rule on 7 April 1980 (45FR23423).
32 CFR 989	Environmental Impact Analysis Process	Published as a proposed rule in the Federal Register 26 July 1979 (44 FR44119). Estimated date for publication as final rule in the FR is June 1980.
32 CFR 880 (Subpart A)	Medical, Dental and Veterinary Care from Civilian Sources.	Estimated date for publication as final rule in the Federal Register is June 1980.
32 CFR 954	Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense.	Presently in the coordination process.
32 CFR 842	Claims Manual	Revision of this regulation in draft status.
32 CFR (Part No. has not been assigned)	Real Property Management, Acquisition of Real Property.	First manuscript completed.
32 CFR (Part No. has not been assigned)	Air Force Energy Conservation and Management	Final manuscript completed. Estimated date for publication in the FR as final rule is July 1980.
32 CFR (Part No. has not been assigned)	Submitting Material for Publication in the Federal Register.	Due to limited applicability to the general public, this regulation will not be published in the Federal Register.

Department of the Air Force—Semiannual Agenda

[December 1, 1979—May 30, 1980]

Part II—Regulations Under Development or Review

CFR No.	Title	Purpose	Legal basis	Regulatory analysis Yes/No	Contact person
32 CFR 803	Disposition of Personal Property	Explains the procedures of disposition of the personal property of certain deceased and missing Air Force military and civilian personnel when that property is under Air Force jurisdiction.	10 U.S.C. 8012	No	Mr. Beauchemin, AFMPC/MPCCM, Randolph AFB, TX, (512) 652–6457.
32 CFR 827a	Release of Information on Accidents.	Gives policy and instructions for quick release to the news media information about accidents and incidents involving Air Force aircraft missiles, vehicles, munitions, and toxic materials.	Sec 8012, 70A Stat. 488; 10 U.S.C. 8012.	No	Major Booth SAF/OI, 697–4100.
32 CFR 837	Support of Nongovernment Groups.	States Air Force policy on supporting nongovernment groups engaged in information activities.	Sec 8012, 70A Stat. 488; 10 U.S.C. 8012.	No	Major Booth, SAF/OI 697–4100.

Department of the Air Force—Semiannual Agenda—Continued

[December 1, 1979—May 30, 1980]

Part II—Regulations Under Development or Review

CFR No.	Title	Purpose	Legal basis	Regulatory analysis Yes/No	Contact person
32 CFR 822	Information Audiovisual (AV) Activities.	Tells how to request AV information coverage of an event or production and how AV material produced by an agency other than the Air Force may be adopted for official Air Force use.	Sec 8012, 70A Stat. 488; 10 U.S.C. 8012.	No	Major Booth, SAF/OI, 697-4100.
32 CFR 892	Part-Time Career Employment Program.	Establishes a continuing program to provide permanent part-time employment opportunities within the Department of the Air Force.	5 U.S.C. 3401	No	Mr. Giarrusso, 694-2630.

[FR Doc. 80-16550 Filed 5-29-80; 8:45 am]

BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1503-7; Docket No. OMSAPC-79-1]

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures; Evaporative Emission Regulation and Test Procedure for Gasoline-Fueled Heavy-Duty Vehicles; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: This document announces the time and place for a public hearing on the EPA Notice of Proposed Rulemaking (NPRM) for control of evaporative emissions from gasoline-fueled heavy-duty vehicles published on April 30, 1980 (45 FR 28922).

DATES: The hearing will be held on June 25, 1980 and will commence at 9:30 AM EDT.

ADDRESS: Location: The hearing will be held at EPA's Motor Vehicle Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Timothy D. Mott. Emission Control Technology Division, Mobile Source Air Pollution Control, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105 Telephone: (313) 668-4462.

SUPPLEMENTARY INFORMATION: The proposed evapotative emission standard for gasoline-fueled heavy-duty vehicles beginning with the 1983 model year is 3.0 grams/test, as tested by the proposed EPA evaporative emission test procedure for gasoline-fueled heavy-duty vehicles (Subpart M of the NPRM). Section 202(a)(1), as amended, 42 U.S.C. 7521(a)(1), provides that the Administrator shall prescribe standards for motor vehicle emissions if such emissions cause or contribute to air pollution which endangers the public health or welfare. The Administrator can require testing of new motor vehicles to determine compliance with applicable standards under section 206, 42 U.S.C. 7525. Section 202(b)(1)(C), 42 U.S.C. 7521(b)(1)(C), requires the Administrator to promulgate a test procedure for measuring "evaporative emissions of hydrocarbons" from heavy-duty vehicles. The general power to promulgate regulations is granted in section 301(a), 42 U.S.C. 7601(a).

Section 307(d), 42 U.S.C. 7607(d) requires the Administrator to give interested parties an opportunity for the oral presentation of data, views, or arguments relating to the April 30, 1980 proposal. Notice of a public hearing to provide this opportunity is hereby given.

The NPRM tentatively scheduled the public hearing for a date at least 30 days after publication of the NPRM. After EPA informed the industry that the Agency was considering June 4, 1980 as the date of the hearing, the Motor Vehicle Manufacturers Association, Ford and General Motors requested a postponement (see Public Docket OMSAPC 79-1). These parties expressed a need for additional time before the hearing to allow them to develop new data pertinent to the hearing. They believe this data would be necessary for them to participate adequately in the hearing. Based on these comments, EPA believes a postponement of the hearing date will be beneficial to the purpose of the hearing. Therefore, EPA has allowed an extra three weeks for data collection.

Participation in the Public Hearing

Any person desiring to make a statement at the hearing or to submit material for inclusion in the record of the hearing should provide written notice of such intention, together with at least one copy of the proposed statement or material for inclusion in the record. All such documents should be submitted to EPA at the address above no later than 48 hours before the day of hearing. EPA requests, but does not require, that at least fifty copies accompany any document which cannot be submitted prior to the start of the hearing.

Participants are advised to adhere to these guidelines if possible. Documents submitted late may not receive full staff consideration prior to the hearing. Further, participants who submit documents on the scheduled day of appearance, without the requested fifty copies, may be rescheduled for a later time in the hearing, if duplication of the documents cannot be completed by EPA prior to the scheduled time of appearance.

The record of the hearing will be left open for 30 days following the close of the hearing to allow submission of rebuttal and supplementary information. Information postmarked no later than July 28, 1980, will be entered into the record of the hearing.

Charles L. Gray, Jr., Director, Emission Control Technology Division, is hereby designated as the Presiding Officer for the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally.

Technical rules of evidence will not apply.

Dated: May 27, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 80-16503 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[OPP-300021; FRL 1503-2]

Certain Inert Ingredients in Pesticide Formulations; Proposed Exemptions From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that certain additional inert (or occasionally active) ingredients in pesticide formulations be exempted from tolerance requirements. The proposal was submitted by various firms. This amendment would permit the use of the exempted inerts in registered pesticide products.

DATE: Comments must be received on or before June 30, 1980.

ADDRESS: Address comments to: Mr. John Shaughnessy, Process Coordination Branch (TS-767), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460 (202-426-9425).

FOR FURTHER INFORMATION CONTACT: Mr. John Shaughnessy at the above address.

SUPPLEMENTARY INFORMATION: At the request of several interested persons, the Administrator is proposing to amend 40 CFR 180.1001 by exempting certain additional pesticide chemicals which are inert (or occasionally active) ingredients in pesticide formulations from tolerance requirements.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to the following types of ingredients (except when they have pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers, and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and the toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Inert ingredient	Firm	Bases for approval
Charcoal, activated	ICI Americas, Inc., Wilmington, DE 19897, and Zoecon Corp., 975 California Ave., Palo Alto, CA 94304.	The Use of activated charcoal meeting food chemical specifications would be of no adverse toxicological significance.
Corn dextrin	Grain Processing Corp., 1600 Oregon Street Muscatine, IA 52761.	Dextrin is a food with no toxicological significance. Corn has previously been cleared under 40 CFR 180.1001.
Styrene-maleic anhydride copolymer.	Arco Chemical Co., 1500 Market Street, Philadelphia, PA 19101.	Styrene component previously cleared under 21 CFR 172.515 as a synthetic flavoring agent. Long-term toxicity studies for maleic anhydride component, which is cleared under 40 CFR 180.1001(d). The compound is essentially innocuous.

Based on the above information, available information on the chemistry of these substances, and a review of their use, it has been found that, when used in accordance with good agricultural practice, these substances are useful and do not pose a hazard to the environment. It is concluded, therefore, that the proposed amendments to 40 CFR 180.1001 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request within 30 days after publication of this proposal in the **Federal Register** that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the document control number, "OPP-300021". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Toxicology Branch, Crystal Mall, Building 2, Room 816, from 8:30 a.m. to 4 p.m. Monday through Friday.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)).

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

It is proposed that Part 180, Subpart D, § 180.1001 be amended by alphabetically inserting the items "Charcoal, activated * * *" and "Corn dextrin * * *" in paragraph (c) and by revising the item "Styrene-maleic anhydride copolymer * * *" under limitations in paragraph (d), as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *.

Inert ingredients	Limits	Uses
* * *	*	* * *
Charcoal, activated	Meet specifications in the Food Chemical Codex.	Carrier.
* * *	*	* * *
Corn dextrin		Solid diluent, carrier.
* * *	*	* * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Styrene-maleic anhydride copolymer	For preemergence use and use prior to formation of edible parts of plant if limited to 3% of the formulation.	Suspending or dispensing agent.
* * *	*	* * *

[FR Doc. 80-16492 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[OPP-300023; FRL 1503-1]

Aluminum Hydroxide; Proposed Exemption From Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that the inert (or occasionally active) ingredient aluminum hydroxide in pesticide formulations be exempted from tolerance requirements. The proposal was submitted by Ralph Fogleman. This amendment would permit the registration of aluminum hydroxide in pesticide formulations.

DATE: Comments must be received on or before June 30, 1980.

ADDRESS: Address comments to: Mr. John Shaughnessy, Process Coordination Branch (TS-767), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460 (202-426-9425).

FOR FURTHER INFORMATION CONTACT: Mr. John Shaughnessy at the above address.

SUPPLEMENTARY INFORMATION: At the request of several interested persons, the Administrator is proposing to amend 40 CFR 180.1001 by exempting alumunum hydroxide, which is an inert (or occasionally active) ingredient, in pesticide formulations from tolerance requirements.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to the following types of ingredients (except when they have pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and the toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Inert ingredient	Firm	Bases for approval
Aluminum hydroxide	Ralph W. Fogleman, 41 Wertsville Road, Ringoes, NJ 08551.	Widely used in medicine as a nonsystemic antacid, adsorbant, and demulcent in the gastrointestinal tract and as a topical astringent and dusting powder. Aluminum hydroxide gels are used as carrier or substrate for vaccines. Alumina hydrates (crystalline forms of aluminum hydroxide) are generally recognized as safe (GRAS) by the Food and Drug Administration.

Based on the above information, available information on the chemistry of this substance, and a review of its use, it has been found that, when used in accordance with good agricultural practice, aluminum hydroxide is useful and does not pose a hazard to the environment. It is concluded, therefore, that the proposed amendment to 40 CFR 180.1001 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request within 30 days after publication of this proposal in the Federal Register that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the document control number, "OPP-300023". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767), Room E-229, EPA 401 M St., SW, Washington, DC 20460 from 8:30 a.m. to 4 p.m., Monday through Friday.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)).)

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

It is proposed that Part 180, Subpart D, § 180.1001 be amended by alphabetically inserting "Aluminum hydroxide * * *" in the table in paragraph (c) to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Aluminum hydroxide		Diluent, carrier.
* * * * * * *		

[FR Doc. 80-16491 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 101 and 105

Agenda of Significant Regulatory Activity

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the significant regulatory actions that GSA plans for the 6-month period from June 1980 to November 1980. This agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978). GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the early stages of the rulemaking process.

FOR FURTHER INFORMATION CONTACT: Stanley W. Bowers, Acting Director, Information Management Division (202–566–0857).

SUPPLEMENTARY INFORMATION: On December 4, 1978, GSA published its final report on implementation plans for Executive Order 12044 at 43 FR 56728. As explained in the report, GSA will publish a semiannual agenda of significant regulatory activity during May and November of each year. The agenda lists, for each of GSA's services and staff officers, new significant regulations that are being considered, changes that are planned to existing significant regulations, significant regulations that will be reviewed during the upcoming 6-month period, and the status of items from the previous agenda.

Dated: May 28, 1980.

R. G. Freeman III,

Administrator of General Services.

National Archives and Records Service

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

1. Public Use of Archives and FRC Records (41 CFR 105–61.1)—in which only § 105–61.104, Access to National Security Information, has been defined as significant—was revised and published as a final rule at 44 FR 18498 (Mar. 28, 1979). This regulation is currently undergoing further revision.

a. Need for change: To resolve conflicts on procedures for implementing Executive Order 12065, National Security Information, for handling Freedom of Information Act requests under 5 U.S.C. 552.

b. Legal basis: Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. Contact point: Adrienne C. Thomas, Director, Planning and Analysis Division (NAA) (202–523–3214).

d. Regulatory analysis: Will not be prepared.

2. Public Use of Donated Historical Materials (41 CFR 105–61.2)—GSA is considering the addition of a provision under which falsifications of information by researchers can provide grounds for denying access to records.

a. Need for change: To provide greater security for records.

b. Legal basis: Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. Contact point: Richard A. Jacobs, Deputy Assistant Archivist, Office of Presidential Libraries (NL) (202–523–3073).

d. Regulatory analysis: Will not be prepared.

C. Regulations Scheduled for Review

No significant regulations are presently being reviewed.

D. Status of Agenda Items Published on November 30, 1979 (44 FR 68869)

No final changes have been made to the items published on the last agenda. These items are listed as B1 and B2, above.

Office of Human Resources and Organization

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

No significant regulations are scheduled to be changed.

C. Regulations Scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Published on November 30, 1979 (44 FR 68869)

1. New regulations. Procedures for implementing section 504 of the Rehabilitation Act of 1973. These regulations are intended to ensure nondiscrimination against handicapped persons in programs and activities that receive financial assistance from GSA.

a. A proposed rule was published on October 30, 1979 (44 FR 62298). GSA is evaluating the comments received on the proposal.

b. Contact point: Jacquie C. Perry, Office of the Civil Rights (202–566–1790).

Transportation and Public Utilities Service

A. New Regulations

1. Travel between city-pairs. These regulations will prescribe policies and procedures applicable to civilian Federal agencies when scheduled airline passenger transportation services are needed for official Government travel between city-pairs.

a. Need for regulations: To reduce costs to the Government.

b. Legal basis: Section 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

c. Contact point: John Millington, Federal Travel Management Division (202–275–6144).

d. Regulatory analysis: Will not be prepared.

B. Changes to Existing Regulations

1. Federal Travel Regulations (41 CFR Part 101–7)—to revise high rate geographical areas, per diem, and reimbursement for the use of privately owned conveyances.

a. Need for change: Will be based on legislation now pending in the Congress to increase the statutory allowances.

b. Legal basis: Executive Order 11609 (July 22, 1971) and the Travel Expense Amendments Act of 1975 (Public Law 94–22, May 19, 1975).

c. Contact point: Audrey Rish, Federal Travel Management Division (202–275–6144).

d. Regulatory analysis: Will not be prepared.

C. Regulations Scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Published on November 30, 1979 (44 FR 62298)

1. Changes to existing regulations.

a. Federal Travel Regulations (41 CFR Part 101–7)—to revise per diem and actual subsistence provisions (parts 7 and 8 of chapter 1).

(1) GSA is in the process of developing the necessary changes.

(2) Contact point: Phyllis Hickman, Federal Travel Management Division (202–275–6144).

b. Federal Travel Regulations (41 CFR Part 101–7)—to revise high rate geographical areas and reimbursement for the use of privately owned conveyances.

(1) A final rule was published on April 23, 1980 (45 FR 27436).

(2) Contact point: Audrey Rish, Federal Travel Management Division (202–275–6144).

Federal Property Resources Service

A. New Regulations

1. Utilization, Donation, Sale, Abandonment, or Destruction of Hazardous materials (41 CFR Chapter 101).

a. Need for regulations: The number of materials identified as hazardous is rapidly increasing, and their disposition is a sensitive matter. A comprehensive regulation is necessary to ensure proper identification and disposal of hazardous materials.

b. Legal basis: Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. Contact point: William Albee, Regional Operations Branch (202–557–0716).

d. Regulatory analysis: Will not be prepared.

B. Changes to Existing Regulations

1. Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority (41 CFR Part 101–46)—revise and clarify.

a. Need for change: The results of a review by GSA employees of proposed Federal Acquisition Regulation (FAR) Subpart 17.3, Exchange/Sale of Nonexcess Personal Property, indicate that 41 CFR Part 101–46, as currently written, does not provide a viable basis for development of the FAR subpart.

b. Legal basis: Section 201(c) of the Federal Property and Administrative Services Act of 1949, 68 Stat. 384, as amended (40 U.S.C. 481(c)).

c. Contact point: Dona Gamble, Sales Division (202–557–0681).

d. Regulatory analysis: Will not be prepared.

C. Regulations Scheduled for Review

No significant regulations are scheduled are scheduled for review.

D. Status of Agenda Items Previously Published

No significant regulatory actions are pending.

Office of General Counsel

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

1. Public Availability of Agency Records and Informational Materials (41 CFR Part 105–60); GSA intends to revise its regulations covering public requests for GSA materials under the Freedom of Information Act (FOIA).

a. Need for change: 41 CFR Part 105–60 covers both procedures for the public to follow when requesting GSA information and rules for GSA employees to follow when they receive these requests from the public. GSA is considering revising these regulations to separate the rules that apply to the public from those that apply only to GSA employees. In the process, the rules for public access to information will be simplified and clarified.

b. Legal basis: Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90–23, as amended by Pub. L. 93–502).

c. Contact point: Rebecca Thompson, Administration and Records Division (202–566–1460).

d. Regulatory analysis: Will not be prepared.

C. Regulations scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Previously Published

No items were listed on the previous agenda.

Automated Data and Telecommunications Service

No significant regulatory actions are planned.

Federal Supply Service

No significant regulatory actions are planned.

Office of Acquisition Policy

No significant regulatory actions are planned.

Office of Plans, Programs, and Financial Management

No significant regulatory actions are planned.

Public Buildings Service

No significant regulatory actions are planned.

[FR Doc. 80–16614 Filed 5–29–80; 8:45 am]
BILLING CODE 6820–34–M

41 CFR Part 105–735

GSA Standards of Conduct; Violation of Post Federal Employment Prohibitions

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend its standards of conduct regulations to provide procedures for the administrative enforcement of the restrictions on post employment activities by former GSA employees, as required by Title V of the Ethics in Government Act of 1978. The proposed procedures provide for notice to the former employee of the alleged violation of the law; an oportunity for the former employee to refute the allegations and request a hearing before an examiner appointed from GSA's Board of Contract Appeals; the right to request a final decision by the Administrator of General Services; and the impostion of sanctions or other forms of disciplinary action if appropriate.

DATE: Comments must be received no later than June 30, 1980.

ADDRESS: Written comments should be sent to the Director, GSA Office of Ethics (K), General Services Administration, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Saul Katz, Director, GSA Office of Ethics (202–566–1212).

SUPPLEMENTARY INFORMATION: The Director, Office of Government Ethics, Office of Personnel Management, has been consulted on these proposed procedures, and has found that they conform to the law and its implementing regulations. The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Accordingly, the General Services Administration proposes to amend Part 105–735 as follows:

PART 105–735—STANDARDS OF CONDUCT

1. The table of contents of Part 105–735 is amended to add the following new entries:

Subpart 105–735.6— Violation of Post Federal Employment Prohibitions

Sec.

105–735.601 General.
105–735.602 Notification and opportunity for hearing.
105–735.603 Hearings.

105–735.604 Action by the Administrator.
105–735.605 Period of prohibition and disciplinary action.
105–735.606 [Reserved]

2. Part 105–735 is amended to add the following new subpart:

Subpart 105–735.6—Violation of post federal employment prohibitions.

§ 105–735.601 General.

(a) The Director, GSA Office of Ethics, and the Inspector General of GSA shall be promplty notified of receipt of information indicating that a former GSA employee (including a special government employee as defined in section 202, of Title 18, United States Code), has violated any of the post federal employment prohibitions contained in sections 207(a), (b), or (c) of Title 18, United States Code.

(b) If the Inspector General of GSA, after appropriate review, determines that there is reasonable cause to believe that the former employee has violated section 207(a), (b), or (c) of Title 18, United States Code, or the regulations implementing the foregoing statutory provisions that have been published by the Office of Personnel Management in the Federal Register, he shall (a) provide the Director, Office of Government Ethics and the Criminal Division, U.S. Department of Justice, and the Director, GSA Office of Ethics with the available information concerning the alleged violation, as well as copies of the pertinent agency regulations and such comments as are deemed appropriate, and (b) recommend to the Administrator, General Services, that action be taken pursuant to Part 105–735.602(a) hereunder.

(c) Any investigation or other administrative action taken by GSA in the matter shall be coordinated with the U.S. Department of Justice to avoid prejudicing criminal proceedings.

§ 105–735.602 Notification and opportunity for hearing.

(a) If the Department of Justice acquiesces, the following action shall be promptly taken. The former employee shal be notified by certified mail, return receipt requested:

(1) The Inspector General of the General Services Administration, has recommended that, based on information received, the Administrator of General Services (hereinafter the Administrator) make a finding pursuant to section 207(j) of Title 18, United States Code, that the former employee has violated certain specified post federal employment prohibitions in section 207(a), (b), or (c), and that the Administrator, if he makes such a finding, institute such administrative sanctions as he deems appropriate against the former employee.

(2) The specific violations alleged against the former employee, is sufficient detail to permit the preparation of an adequate defense.

(3) The former employee has the right to:

(i) present information to the Administrator in opposition to the recommendation in person, in writing, and if desired, through a designated representative, or

(ii) request a hearing before a member of GSA's Board of Contract Appeals (conducted by him or her as an Examiner in accordance with the Board's published rules) by addressing such request to: Board of Contract Appeals, General Services Administration, Washington, DC 20405.

(4) A statement that the hearing rights are as set forth in § 105–735.603 below.

(5) If a hearing is held, no individual who has participated in the decision to initiate the proceedings may serve as an Examiner at the hearing.

(6) The period of time to be afforded for decision as to presentation of information for consideration, or for requesting a hearing.

(b) A copy of these regulations will be provided with the foregoing notification.

(c) The period of time to be afforded for notifying GSA of a decision to present information for consideration or for requesting a hearing shall be limited to 20 days from receipt of the notification described in paragraph (a) of this section, unless the former employee requests and is granted additional time before the expiration of the 20-day period.

§ 105–735.603 Hearings.

(a) If a hearing is requested and granted in accordance with § 105–735.602(c) above, the hearing shall be conducted at a reasonable time, date, and place.

(b) In setting a hearing date, the examiner shall give due regard for the former Government employee's need for:

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(c) A hearing shall include, at a minimum, the following rights:

(1) To represent oneself or to be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To a transcript or recording of the proceedings, on request.

(d) In the hearing, the agency has the burden of proof and must establish substantial evidence of a violation.

(e) The examiner shall make a written determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(f) Within 10 days of the date of receipt of an initial decision either party may appeal the decision to the Administrator, who shall base his decision on the appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the Administrator modifies or reverses the initial decision, he shall specify such findings of fact and conclusions of law as are different from those of the examiner.

§ 105–735.604 Action by the Administrator.

(a) When the former employee has presented information, pursuant to § 105–735.602(a)(3)(i) above, or has appealed from the decision of an examiner at a hearing as provided in § 105–735.604(f) above, the Administrator shall consider the information presented to him by the Inspector General of GSA and by or on behalf of the former employee, or (in the case of a hearing) the record or portions of the record of the proceedings as described in § 105–735.603(f) above, and shall take such action thereon as he deems appropriate after consultation with the Director, Office of Ethics.

(b) If the Administrator finds, after the requirements for notice and opportunity to present information or for a hearing and appeal as set forth above have been satisfied, and the former employee has violated section 207(a), (b), or (c) of Title 18, United States Code, the Administrator may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to GSA on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 105–735.605 Period of prohibition and disciplinary action.

(a) Any period of prohibited appearance or communications ordered by the Administrator shall be for a reasonable specified period of time, commensurate with the seriousness of the conduct on which the prohibition is based, and may not exceed five years.

(b) Appropriate disciplinary action may include a private letter of:

(1) Warning,

(2) Admonition, or

(3) Reprimand.

(c) If disciplinary action is taken, the former employee shall be promptly notified that such action is subject to review in an appropriate United States District Court.

§ 105-735.606 [Reserved]

(Sec. 501(a), 92 Stat. 1867; 18 U.S.C. 207(j); 5 CFR § 737.27)

Dated: May 9, 1980.

Saul Katz,

Director, Office of Ethics, General Services Admninistration.

[FR Doc. 80-16499 Filed 5-29-80; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 408, 409, and 440

Medicare Program; Hospital Insurance Entitlement and Benefits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would clarify, reorganize, and renumber existing regulations for hospital insurance (Part A of Medicare) that deal with eligibility and entitlement, scope of benefits and specific limitations, and the deductible and coinsurance amounts for which beneficiaries are responsible. It would also revise the regulations to implement a legislative amendment that affects entitlement of disabled individuals and to make four minor changes in policy applicable to persons who have end-stage renal disease.

This revision is part of Operation Common Sense and is intended to make our regulations easier to use.

DATES: In order to ensure consideration, comments should be received by July 29, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Md. 21235.

If you prefer, you man deliver comments to:

Room 309G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. or

Room 789, East High Rise, 6401 Security Boulevard, Baltimore, Maryland

When commenting, please refer to BPP-9-P. Comments will be available for public inspection, beginning approximately 2 weeks from today in room 309G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (telephone 202-245-9870).

FOR FURTHER INFORMATION CONTACT: For eligibility policy—Harold Fishman, Telephone 301-594-9077. For coverage policy—Martin Horowitz, Telephone 301-594-9823

SUPPLEMENTARY INFORMATION:

Purpose and Scope of Revision

This proposal is part of our Operation Common Sense project to reorganize and revise existing regulations for clarity and simplicity and to eliminate unnecessary provisions. A notice published on April 16 (45 FR 25829) announced HCFA's plan to rewrite the Medicare regulations contained in 42 CFR Part 405 and to present them in several different parts. That notice also provided an outline of the proposed reorganization. Two of the new parts have already been established. Part 420, Program Integrity, was published on May 30, 1979 (44 FR 31138); and Part 489, Provider Agreements in Medicare, was published on April 4, 1980 (45 FR 22933).

This proposal would reorganize the content of §§ 405.101 through 405.133, 405.161, 405.180 and 405.181 and redesignate them under two new parts. Part 408 would contain policies on eligibility and entitlement. Part 409 would explain the scope of benefits, the limitations, and the deductible and coinsurance amounts for which a beneficiary is responsible. Each new part would begin with a brief explanation of the legal basis and scope of the part, and definitions of frequently used terms. The remaining sections of Part 405, Subpart A, deal with conditions and procedures for payment and will be recodified later under a new Part 411.

Except for the changes specifically noted in this preamble, the substantive provisions of this proposal are the same as those in existing regulations. Changes in organization and language are intended to clarify and explain without revising the existing policies.

A redesignation table is included to enable the reader to determine the proposed new location for the content of each section of current regulations.

Specific Changes

Disabled Widow or Widower

Section 408.12(b)(4) would implement Sec. 226(i)(4) of the Social Security Act, added by the Social Security Amendments of 1977 (P.L. 95-216). That section provides that a disabled widow or widower may be deemed entitled to monthly disability benefits retroactively for up to 10 months before filing an application for those benefits even though payment of the monthly benefits themselves may not be retroactive. The purpose of this provision is to enable the individual to count those earlier months toward the 25 months of disability entitlement required for entitlement to hospital insurance.

End-Stage Renal Disease

Four changes would be made in policies that apply to individuals with end-stage renal disease (ESRD). The first responds to comments received on final regulations published on September 28, 1978 (43 FR 44803). The other three are the result of further analysis of the impact of those regulations.

The first would provide for entitlement for a patient who begins self-dialysis training but dies before the end of the 3-month waiting period normally required for entitlement. (See § 408.13(e)(4)(iii).) The purpose of this change is to enable Medicare to pay for the part of training that was completed and for treatment furnished during that period. This would protect the facility against loss and the patient's family against medical debts.

The other three changes would:

1. Require that self-dialysis training provided by a facility specifically approved to provide such training. (See § 408.13(e)(4)(i).) This requirement would ensure that self-dialysis training meets quality and safety standards.

2. Require that anyone who seeks entitlement on the basis of ESRD must file an application. Pub. L. 95-292 added the requirement that ESRD patients must file application for Medicare. (Under the Act, such application may not be retroactive for more than 12 months.) Implementing regulations (42 CFR 405.104) were published on September 28, 1978 (43 FR 44802), to be effective October 1, 1978. The preamble to those regulations indicated that an application was not required for those who had ESRD before October 1, 1978. On further consideration, we have realized that the intent of the law was to require an application (with its attendant 12-month limitation on retroactivity) for all ESRD patients who first seek to establish entitlement to hospital insurance after the effective date of the amendment, which is self-implementing. Section 408.13(c) reflects this understanding and is consistent with the basic purpose of the ESRD program, i.e., to enable individuals to obtain currently needed care, rather than to pay (or to reimburse

patients who paid) for medical care received many years in the past. The change is also necessary to preclude potential inequity. For example, under current regulations, an individual who had ESRD in July 1974 but delayed filing until July 1980 could become entitled retroactively for 6 years. An individual who developed ESRD in November 1978 but did not file an application until July 1980 could become entitled retroactively for only 1 year, to July 1979.

3. Delete the provision that permits an application to be filed on behalf of an ESRD patient after his or her death. This provision was put into effect in October 1978, along with the requirement to file an application. We now believe, however, that we lack authority for this policy. Under the Act, an individual must be alive when the application is filed, unless a specific legal provision permits otherwise. There is no such provision. We anticipate little if any hardship as a result of this change because of the very liberal social security rules. A simple written statement of intent to claim benefits, filed by or on behalf of a live patient, can be considered an application and ensure ample time (at least 6 months) for filing the prescribed application form, even if the ESRD patient dies in the meantime. (The rules about filing applications are set forth in 20 CFR Part 404, Subpart G.)

Clarification

Clarification was particularly needed with respect to the limitations on psychiatric care and the blood deductible.

Limitations on Psychiatric Care

Sections 409.52 and 409.53 would clarify that there is a 190-day lifetime limitation on inpatient psychiatric hospital care and that benefits during the initial benefit period may be reduced if the individual was receiving inpatient psychiatric hospital care on his or her first day of entitlement and had received such care during any of the immediately preceding 150 days. They would delete similar provisions that formerly applied to inpatient care in tuberculosis hospitals but were repealed by the 1967 amendments to the Social Security Act (Pub. L. 90–248).

Blood Deductible

Sections 409.60—409.64 would clarify policy on deductibles and coinsurance. Rules dealing with the blood deductible would:

- Specify that it applies to the first three pints of whole blood or units of packed red cells and that it does not apply to other blood components or to the costs of processing, storing, and administering blood;
- Set forth criteria for satisfying the blood deductible by a replacement offer.

A replacement offer would be acceptable if (1) the replacement blood would not endanger the health of a recipient and (2) the prospective donor's health would not be endangered by making a blood donation. The facility could not charge the beneficiary for any of the first three pints of blood or units of packed red cells for which it received a replacement offer that meets those criteria, even if it or its blood supplier rejected the offer.

Conforming Amendments

Section 440.40 of the Medicaid regulations, which deals with skilled nursing facility services for individuals under 21, would be amended to conform cross-references to the Medicare regulations.

Redesignation Table.—Part 405, Subpart A

Old Section	*New Section*
405.101(a)	409.3
405.101(b)	deleted
405.102	408.10
405.103	408.11
405.104	408.13
405.105	408.12
405.106(a) & (b)	408.20
405.106(c) & (c)(1)	408.21
405.106(c)(2)	408.23
405.106(c)(3)—Deleted as unnecessary. § 405.210 clearly applies only to individuals already entitled to Hospital Insurance. Reference to § 405.106 must be deleted from § 405.205.	
405.106(d)	408.22
405.110(a)...Deleted as inaccurate and unnecessary.	
405.110(a)(1) & (2)	409.51(a)(1)
405.110(b)	409.3
405.110(c)(1)	Deleted as outdated.
405.110(c)(2)	Deleted as redundant.
405.110(d)	409.52(a)
405.111.....Uncoded introduction...Deleted as unnecessary.	
405.111(a)	409.53(a)
405.111(b)	Deleted as outdated.
405.111(c) & (d)	409.53(a)
405.112	409.54
405.113	409.60
405.114	409.62
405.115	409.61
405.116	409.10
405.116(a)	409.10
405.116(b)	409.11
405.116(c)	409.12
405.116(d)(1)	409.13
405.116(d)(2)	409.14
405.116(e)	409.16
405.116(f)	409.15
405.116(g) and (h)	409.18
405.117	409.65
405.118(a)—language through "paragraph (c) of this section"	409.55(b)
405.118(a) remaining language—	409.55(a)
405.118(b)	409.55(c)
405.118(c)	409.55(d)
405.118(d)	409.55(e)
405.119	409.56
405.120(a)(1)—words "he was an inpatient for not less than 3 consecutive days"	409.30(a)
405.120(a)(1)—all other words...Deleted because mostly cross references or duplicative of content of § 409.30.	
405.120(a)(2)—First 2 sentences—Deleted at outdated.	
405.120(a)(2)—Last sentence—Deleted as unnecessary. The cited § 405.152 takes care of the matter.	
405.120(b)(1)—Deleted because 100-day limitation is explained in § 409.51(b).	
405.120(b)(2)	409.32
405.120(b)(3)—Deleted because the specifics of the cited sections are incorporated in § 409.31	
405.120(c)	409.30(a)
405.120(d)(2)—Words through the 3rd and final October 30, 1972"—Deleted as unnecessary. Since (d)(1), which dealt with admissions *before* 10/30/72, was deleted, there is only one set of requirements.	
405.120(d)(2)—remaining words through (d)(2)—409.30(c)	
405.120(d)(3)—Words through the parenthetical statement—Deleted as unnecessary (a calendar day is a calendar day).	
405.120(d)(3).....Remaining words	409.32
405.120(e)—Deductible and coinsurance amount—§§ 409.60 and 409.61	
405.122	409.54
405.123	409.62
405.124	409.64
405.125	409.20
405.126.....Uncoded introduction...Deleted as unnecessary.	
405.126(a) & (b)	409.31
405.127(a)	409.31
405.127(b)	409.32
405.127(c) & (d)	409.33
405.128	409.34
405.128a	409.35
405.130	409.44
405.131—Uncoded introduction (and specifics taken from 405.236)—409.40(a)	
405.131(a)–(f)	409.40(b)
405.133(a)	409.48(a) & (c)
405.133(b)	409.48(b) & (f)
405.133(c)	409.48(d)
405.133(d)	409.48(e)
405.161	409.58
405.180	408.30
405.181	408.31

The remaining sections of Subpart A deal with other matters and will be recodified later.

42 CFR Chapter IV is amended as set forth below:

1. In Part 405, Subpart A, the subpart title is revised, a new § 405.100 is added, §§ 405.101 through 405.133, 405.161, 405.180 and 405.181 are vacated and the table of contents is amended accordingly.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart A—Payment of Hospital Insurance Benefits

Sec.
405.100 Scope.
405.101–405.106 [Vacated. See Part 408 of this chapter.]
405.110–405.133 [Vacated. See Part 409 of this chapter.]
* * * * *
405.161 [Vacated. See Part 409 of this chapter.]
* * * * *
405.180–405–181 [Vacated. See Part 408 of this chapter.]
* * * * *

2. A new § 405.100 is added to read as follows:

§ 405.100 Scope.

This subpart deals only with conditions and procedures for payment of hospital insurance benefits (Part A of Medicare). Provisions dealing with eligibility and entitlement are set forth in Part 409 of this chapter. Provisions dealing with the scope of the benefits are set forth in Part 408 of this chapter.

3. The content of §§ 405.101–405.133, 405.161, 405.180, and 405.181 is revised and redesignated under new Parts 408 and 409.

4. A new Part 408 is added to read as follows:

PART 408—ELIGIBILITY AND ENTITLEMENT

Subpart A—Hospital Insurance

General Provisions

Sec.
408.1 Statutory basis.
408.2 Scope.
408.3 Definitions.
408.5 Bases of eligibility and entitlement.
408.6 Application or enrollment.

Hospital Insurance Without Premiums

408.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.
408.11 Individual age 65 or over who is not entitled to social security or railroad retirement benefits.
408.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.
408.13 Individual who has end-stage renal disease.

Premium Hospital Insurance

408.20 Basic requirements.
408.21 Enrollment and entitlement.
408.22 Monthly premiums.
408.23 Termination of entitlement.
408.25 Prejudice to enrollment rights because of Federal Government error.

Special Circumstances That Affect Entitlement

408.30 Nonpayment of benefits on behalf of certain aliens.
408.31 Conviction of subversive activities.

Authority: Secs. 202(t) and (u), 226, 226A, 1102, and 1818 of the Social Security Act (42 U.S.C. 402(t) and (u), 426, 426A, 1302 and 1395 i–2; Section 103 of Pub. L. 89–97 (42 U.S.C. 426a)).

Subpart A—Hospital Insurance

General Provisions

§ 408.1 Statutory basis.

Sections 226, 226A, and 1818 of the Social Security Act and section 103 of Pub. L. 89–97 establish the conditions for entitlement to hospital insurance benefits. Sections 202 (t) and (u) of the Act specify limitations that apply to certain aliens and to persons convicted of certain offenses.

§ 408.2 Scope.

This subpart specifies the conditions of eligibility for hospital insurance and sets forth certain specific conditions that affect entitlement to benefits. Hospital insurance is authorized under Part A of Title XVIII and is also referred to as Medicare Part A. It includes inpatient hospital care, posthospital skilled nursing facility care, and posthospital home health services.

§ 408.3 Definitions.

"Benefits," "Hospital insurance benefits" or *"Part A benefits"* means payments on behalf of, and in rare circumstances directly to, an entitled individual for services that are covered under Part A of Title XVIII. *"Entitled"* means that an individual meets all the requirements for Part A benefits.

"First month of eligibility" means the first month in which an individual meets all the requirements for entitlement to hospital insurance except application or enrollment if that is required.

"First month of entitlement" means the first month for which the individual is entitled to Part A benefits.

"Insured individual" means an individual who has the number of quarters of coverage required for monthly social security benefits.

"Medicare Part A" means the program authorized under Part A of title XVIII of the Act.

"Quarter of coverage" means a calendar quarter that is counted toward the number of covered quarters required to make the individual eligible for monthly social security benefits. A quarter is counted if during that quarter (or that calendar year) the individual earned a required minimum amount of money. (For details, see 20 CFR Part 404, Subpart B.)

"Railroad retirement benefits" means monthly benefits payable to individuals under the Railroad Retirement Act of 1974 (45 U.S.C. beginning at section 231).

"Social security benefits" means monthly cash benefits payable under section 202 or 223 of the Social Security Act.

§ 408.5 Bases of eligibility and entitlement.

(a) *Hospital insurance without premiums.* Hospital insurance is available to most individuals without payment of a premium if they:

(1) Are age 65 or over; or

(2) Have received social security or railroad retirement disability benefits for 25 consecutive months; or

(3) Have end-stage renal disease. Sections 408.10 through 408.13 explain the requirements such individuals must meet to obtain hospital insurance without premiums.

(b) *Premium hospital insurance.* Many individuals who are age 65 or over, but do not meet the requirements set forth in §§ 408.10 through 408.13, may obtain the benefits by paying a premium. Section 408.20 of this part explains the requirements individuals must meet to obtain premium hospital insurance.

§ 408.6 Application or enrollment.

(a) *Application for monthly cash benefits.*

In most cases, eligibility for Medicare Part A is a result of entitlement to monthly social security or railroad retirement cash benefits. Accordingly—

(1) An individual who is already entitled to monthly cash benefits when he or she meets the eligibility requirements for Medicare need not file a separate application for Medicare Part A; but

(2) An individual who has reached age 65 without applying for monthly cash benefits must apply for those benefits in order to become entitled to Part A benefits.

(b) *Application or enrollment for hospital insurance.*

(1) An individual must file an application for hospital insurance if he or she seeks entitlement on the basis of—

(i) The transitional provisions set forth in § 408.11;

(ii) Deemed entitlement to disabled widow's or widower's benefit under certain circumstances as provided in § 408.12; or

(iii) A diagnosis of end-stage renal disease, as specified in § 408.13.

(2) An individual who must pay a monthly premium for hospital insurance

must enroll in accordance with the procedures set forth in § 408.21.

Hospital Insurance Without Premiums

§ 408.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.

(a) *Requirements.*

An individual is entitled to hospital insurance benefits under Section 226 of the Act if he or she has attained age 65 and is:

(1) Entitled to monthly social security benefits under section 202 of the Social Security Act; or

(2) A qualified railroad retirement beneficiary who has been certified as such to the Social Security Administration by the Railroad Retirement Board in accordance with section 7(d) of the Railroad Retirement Act of 1974.

(d) *Beginning and end of entitlement.*

(1) Entitlement begins with the first day of the first month in which the individual meets the requirements of paragraph (a) of this section.

(2) Entitlement continues until the individual dies or no longer meets the requirements of paragraph (a) of this section. Although an individual is not entitled to social security or railroad retirement benefits for the month in which he or she dies, he or she is entitled to hospital insurance for that month if he or she would have been entitled to monthly benefits if he or she had not died.

§ 408.11 Individual age 65 or over who is not eligible for social security or railroad retirement benefits.

(a) *Basis.* Section 103 of the law that established the Medicare program in 1965 (Pub. L. 89–97) provided for eligibility for certain individuals who were age 65 or would soon attain age 65 but would not be able to qualify for social security or railroad retirement benefits.

(b) *Requirements.* Unless he or she is excluded under paragraph (c) of this section, an individual age 65 or over who does not meet the requirements of § 408.10 (and who would not meet those requirements if he or she filed an application), is entitled to Medicare Part A benefits if he or she meets the following requirements:

(1) *Age and quarters of coverage.*

(i) He or she attained age 65 before 1968; or

(ii) If he or she attained age 65 in 1968 or later, he or she must have at least 3 quarters of coverage for each year that elapsed after 1966 and before the year in which he or she attained age 65. (The quarters of coverage may have been acquired at any time, not necessarily during the elapsed years.)

(2) *Residence and citizenship.* He or she is a resident of the United States and—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has continuously resided in the United States for 5 years immediately preceding the first month in which he or she meets all other requirements for entitlement to hospital insurance.

(3) *Application.* He or she has filed an application for Medicare Part A no earlier than the 3 months before the first month of eligibility.

(c) *Bases for exclusion.* An individual who meets the requirements of paragraph (b) of this section is excluded from Medicare Part A if he or she—

(1) Has been convicted of spying, sabotage, or treason, sedition, and subversive action under chapter 37, 105, or 115 of title 18 of the United States Code;

(2) Has been convicted of conspiracy to establish a dictatorship, spying or sabotage, or assisting others wanted in connection with spying or sabotage, or under section 4 of the Internal Security Act of 1950;

(3) On February 16, 1965, was or could have been covered under the Federal Employees Health Benefits Act (FEHBA) of 1959; or

(4) In his or her first month of eligibility:

(i) Is covered by an enrollment under the FEHBA; or

(ii) Could have been covered by an enrollment under that Act if he or she (or any other person who could provide him or her with coverage) was a Federal employee at any time after February 15, 1965, and had enrolled and retained coverage under that Act.

(d) *End of exclusion.* An individual excluded under paragraph (c)(3) or (4) of this section can become entitled beginning with the first month in which he or she loses the right to FEHBA coverage solely because he or she or the other person leaves Federal employment.

(e) *Beginning and end of entitlement.*

(1) Entitlement begins—

(i) In the first month of eligibility if the application is filed no later than 12 months after the first month of eligibility;

(ii) In the 12th month before the month of application if the application is filed more than 12 months after the first month of eligibility.

(2) Entitlement continues until death or until the month before the month in which the individual becomes eligible under § 408.10.

§ 408.12 Individual under age 65, who is entitled to social security or railroad retirement disability benefits.

(a) *Basic requirements.*

An individual under age 65 is entitled to hospital insurance benefits if, for 25 consecutive months, he or she has been—

(1) Entitled or deemed entitled to social security disability benefits as an insured individual, child, widow, or widower who is "under a disability"; or

(2) A disabled qualified beneficiary certified under Section 7(d) of the Railroad Retirement Act.

(b) *Deemed entitlement to disabled widow's or widower's monthly benefits.*

(1) *Purpose.* The provisions of paragraphs (b) (2), (3), and (4) of this section are intended to enable individuals—

(i) To meet the 25-month requirement of paragraph (a) of this section; or

(ii) To retain hospital insurance entitlement when they are no longer entitled to monthly disability benefits.

(2) *Deemed entitlement for certain individuals entitled to old-age insurance benefits.*

An individual who becomes entitled to monthly old-age insurance benefits before age 65 is, by law, precluded from establishing or retaining entitlement to disabled widow's or widower's monthly benefits. However, for purposes of meeting the 25-month requirement, a widow or widower who meets all other requirements for disability benefits and is excluded solely because of entitlement to old-age insurance benefits, shall be deemed to be (or to continue to be) entitled to disability benefits. A widow or widower who is not entitled to disability benefits for the month before attaining age 60 must file two applications, one for old-age insurance benefits and one for hospital insurance.

(3) *Deemed entitlement for certain individuals entitled to mother's benefits.*

An individual entitled to mother's insurance benefits under section 202(g) of the Social Security Act cannot at the same time be entitled to disabled widow's benefits. However, if she applies for hospital insurance, she will be deemed to be entitled to disabled widow's monthly benefits in the first month (of the 12 months before application) in which she would have been entitled to those benefits if she had filed an application for them.

(4) *Deemed retroactive entitlement for certain disabled widows and widowers.*

In some cases, disabled widows or widowers cannot become entitled to monthly cash benefits before the month in which they file application. However, for purposes of meeting the 25-month

requirement, disability benefit entitlement will be deemed to have begun with the earliest month (of the 12 months before the application for cash benefits) in which the individual met all the requirements except the filing of an application.

(c) *When entitlement begins and ends.* Entitlement to hospital insurance begins with the 25th consecutive month of an individual's entitlement or deemed entitlement to disability benefits and ends with the earliest of the following:

(1) The last day of the last month in which he or she was entitled or deemed entitled to disability benefits or was qualified as a disabled railroad retirement beneficiary, if he or she was notified of the termination of entitlement before that month.

(2) the last day of the month following the month in which he or she is mailed a notice that his or her entitlement or deemed entitlement to disability benefits or his or her status as a qualified disabled railroad retirement beneficiary has ended.

(3) The last day of the month before the month he or she attains age 65. (An individual who is entitled to social security or railroad retirement benefits for the month of attainment of age 65 is automatically entitled to hospital insurance under § 408.10.)

§ 408.13 Individual who has end-stage renal disease.

(a) *Statutory basis and applicability.* This section explains the conditions of entitlement to hospital insurance benefits on the basis of end-stage renal disease, and specifies the beginning and end of the period of entitlement. It implements section 226A of the Social Security Act.

(b) *Definitions.* As used in this section:

"End-stage renal disease" (ESRD) means that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

"Child" or *"spouse"* means a child or spouse whose relationship to the parent or spouse meets the relationship requirements for entitlement to child's monthly social security benefits or to wife's, husband's, widow's, widower's, mother's or father's monthly benefits, as set forth in 20 CFR Part 404. However, the duration of relationship requirements apply only to divorced spouses. (See 20 CFR 404.331.)

"Dependent child" means a person who, on the first day he or she has end-stage renal disease, is unmarried and meets the dependency requirements for entitlement to child's social security benefits on the basis of a parent's earnings (see 20 CFR 404.350–404.365) and:

(1) Is under age 22;

(2) Is under a disability that began before age 22; or

(3) Is under age 26, is receiving at least one-half support from that parent, and has continuously received at least one-half support from that parent since the day before attaining age 22.

"One-half support" means regular contributions, in cash or in kind, that equals or exceeds one-half of the child's total support.

(c) *Requirements.* An individual is entitled to hospital insurance benefits if—

(1) He or she is medically determined to have ESRC;

(2) He or she is:

(i) Fully or currently insured under the social security program (title II of the Act) or would be fully or currently insured if his or her employment (after 1936) as defined under the Railroad Retirement Act were considered "employment" under the Social Security Act;

(ii) Entitled to monthly social security or railroad retirement benefits; or

(iii) The spouse or dependent child of a person who meets the requirements of paragraph (c)(2)(i) of (c)(2)(ii) of this section;

(3) He or she has filed an application for Medicare Part A; and

(4) He or she has satisfied the waiting period explained in paragraph (e) of this section.

(d) *Filing an application.*

(1) An individual may obtain an application form, and help in completing it, from any social security office.

(2) An application is not valid if it is filed earlier than the third month before the month in which the individual meets the conditions of paragraphs (c)(1) and (c)(2) of this section.

(3) If an individual who has ESRD is unable to file because of physical or mental condition, a relative or other person responsible for his or her affairs may file in his or her behalf. If such relative or other person is not available, the hospital or dialysis facility that furnished treatment may file the application. (The rules about filing applications are set forth in 20 CFR Part 404, Subpart G.)

(e) *Beginning of entitlement.*

(1) *Basic limitations.* Entitlement can begin no earlier than the first month in which the individual meets the conditions specified in paragraph (c) of this section, or the 12th month before the month of application, whichever is later.

(2) *Waiting period.* Entitlement begins on the first day of the third month after the month in which the individual initiates a regular course of renal dialysis, if the course is maintained throughout the waiting period, unless entitlement would begin earlier under paragraph (e) (3) or (4) of this section. This means that if dialysis began in January, entitlement would begin April 1.

(3) *Exceptions: Early kidney transplant.* If the individual receives a transplant, entitlement begins with the first day of the month in which the transplant was performed. However, if the individual is admitted as an inpatient to a hospital that is an approved renal transplantation center or renal dialysis center (see § 405.2102) for procedures preliminary to transplant surgery, entitlement begins.

(i) On the first day of the month in which he or she initially enters the hospital, if the transplant is performed in that month or in either of the next 2 months; or

(ii) On the first day of the second month before the month of kidney transplantation, if the transplant is delayed more than 2 months after the month of initial hospital stay.

For example, if an individual enters the hospital in January February, or March, and the transplant is performed in March, entitlement would begin January 1. However, if the transplant is performed in April, entitlement would begin February 1.

(4) *Exceptions: Self-dialysis training.* Entitlement begins on the first day of the month in which a regular course of renal dialysis began if:

(i) Before the end of the waiting period, the individual participates in a self-dialysis training program offered by a participating Medicare facility that is approved to provide such training;

(ii) The patient's physician has certified that it is reasonable to expect the individual will complete the training program and will self-dialyze on a regular basis; and

(iii) The regular course of dialysis is maintained throughout the time that would otherwise be the waiting period (unless it is terminated earlier because the individual dies).

(f) *End of entitlement.* Entitlement ends with:

(1) The end of the 12th month after the month in which a course of dialysis ends, unless the individual receives a kidney transplant during that period or begins another regular course of dialysis; or

(2) The end of the 36th month after the month in which the individual has received a kidney transplant, unless the individual receives another kidney

transplant or begins a regular course of dialysis during that period.

(g) *Resumption of entitlement.* An individual who initiates dialysis more than 36 months after the month of a kidney transplant or resumes dialysis more than 12 months after the month a previous course of dialysis ended must submit a new application but need not serve a waiting period. If he or she is otherwise entitled under the conditions specified in paragraph (c) of this section, and files an application, entitlement begins with the month in which dialysis is initiated or resumed, subject to the limitations of paragraph (e)(1) of this section.

Premium Hospital Insurance

§ 408.20 Basic requirements.

(a) *General provisions.* Hospital insurance benefits are available to most individuals age 65 or over who do not qualify for those benefits under sections 408.10 through 408.13 of this subpart and are willing to pay a monthly premium. This is called premium hospital insurance.

(b) *Eligibility to enroll for premium hospital insurance.*

An individual is eligible to enroll for Medicare Part A if he or sha meest the following conditions:

(1) He or she has attained age 65;

(2) He or she is a resident of the United States and is either—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has resided in the United States continuously for the 5-year period immediately preceding the month in which he or she meets all other requirements;

(3) He or she is not eligible for Part A benefits under §§ 408.10—408.13; and

(4) He or she is entitled to supplementary medical insurance (Part B of Medicare) or is eligible and has enrolled for it during an enrollment period.

§ 408.21 Enrollment and entitlement.

(a) *Basic provision.* An individual who meets the requirements of § 408.20(b) may enroll for premium hospital insurance only during his or her "initial enrollment period" or a "general enrollment period," as set forth in paragraphs (b) through (d) of this section.

(b) *Initial enrollment period.*

(1) *Duration.*

The initial enrollment period extends for 7 months, from the third month before the month the individual first meets the requirements of paragraph (b) of § 408.20 through the third month after that first month of eligibility.

(2) *Effect of month of enrollment on entitlement.*

(i) If the individual enrolls during the 3 months before the first month of eligibility, entitlement begins with the first month of eligibility.

(ii) If the individual enrolls in the first month of eligibility, entitlement begins with the following month.

(iii) If the individual enrolls during the month after the first month of eligibility, entitlement begins with the second month after the month of enrollment.

(iv) If the individual enrolls in either of the last 2 months of the enrollment period, entitlement begins with the third month after the month of enrollment.

(c) *General enrollment period.*

(1) The general enrollment period extends from January 1 to March 31 of each calendar year.

(2) General enrollment periods are for individuals who fail to enroll during their initial enrollment periods or whose previous period of entitlement has terminated.

(3) If the individual enrolls or reenrolls during a general enrollment period, his or her entitlement begins on July 1 of the calendar year.

(d) *"Deemed" initial enrollment period.*

(1) If an individual fails to enroll during the initial enrollment period because of reliance on incorrect documentary information which led him or her to believe that he or she was not yet age 65, an initial enrollment period may be established for him or her as though he or she had attained age 65 on the date indicted by the incorrect documentary information.

(2) The deemded initial enrollment period will be used to determine the individual's premium and right to enroll in a general enrollment period if such use is advantageous to the individual.

(e) *Limitation on number of enrollments.*

No individual may enroll for premium hospital insurance more than twice.

§ 408.22 Monthly premiums.

(a) *General provisions.*

(1) For months before July 1974, the monthly premium was $33.

(2) For months after June 1974, premiums have been determined for each 12-month period beginning July 1, and published in the **Federal Register** during the last quarter of the preceding calendar year.

(b) *Monthly premiums: Determination of dollar amount.*

(1) The dollar amount is determined by multiplying $33 by the ratio of next year's inpatient deductible to $76, which was the inpatient deductible determined for 1973. (Because of cost controls, the deductible actually charged for that year was $72.)

(2) The amount determined by the mathematical formula is rounded to the nearest multiple of $1. (Fifty cents is rounded to the next higher dollar.)

(c) *Monthly premiums: Effect of delayed enrollment.*

For an individual who enrolls after the close of the initial enrollment period or reenrolls, the amount of the monthly premium, as determined under paragraph (b) of this section, is increased by 10% for each full 12 months in the period that includes—

(1) The number of months elapsed between the end of the initial enrollment period and the end of the general enrollment period in which the individual first enrolled; plus

(2) The number of months elapsed between the end of the initial period of entitlement and the close of the general enrollment period in which he or she reenrolled.

(d) *Collection of monthly premiums.*

(1) HCFA will bill the enrollee on a monthly basis and include an addressed return envelope with the bill.

(2) The enrollee must pay by check or money order that is payable to "HCFA Medicare Insurance," and shows his or her name and the claim number that appears on his or her Medicare card. He or she must return the bill with the check or money order.

§ 408.23 Termination of entitlement.

Any of the following actions or events will terminate entitlement:

(a) *Filing of request for termination.*

The beneficiary may at any time give HCFA or the Social Security Administration written notice that he or she no longer wishes to participate in the premium hospital insurance program.

(1) If he or she files the notice before entitlement begins, he or she will be deemed not to have enrolled.

(2) If he or she files the notice after entitlement begins, that entitlement will end at the close of the month following the month in which he or she filed the notice.

(b) *Eligibility for hospital insurance without premiums.*

(1) If an individual meets the eligibility requirements for hospital insurance specified in § 408.10 or § 408.11, entitlement to premium hospital insurance ends with the month before the month in which he or she meets those requirements.

(2) If an individual meets the requirements of § 408.10 or § 408.11, he or she will be deemed to have filed the required application for hospital

insurance benefits in his or her first month of eligibility under that section.

(c) *Termination of supplementary medical insurance.*

If an individual's entitlement to supplementary medical insurance ends for any reason, entitlement to premium hospital insurance will end on the same date.

(d) *Nonpayment of premium.*

(1) If an individual fails to pay the initial premium bill, entitlement will end on the last day of the third month after the month that premium was due.

(2) If an individual fails to pay a subsequent premium bill, entitlement will end on the last day of the second month after the month payment was due.

(3) If an individual shows good cause for failure to pay on time, HCFA may grant an additional 3 calendar months to pay overdue premiums.

§ 408.25 Prejudice to enrollment rights because of Federal Government error.

(a) If an individual's enrollment or nonenrollment for premium hospital insurance is unintentional, inadvertent, or erroneous because of the error, misrepresentation, or inaction of a Federal employee, or any person authorized by the Federal Government to act on its behalf, the Social Security Administration or HCFA may take whatever action it determines is necessary to provide appropriate relief.

(b) The action may include—

(1) Designation of a special initial or general enrollment period;

(2) Designation of an entitlement period;

(3) Adjustment of premiums;

(4) Any combination of the actions specified in paragraph (b) (1) through (3) of this section; or

(5) Any other remedial action which may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

Special Circumstances That Affect Entitlement

§ 408.30 Nonpayment of benefits on behalf of certain aliens.

(a) Hospital insurance benefit payments may not be made for services furnished to an alien in any month in which his or her monthly social security benefits are suspended (or would be suspended if he or she were entitled to those benefits) because the alien remains outside the United States for more than 6 months.

(b) Benefits will be payable beginning with services furnished in the first full calendar month the alien is back in the United States.

§ 408.31 Conviction of certain offenses.

(a) *Penalty that affects entitlement.*

(1) If an individual is convicted of any of the crimes listed in § 408.11(c)(1) and (2), the court may impose, in addition to all other penalties, a penalty that affects entitlement to hospital insurance, beginning with the month of conviction.

(2) The additional penalty is that the individual's income (or the income of the insured individual on whose earnings record he or she became or seeks to become entitled) for the year of conviction and any previous year may not be counted in determining the insured status necessary for entitlement to hospital insurance.

(b) *Effect of pardon.*

If the President of the United States pardons the convicted individual, that individual regains (or may again seek) entitlement effective with the month following the month in which the pardon is granted.

5. A new Part 409 is added, to read as follows:

PART 409—BENEFITS, LIMITATIONS, AND EXCLUSIONS

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Authority: Secs. 1102, 1812, 1813, 1814, 1861, 1866, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395x, 1395cc, 1395hh, and 1395rr).

Supart A—Hospital Insurance

General Provisions

§ 409.1 Statutory basis.

Sections 1812 and 1813 of the Social Security Act establish the scope of benefits of the hospital insurance program under Medicare Part A and set forth the deductible and coinsurance requirements.

§ 409.2 Scope.

This subpart describes the benefits available under Medicare Part A and sets forth the limitations on those benefits, including certain amounts of payment for which beneficiaries are responsible.

§ 409.3 Definitions.

As used in this subpart, unless the context indicates otherwise—

"*Arrangements*" means arrangements which provide that Medicare payment made to the provider that arranged for the services dischargs the liability of the beneficiary or any other person to pay for those services.

"*Covered*" refers to services for which the law and the regulations authorize Medicare payment.

"*HHA*" stands for home health agnecy.

"*Participating*" refers to a hospital or other facility that meets the conditions of participation and has in effect a Medicare provider agreement.

"*Qualified hospital*" means a facility that—

(1) Is primarily engaged in providing, by or under the supervision of doctors of medciane or osteopathy, impatient services for the diagnosis, treatment, and care or rehabilitation of persons who are sick, injured, or disabled;

(2) Is not primarily engaged in providing skilled nursing care and related services for impatients who require medical or nursing care;

(3) Provides 24-hour nursing service in accordance with Sec. 1861(e)(5) of the Act;

(4) If it is a U.S. hospital, is licensed, or approved as meeting the standards for licensing, by the State or local licensing agency; and

(5) If it is a foreign hospital, is licensed, or approved as meeting the standard for licensing, by the appropriate Canadian or Mexican licensing agency, and for purposes of furnishing non-emergency services to U.S. residents, is accredited by the Joint Commission on Accreditation of Hospitals (JCAH), or by a Canadian or Mexican program under standards that HCFA finds to be equivalent to those of the JCAH.

"*Services*" means medical care or services and items, such as medical diagnosis and treatment, drugs, and biologicals, supplies, appliances, and equipment, medical social services, and use of hospital or SNF facilities.

"*SNF*" stands for skilled nursing facility.

§ 409.5 General description of benefits.

Hospital insurance (Part A of Medicare) helps pay for inpatient hospital services. It also pays for extended care services in a SNF and for home health visits when these services are provided after a stay in a hospital or SNF. There are limitations on the number of days of care and visits that Medicare can pay for and there are deductible and coinsurance amounts for which the beneficiary is responsible. For each type of service, certain conditions must be met, as specified in the pertinent sections of this subpart.

The special conditions for impatient hospital services furnished by a qualified U.S., Canadian, or Mexican hospital are set forth in Part 411, Subparts E and F of this chapter.

Inpatient Hospital Services

§ 409.10 Included services.

Subject to the conditions, limitations, and exceptions in §§ 409.11 through 409.18, the term "inpatient hospital services" means the following items and services furnished to an inpatient of a participating hospital or, in the case of emergency services or services in foreign hospitals, to an inpatient of a qualified hospital:

(a) Bed and board;

(b) Nursing services and other related services;

(c) Use of hospital facilities;

(d) Medical social services;

(e) Drugs, biologicals, supplies, appliances, and equipment;

(f) Certain other diagnostic or therapeutic services; and

(9) Medical or surgical services provided by certain interns or residents-in-training.

§ 409.11 Bed and board.

(a) *Semiprivate and ward accommodations.* Except for applicable deductible and coinsurance amounts, Medicare Part A pays in full for bed and bogrd and semiprivate (2 to 4 beds), or ward (5 or more beds) accomodations.

(b) *Private accommodations.* (1) *Conditions for payment in full.* Except for applicable deductible and coinsurance amounts, Medicare Part A pays in full for a private room if—

(i) The patient's condition requires him or her to be isolated;

(ii) The hospital has no semiprivate or ward accommodations; or

(iii) The hospital's semiprivate and ward accommodations are fully occupied by other patients, were so occupied at the time the patient was admitted to the hospital for treatment of a condition that required immediate inpatient hospital care, and have been so occupied during the interval.

(2) *Period of payment.* In the situations specified in paragraph (b)(1) (i) and (iii) of this section, Medicare pays for a private room until the patient's condition no longer requires isolation or until semiprivate or ward accommodations are available.

(3) *Conditions for patient's liability.* The hospital may charge the patient the difference between its customary charge for the private room and its most prevalent charge for a semiprivate room if—

(i) The conditions of paragraph (b)(1) of this section are not met; and

(ii) The private room was requested by the patient or a member of the family, who, at the time of the request, was informed what the hospital's charge would be.

§ 409.12 Nursing and related services; medical social services; use of hospital facilities.

(a) Medicare pays for nursing and related services, use of hospital facilities, and medical social services as inpatient hospital services only if those services are ordinarily furnished by the hospital for the care and treatment of inpatients.

(b) Except as specified in paragraph (c) of this section, Medicare does not pay for the services of a private duty nurse or attendant.

(c) Medicare pays for services furnished by a nurse or attendant who is a bona fide employee of the hospital during the time he or she provides the services. Medicare pays for the services of a private duty nurse or attendant employed by the hospital only if the beneficiary's condition requires such services.

§ 409.13 Drugs and biologicals.

(a) Except as specified in paragraph (b) of this section, Medicare pays for drugs and biologicals as inpatient hospital services only if—

(1) They represent a cost to the hospital;

(2) They are ordinarily furnished by the hospital for the care and treatment of inpatients; and

(3) They are furnished to an inpatient for use in the hospital.

(b) *Exception.* Medicare pays for a limited supply of drugs for use outside the hospital if it is medically necessary to facilitate the beneficiary's departure from the hospital and required until he or she can obtain a continuing supply.

§ 409.12 Supplies, appliances, and equipment.

(a) Except as specified in paragraph (b) of this section, Medicare pays for supplies, appliances, and equipment as inpatent hospital services only if—

(1) They are ordinarily furnished by the hospital to inpatents; and

(2) They are furnished to inpatents for use in the hospital.

Exceptions. Medicare pays for items to be used beyond the hospital stay if—

(1) The item is one that the benficiary must continue to use after he or she leaves the hospital, for example, heart valves or a heart pacemaker; or

(2) The item is medically necessary to permit or facilitate the beneficiary's departure from the hospital and is

required until the beneficiary can obtain a continung supply. Tracheostomy or draining tubes are examples.

§ 409.15 Services furnished by an intern or a resident-in-training.

Medical or surgical sevices provided by an intern or a resident-in-training are included as "inpatent hospital services" if they are provided—

(a) By an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association, or the Bureau of Professional Education of the American Osteopathic Association;

(b) By an intern or a resident-in-training in the field of dentistry under a teaching program approved by the Council on Dental Education of the American Dental Association; or

(c) By an intern or a resident-in-training in the field of podiatry under a teaching program approved by the Council on Podiatry Education of the American Podiatry Association.

§ 409.16 Other diagnostic or therapeutic services.

Diagnostic or therapeutic items or services other than those provided for in §§ 409.12, 409.13, and 409.15 are considered as inpatient hospital services if—

(a) They are furnished by the hospital, or by others under arrangements made by the hospital;

(b) Billing for those services is through the hospital; and

(c) The services are of a kind ordinarily furnished to inpatients either by the hospital or under arrangements made by the hospital.

§ 409.18 Services related to kidney transplantations.

(a) *Kidney transplants.* Medicare pays for kidney transplantation surgery only if performed in a renal transplantation center approved under Subpart U of Part 405 of this chapter.

(b) *Services in connection with kidney donations.* Medicare pays for services related to the evaluation or preparation of a potential or actual donor, to the donation of the kidney, or to post-operative recovery services directly related to the kidney donation—

(1) If the kidney is intended for an individual who has ESRD and is entitled to Medicare benefits or can be expected to become so entitled within a reasonable time; and

(2) Regardless of whether the donor is entitled to Medicare.

Extended Care Services

§ 409.20 Included services.

Subject to the conditions and limitations set forth in §§ 409.21–409.35, posthospital "extended care services" means the following services furnished to an inpatient of a participating SNF:

(a) Nursing care provided by or under the supervision of a registered professional nurse;

(b) Bed and board in connection with the furnishing of that nursing care;

(c) Physical, occupational, or speech therapy;

(d) Medical social services;

(e) Drugs, biologicals, supplies, appliances, and equipment;

(f) Certain medical services provided by an intern or a resident-in-training;

(g) Certain other diagnostic or therapeutic services; and

(h) Other services that are necessary to the health of the patient and are generally provided by SNFs.

§ 409.21 Excluded services.

(a) *Services that are not considered inpatient hospital services.* No service is included as an extended care service if it would not be included as an inpatient hospital service under §§ 409.11 through 409.18.

(b) *Services not generally provided.* Except as specifically listed in §§ 409.22 through 409.27, only those services generally provided by SNFs are considered as extended care services. For example, if an individual is furnished the use of an operating room by a SNF, that service is not included as an "extended care service" because SNFs generally do not maintain operating rooms.

§ 409.22 Bed and board.

(a) *Semiprivate and ward accommodations.* Except for applicable deductible and coinsurance amounts, Medicare Part A pays in full for semiprivate (2 to 4 beds), or ward (5 or more beds) accommodations.

(b) *Private accommodations.*

(1) *Conditions for payment in full.* Medicare pays in full for a private room if—

(i) The patient's condition requires him to be isolated;

(ii) The SNF has no semiprivate or ward accommodations; or

(iii) The SNF semiprivate and ward accommodations are fully occupied by other patients, were so occupied at the time the patient was admitted to the SNF for treatment of a condition that required immediate inpatient SNF care, and have been so occupied during the interval.

(2) *Period of payment.*

In the situations specified in paragraph (b)(1) (i) and (iii) of this section, Medicare pays for a private room until the patient's condition no longer requires isolation or until semiprivate or ward accommodations are available.

(3) *Conditions for patient's liability.* The SNF may charge the patient the difference between its customary charge for the private room furnished and its most prevalent charge for a semiprivate room if:

(i) The conditions of paragraph (b)(1) of this section are not met; and

(ii) The private room was requested by the patient or a member of the family who, at the time of request, was informed what the SNF's charge would be.

§ 409.23 Physical, occupational, and speech therapy.

Medicare pays for physical, occupational, or speech therapy as extended care services if—

(a) It is furnished by the SNF or under arrangements made by the SNF; and

(b) Billing for the therapy is by or through the SNF.

§ 409.24 Drugs and biologicals.

(a) Except as specified in paragraph (b) of this section, Medicare pays for drugs and biologicals as extended care services only if—

(1) They represent a cost to the SNF;

(2) They are ordinarily furnished by the SNF for the care and treatment of inpatients; and

(3) They are furnished to an inpatient for use in the SNF.

(b) *Exception.* Medicare pays for a limited supply of drugs for use outside the SNF if it is medically necessary to facilitate the beneficiary's departure from the SNF and required until he or she can obtain a continuing supply.

§ 409.25 Supplies, appliances, and equipment.

(a) Except as specified in paragraph (b) of this section, Medicare pays for supplies, appliances, and equipment as extended care services only if—

(1) They are ordinarily furnished by the SNF to inpatients; and

(2) They are furnished to inpatients for use in the SNF.

(b) *Exception.* Medicare pays for items to be used beyond the SNF stay if—

(1) The item is one that the beneficiary must continue to use after leaving the SNF, such as a leg brace; or

(2) The item is necessary to permit or facilitate the beneficiary's departure from the SNF, and is required until he or she can obtain a continuing supply. Sterile dressings would be an example.

§ 409.26 Services furnished by an intern or a resident-in-training.

Medicare pays for medical services furnished by an intern or a resident-in-training as extended care services if—

(a) The intern or resident is in a participating hospital with which the SNF has in effect an agreement for the transfer of patients and exchange of medical records; and

(b) The intern or resident furnishes the services under a hospital teaching program approved in accordance with the provisions of § 409.15.

§ 409.27 Other diagnostic or therapeutic services.

Medicare pays for other diagnostic or therapeutic services as extended care services if provided by a participating hospital with which the SNF has in effect an agreement for the transfer of patients and exchange of clinical records.

Requirements for Coverage of Extended Care Services

§ 409.30 Basic requirements.

Posthospital extended care services are covered only if the beneficiary meets the requirements of this section.

(a) *Pre-admission requirements.* The beneficiary must—

(1) Have been hospitalized in a participating or qualified hospital, for medically necessary inpatient hospital care, for at least 3 consecutive calendar days, not counting the day of discharge;

(2) Have been discharged from the hospital in a month for which he or she was entitled to hospital insurance benefits, in accordance with Part 408 of this chapter; and

(3) Be in need of posthospital extended care of the level described in § 409.31.

(b) *Date of admission requirements.*

(1) Except as specified in paragraph (b)(2) of this section, the beneficiary must—

(i) Be in need of posthospital extended care services within 14 calendar days after the date of discharge from a hospital and on the date he or she is admitted to the SNF; and

(ii) Be admitted to the SNF (and receive the needed care) within 14 calendar days after the date of discharge from a hospital or within 28 days after the day of discharge if the delay is because of lack of appropriate bed space in the geographic area in which the beneficiary lives.

(2) *Exception.* A beneficiary for whom posthospital extended care services would not be appropriate within 14 days after discharge from the hospital may be admitted at the time it would be medically appropriate to begin an active course of treatment.

§ 409.31 Level of care requirement.

(a) *Definition.* As used in this section, "skilled nursing and skilled rehabilitation services" mean services that:

(1) Are ordered by a physician;

(2) Require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

(3) Are furnished directly by, or under the supervision of, such personnel.

(b) *Specific conditions for meeting level of care requirements.*

(1) The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis.

(2) Those services must be furnished for a condition—

(i) For which the beneficiary received inpatient hospital services; or

(ii) Which arose while the beneficiary was receiving SNF care for a condition for which he or she received inpatient hospital services.

(3) The daily skilled services must be ones that, as a practical matter, can only be provided in a SNF, on an inpatient basis.

§ 409.32 Criteria for skilled services and the need for skilled services.

(a) The service must be so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel.

(b) A condition that does not ordinarily require skilled services may require them because of special medical complications. Under those circumstances, a service that is usually nonskilled (such as those listed in § 409.33(d)) may be considered skilled because it must be performed or supervised by skilled nursing or rehabilitation personnel. For example, a plaster cast on a leg does not usually require skilled care. However, if the patient has a preexisting acute skin condition or needs traction, skilled personnel may be needed to adjust traction or watch for complications.

In situations of this type, the complications, and the skilled services they require, must be documented by physicians' orders and nursing or therapy notes.

(c) The restoration potential of a patient is not the deciding factor in determining whether skilled services are needed. Even if full recovery or medical improvement is not possible, a patient may need skilled services to prevent further deterioration or preserve current capabilities. For example, a terminal cancer patient may need some of the skilled services described in § 409.33.

§ 409.33 Examples of skilled nursing and rehabilitation services.

(a) *Services which could qualify as either skilled nursing or skilled rehabilitation services* (1) *Overall management and evaluation of care plan.* The development, management, and evaluation of a patient care plan based on the physician's orders, constitute skilled services when, in terms of the patient's physical or mental condition, such development, management, and evaluation necessitate the involvement of technical or professional personnel to meet his or her needs, promote recovery, and actuate medical safety. This would include the management of a plan involving only a variety of personal care services where in light of the patient's condition, the aggregate of such services necessitates the involvement of technical or professional personnel. For example, an aged patient with a history of diabetes mellitus and angina pectoris who is recovering from an open reduction of a fracture of the neck of the femur requires, among other services, careful skin care, appropriate oral medications, a diabetic diet, an exercise program to preserve muscle tone and body condition, and observation to detect signs of deterioration in his or her condition or complications resulting from restricted, but increasing mobility. Although any of the required services could be performed by a properly instructed person, such a person would not have the ability to understand the relationship between the services and evaluate the ultimate effect of one service on the other. Since the nature of the patient's condition age, and immobility create a high potential for serious complications, such an understanding is essential to assure the patient's recovery and safety. Under these circumstances, the management of such a plan of care would require the skills of a nurse even though the individual services are not skilled. Skilled planning and management activities are not always specifically identified in the patient's clinical record. In light of this, where the patient's overal condition would support a finding that his or her recovery and/or safety could be assured only if the total care he or she requires is planned, managed, and evaluated by technical or professional personnel, it would be appropriate to infer that skilled services are being provided.

(2) *Observation and assessment of the patient's changing condition.* When the patient's condition is such that the skills of a nurse or other technical or professional person are required to identify and evaluate the patient's need for possible modification of treatment and the initiation of additional medical procedures until his or her condition is stabilized, such services constitute skilled services. For example, a patient with congestive heart failure may require continuous close observation to detect signs of decompensation, abnormal fluid balance, or adverse effects resulting from prescribed medication(s) which serve as indicators for adjusting therapeutic measures. Likewise, surgical patients transferred from a hospital to a skilled nursing facility while in the complicated, unstabilized postoperative period, e.g., after hip prosthesis or cataract surgery, may need continued close skilled monitoring for postoperative complications, and adverse reaction. Patients who, in addition to their physical problems, exhibit acute psychological symptoms such as depression, anxiety, or agitation, etc., may also require skilled observation and assessment by technical or professional personnel to assure their safety and/or the safety of others, i.e., to observe for indications of suicidal or hostile behavior. In such cases, special services required must be documented by physicians' orders and/or nursing or therapy notes.

(3) *Patient education services.* In cases where the use of technical or professional personnel is necessary to teach a patient self-maintenance, such teaching services would constitute skilled services. For example, a patient who has had a recent leg amputation needs skilled rehabilitation services provided by technical or professional personnel to provide gait training and to teach prosthesis care. Likewise, a patient newly diagnosed with diabetes requires instruction from technical or professional personnel to learn the self-administration of insulin or foot-care precautions, etc.

(b) *Services which would qualify as skilled nursing services.* (1) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(2) Levin tube and gastrostomy feedings;

(3) Nasopharyngeal and tracheotomy aspiration;

(4) Insertion and sterile irrigation and replacement of catheters;

(5) Application of dressings involving prescription medications and aseptic techniques;

(6) Treatment of extensive decubitus ulcers or other widespread skin disorder;

(7) Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient's progress;

(8) Initial phases of a regimen involving administration of medical gases;

(9) Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing, that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs.

(c) *Services which would qualify as skilled rehabilitation services.* (1) On-going assessment of rehabilitation needs and potential: Services concurrent with the management of a patient care plan, including tests and measurements of range of motion, strength, balance, coordination, endurance, functional ability, activities of daily living, perceptual deficits, speech and language or hearing disorders;

(2) Therapeutic exercises or activities: Therapeutic exercises or activities which, because of the type of exercises employed or the condition of the patient, must be performed by or under the supervision of a qualified physical therapist or occupational therapist to ensure the safety of the patient and the effectiveness of the treatment;

(3) Gait evaluation and training: Gait evaluation and training furnished to restore function in a patient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;

(4) Range of motion exercises: Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility (as evidenced by a therapist's notes showing the degreee of motion lost and the degree to be restored);

(5) Maintenance therapy: Maintenance therapy, when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance. For example, a patient with Parkinson's disease who has not been under a rehabilitation regimen may require the services of a qualified therapist to determine what type of exercises will contribute the most to the maintenance of his present level of functioning;

(6) Ultrasound, short-wave, and microwave therapy treatments by a qualified physical therapist;

(7) Hot pact, hydrocollator, infrared treatments, paraffin baths, and whirlpool: Hot pack hydrocollator, infrared treatments, paraffin baths, and whirlpool in particular cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required; and

(8) Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(d) *Personal care services.* Personal care services which do not require the skills of qualified technical or professional personnel are not skilled services except under the circumstances specified in § 409.32(b). Personal care services include, but are not limited to, the following:

(1) Administration of routine oral medications, eye drops, and ointments;

(2) General maintenance care of colostomy and ileostomy;

(3) Routine services to maintain satisfactory functioning of indwelling bladder catheters;

(4) Changes of dressings for noninfected postoperative or chronic conditions;

(5) Prophylactic and palliative skin care, including bathing and application of creams, or treatment of minor skin problems;

(6) Routine care of the incontinent patient, including use of diapers and protective sheets;

(7) General maintenance care in connection with a plaster cast;

(8) Routine care in connection with braces and similar devices;

(9) Use of heat as a palliative and comfort measure, such as whirlpool and hydrocollator;

(10) Routine administration of medical gases after a regimen of therapy has been established;

(11) Assistance in dressing, eating, and going to the toilet;

(12) Periodic turning and positioning in bed; and

(13) General supervision of exercises which have been taught to the patient; including the actual carrying out of maintenance programs, i.e., the performance of the repetitive exercises required to maintain function do not require the skills of a therapist and would not constitute skilled rehabilitation services (see paragraph (c) of this section). Similarly, repetitious exercises to improve gait, maintain strength, or endurance; passive

exercises to maintain range of motion in paralyzed extremities, which are not related to a specific loss of function; and assistive walking do not constitute skilled rehabilitation services.

§ 409.34 Criteria for "daily basis".

(a) To meet the daily basis requirement specified in § 409.31(b)(1) the following frequency is required:

(1) Skilled nursing services or skilled rehabilitation services must be needed and provided 7 days a week; or

(2) If a patient needs only skilled rehabilitation services and those services are not available 7 days a week, skilled rehabilitation services must be needed and provided at least 5 days a week.

(b) A break of one or two days in the furnishing of rehabilitation services will not preclude coverage if discharge would not be practical for the one or two days during which, for instance, the physician has suspended the therapy sessions because the patient exhibited extreme fatigue.

§ 409.35 Criteria for "practical matter".

(a) *General considerations.*

In making a "practical matter" determination, as required by § 409.31(b)(3), consideration must be given to the patient's condition and to the availability and feasibility of using more economical alternative facilities and services. However, in making that determination, the availability of payment for those services may not be a factor. Example: The beneficiary can obtain daily physical therapy from a physical therapist in independent practice. In determining the amount of Medicare payment, consideration is given only to the first $100 of services furnished by such a practitioner in a year. This limitation on payment may not be a basis for finding that the needed care can only be provided in a SNF.

(b) *Examples of circumstances that meet practical matter criteria.*

(1) *Beneficiary's condition.*

Inpatient care would be required "as a practical matter" if transporting the beneficiary to and from the nearest facility that furnishes the required daily skilled services would be an excessive physical hardship.

(2) *Economy and efficiency.*

Even if the beneficiary's condition does not preclude transportation, inpatient care might be more efficient and less costly if, for instance, the only alternative is daily transportation by ambulance.

§ 409.36 Effect of discharge from SNF.

If a beneficiary is discharged from a SNF after receiving posthospital extended care services, he or she is not entitled to additional services of this kind in the same benefit period unless—

(a) He or she is readmitted to the same or another SNF within 14 calendar days following the day of discharge from the SNF; or

(b) He or she is again hospitalized for at least 3 consecutive calendar days.

Home Health Services

§ 409.40 Included services.

Subject to the requirements and conditions set forth in § 409.42, "home health services" means the following items and services:

(a) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(b) Physical, occupational, or speech therapy;

(c) Medical social services provided under the direction of a physician;

(d) Part-time or intermittent services of a home health aide;

(e) Medical supplies (other than drugs and biologicals) and the use of medical appliances; and

(f) In the case of a home health agency (HHA) that is affiliated or under common control with a hospital, medical services provided by an intern or a resident-in-training of that hospital under a teaching program approved as provided in § 409.15.

§ 409.41 Excluded services.

(a) *Services that are not considered inpatient hospital services.*

No service is included as a home health service if it would not be included as an inpatient hospital service under §§ 409.11–409.18.

(b) *Transportation.*

Transportation required to take a homebound individual to a hospital, SNF, rehabilitation center or other place, to receive services that cannot be provided in the home, is not included as a home health service.

(c) *Housekeeping services.*

The services of housekeepers or food service arrangements such as "meals-on-wheels" programs are not included as home health services.

§ 409.42 Requirements and conditions for home health services.

(a) *Basic rule.*

The services specified in § 409.40 are covered by Medicare Part A only if the requirements of paragraphs (b) through (g) of this section are met.

(b) *Conditions the beneficiary must meet.* The beneficiary must be—

(1) Confined to the home or in an institution that is neither a hospital nor primarily engaged in providing skilled nursing or rehabilitation services;

(2) Under the care of a physician who is a doctor of medicine or osteopathy; and

(3) In need of intermittent skilled nursing care or physical or speech therapy.

(c) *Prior inpatient care requirement.*

(1) The beneficiary must—

(i) Have received inpatient hospital or posthospital extended care services; and

(ii) Need intermittent skilled nursing care or physical or speech therapy for a condition for which he or she received inpatient hospital or posthospital extended care services.

(2) For purposes of this paragraph, the inpatient hospital services must have been received in a participating hospital or a qualified hospital.

(d) *Plan of treatment requirements.*

The home health services must be furnished under a plan of treatment that is—

(1) Established and periodically reviewed by a physician who is a doctor of medicine or osteopathy; and

(2) Established within 14 days after the individual's discharge from a hospital or SNF.

(e) *Where the services must be furnished.*

(1) The home health services must be furnished—

(i) On a visiting basis in the individual's home; or

(ii) If it is necessary to use equipment that cannot readily be made available in the home, on an outpatient basis in a hospital, a SNF, or a rehabilitation center that meets State and local health and safety standards.

(2) If an individual is brought to a facility in accordance with paragraph (e)(1)(ii) of this section, other services that could be furnished in the home may be furnished in the facility at the same time.

(f) *When the services must be furnished.*

The home health services must be furnished within the time frames specified in § 409.51(c).

(g) *By whom the services must be furnished.*

The home health services must be furnished by, or under arrangements made by, a participating HHA.

§ 409.43 Home health service visit.

(a) *What constitutes a "visit".*

For purposes of the 100-visit limitation specified in § 409.50, one visit is charged each time a health worker furnishes home health services to the beneficiary.

(b) *Specific examples.*

(1) If both a physical therapist and a visiting nurse furnish services in the home on the same day, two visits are charged.

(2) If a beneficiary has dressings changed twice in the same day, two visits are charged.

(3) If a beneficiary is brought to the hospital for hydrotherapy, and while there also receives speech therapy, two visits are charged.

(4) If a nurse furnishes several services during the same visit (e.g., skilled nursing care and home health aide services), only one visit is charged.

§ 409.44 Home health services under Medicare Part B.

(a) Home health services are also provided under the supplementary medical insurance program.

(b) Under Medicare Part B, home health services may be furnished—

(1) Even though the beneficiary has not had inpatient care in a hospital or SNF, for the condition for which he or she needs home health services;

(2) Without regard to the time limits established in § 409.42(d)(2) and (f); and

(3) Even though the beneficiary has received 100 visits under Medicare Part A.

(c) Details of the Part B benefits are now contained in Subpart B of Part 405 of this chapter.

§409.45 Option for beneficiaries who need physical or speech therapy.

A beneficiary who needs physical therapy or speech pathology services could, if he is also enrolled in Medicare Part B, receive them on an outpatient basis as a medical and other health service under Part B, and use the Part A and Part B home health visits for other purposes.

Presumed Coverage

§409.48 Presumed coverage based on medical condition or type of service.

(a) *Basis, purpose, and limitations on presumed coverage.*

(1) *Basis for presumption.*

Experience has shown that certain medical conditions usually require a certain minimum number of days of posthospital extended care or a certain minimum number of posthospital home health visits. This experience is the basis for paragraphs (d) and (e) of this section.

(2) *Purpose of, and limitations on, presumed coverage.*

(i) Presumed coverage is intended to guarantee payment in certain situations.

(ii) Only one period of presumed coverage is allowed for each admission to a SNF or to home health agency care.

(iii) Failure to qualify for presumed coverage does not preclude payment of benefits if all the requirements of this subpart A are met.

(b) *Definitions.* As used in this section—

"Unacceptable certifications" means certifications which erroneously indicate that—

(1) The patient's medical condition is among those listed in paragraph (d) of this section; or

(2) The patient needs one or more of the services listed in paragraph (e) of this section.

"Inappropriate treatment plans" means plans that are not appropriate for the certified conditions and do not reflect the level of care required to qualify a beneficiary for posthospital extended care or home health services.

(c) *Conditions for presumed coverage.* The following conditions must be met:

(1) The beneficiary must be entitled to posthospital extended care or home health services in accordance with this subpart A.

(2) The beneficiary must not have exhausted the extended care and home health benefits available in his or her current benefit period.

(3) A physician must submit a written certification to the provider before or at the time of admission to the SNF or before the first home health visit.

(4) The certification must indicate that the patient has one of the medical conditions listed in paragraph (d) of this section or needs one of the services listed in paragraph (e) of this section.

(5) The certification must be accompanied by a plan of treatment for providing SNF or home health agency care.

(6) The certifying physician must be one whose certifications and treatment plans have not been found unacceptable under paragraph (f) of this section.

(7) In the case of extended care services, the SNF's utilization review committee must not have found that the stay is medically unnecessary.

(d) *Medical conditions eligible for presumed coverage of post-hospital extended care services.* If a beneficiary has more than one of the conditions listed in the following table, the period of presumed coverage is the one specified for the condition that shows the longest period.

Medical condition:	*Presumed period of covered skilled nursing facility care (days)*
1. Acute cerebrovascular accident (CVA) resulting from hemorrhage, thrombosis, embolism, brain injury, or tumor (CVA reason for qualifying hospital stay or occurred during hospital stay)	
Qualifying criteria: Hemiplegia and/or aphasia which requires on a daily basis skilled nursing care, physical therapy, occupational therapy, speech therapy (speech pathology), or a combination thereof—admitted directly from the hospital to skilled nursing facility	15
2. Fracture of femur—neck or shaft, and/or fracture of pelvis or acetabulum.	
Qualifying criteria: Nonweight bearing stage following surgery or reduction, complicated by presence of infection, delayed union or aspetic necrosis; and/or a complicating secondary medical condition(s), necessitated daily skilled nursing observation and/or skilled management—admitted directly from hospital to skilled nursing facility.	
A. Open reduction	15
B. Closed reduction	21
3. Post-arthroplasty of hip with prosthetic device (surgery performed during the hospitalization immediately prior to admission to skilled nursing facility)—admitted directly from hospital to skilled nursing facility	15
4. Malignancies.	
Qualifying criteria: Admitted directly from hospital to skilled nursing facility for:	
A. Administration of anticarcinogenic chemotherapeutic agents	14
B. Postoperative care	10
C. Terminal care—Patient in terminal stage of illness and is unable to function outside of skilled nursing facility because of need for skilled management of care required on a daily basis	14
5. Diabetes Mellitus.	
Qualifying criteria: Admitted directly from hospital to skilled nursing facility with:	
A. Presence of gangrene, ulceration, or unstable peripheral neuropathy	14
B. Below knee amputation requiring prosthesis (amputation performed during the hospitalization immediately prior to admission to skilled nursing facility)	14
C. Above knee amputation requiring prosthesis (amputation performed during the hospitalization immediately prior to admission to skilled nursing facility)	21
6. Disease of digestive system which required colostomy, Deostomy, or gastrostomy.	
Qualifying criteria: Admitted directly from hospital to skilled nursing facility for: Diet control and training required (surgery performed during hospitalization immediately prior to admission to skilled nursing facility)	10
7. Congestive heart failure complicated by disorders of rhythm and/or requiring additional drug or anticoagulant stabilization-admitted directly from hospital to skilled nursing facility	10
8. Myocardial infarction with recurring bouts of angina and/or complicated by disorders of rhythm and/or congestive heart failure—admitted directly from hospital to skilled nursing facility	14
9. Chronic obstructive pulmonary disease complicated by acute respiratory infection and/or congestive heart failure—admitted directly from hospital to skilled nursing facility	14

(e) *Posthospital home health services eligible for presumed coverage.* A beneficiary may need more than one of the types of services listed in the following table. If, for instance, the beneficiary needs two services that that require the same type of visit (e.g. nursing visits), the presumed number of visits is the one specified for the service that shows the greater number. However, if the services require different types of visits (e.g., nursing visits and physical therapy visits), the presumed number of visits is the sum of the numbers shown for each type. The visits may be allocated in any combination, as long as they do not exceed the total allowed number of visits or the total time frame specified.

Skilled services	Presumed number of covered home health visits
1. Skilled observation for any unstabilized condition characterized by significant fluctuations in vital signs or marked edema or elevated blood sugar levels..	Nine skilled nursing visits in a 3-week period.
2. Application of dressings involving prescription medications and aseptic techniques because of the presence of open wounds, extensive decubitus ulcers, or other widespread skin disorders..	Ten skilled nursing visits in a 2-week period.
3. A. Instructions in colostomy, ileostomy, or gastrostomy care	Five skilled nursing visits in a 2-week period.
B. Instructions in the routine care of an indwelling catheter	Three skilled nursing visits in a 3-week period.
C. Instruction in tube feeding technique	Six skilled nursing visits in a 1-week period.
D. Instructions of a newly diagnosed diabetic in a diabetic regimen, i.e., training in diet, the administration of insulin injection, urine test, skin care, etc..	Eight skilled nursing visits in a 3-week period.
E. Instruction of recent[1] hip fracture patient, or family members, in an exercise program and/or in the use of crutches, a walker, or a cane..	Four skilled nursing or four physical therapy visits in a 2-week period.
F. Instruction of a recent[1] post-arthroplasty of hip patient or a recent[1] above or below knee amputation patient in the use of a prosthetic device..	Four skilled nursing or four physical therapy visits in a 2-week period.
G. Instruction of a patient who requires respiratory therapy in the use of special equipment such as an IPPB machine or oxygen units..	Three skilled nursing visits in a 3-week period.
H. Instruction in postural drainage procedures and pulmonary exercises.	Three skilled nursing or three physical therapy visits in a 2-week period.
I. Administration of anticarcinogenic chemotherapeutic agents.	Four skilled nursing visits in a 2-week period.
4. Skilled physical therapy services and/or speech therapy (speech pathology) services to restore functions impaired by a recent[1] cerebrovascular accident resulting in hemiplegia and/or aphasia..	Five physical therapy and/or five speech therapy (speech pathology) visits in a 2-week period.

[1] Recent means the medical condition was either the reason for the qualifying hospital or skilled nursing facility stay or occurred during the qualifying stay.

(f) *Unacceptable certifications and treatment plans.*

(1) *Notice of proposed determination.* If HCFA proposes to determine that a physician has, with some frequency, submitted erroneous certifications or inappropriate treatment plans, it will notify the affected physician. The notice will be mailed to the physician's last known address and will—

(i) State the reasons for the proposed determination;

(ii) State HCFA's intention not to accept that physician's future certifications and treatment plans for purposes of presumed coverage; and

(iii) Indicate that HCFA will disclose the fact and effect of the determination to providers, claimants, prospective claimants, and other interested parties.

(2) *Opportunity for administrative hearing.*

(i) The physician will be given 30 days from the date on the notice of the proposed determination to request an administrative hearing.

(ii) If the physician does not request a hearing within the 30-day period, the proposed determination will become final.

(3) *Conduct of administrative hearing.*

(i) The hearing will be conducted by a HCFA hearing officer who has had no involvement in the proposed determination.

(ii) The hearing officer will inquire fully into the matter at issue, hear witnesses, and receive any documents that are relative and material.

(iii) The physician will be entitled to examine and question the evidence; to present and cross-examine witnesses; and to be represented by counsel or other qualified individuals.

(4) *Hearing decision.*

As soon as practicable after a hearing, the hearing officer will prepare a written decision that is based on the hearing record and contains findings of fact and statement of reasons.

(5) *Final determination without hearing.*

If the physician does not request a hearing, HCFA will, at the end of the 30-day period, send written notice that the proposed determination will be effective 15 days after the date on the notice.

(6) *Final determination after a hearing.*

(i) The hearing decision constitutes HCFA's final determination.

(ii) A copy of the decision will be mailed to the physician with the notice of final determination.

(iii) If the decision confirmed HCFA's proposed determination, the notice will indicate that the determination will be effective 15 days after the date on the notice.

(7) *Effective period of determination.*

An adverse determination under this section shall remain in effect until HCFA finds that there is reasonable assurance that the reasons for that determination will not recur.

Scope of Benefits

§ 409.50 Benefit periods.

(a) *When benefit periods begin.* The initial benefit period begins on the day and beneficiary receives inpatient hospital or SNF services for the first time after becoming entitled to hospital insurance. Thereafter, a new benefit period begins whenever the beneficiary receives inpatient services upon admission to a participating hospital or SNF (or one that meets the requirements for participation), after he or she has, for at least 60 consecutive days, not been an inpatient in any hospital, or SNF, or other institution that primarily provides skilled nursing or rehabilitation services.

(b) *Relation of benefit period to scope of benefits.*

The limitations specified in §§ 409.51 and 409.54, and the deductible and coinsurance requirements set forth in §§ 409.61 through 409.64 apply for each benefit period. The limitations of 409.53 apply only to the initial benefit period.

§ 409.51 General limitations on amount of benefits.

(a) *Inpatient hospital services.*

(1) *Regular benefit days.* Up to 90 days are available in each benefit period, subject to the limitations on days for psychiatric hospital services set forth in §§ 409.52 and 409.53.

(i) For the first 60 days (referred to in this subpart as *full benefit days*), Medicare pays the hospital for all covered services furnished the beneficiary, except for a deductible which is the beneficiary's responsibility. (Section 409.61 specifies the requirements for the inpatient hospital deductible.)

(ii) For the next 30 days (referred to in this subpart as *coinsurance days*), Medicare pays for all covered services except for a daily coinsurance amount, which is the beneficiary's responsibility. (Section 409.62 specifies the inpatient hospital coinsurance amounts.)

(2) *Lifetime reserve days.* Each beneficiary has a non-renewable lifetime reserve of 60 days of inpatient hospital services that he may draw upon whenever he is hospitalized for more then 90 days in a benefit period. Upon exhaustion of the regular benefit days, the reserve days will be used unless the

beneficiary elects not to use them, as provided in § 409.55. For lifetime reserve days, Medicare pays for all covered services except for a daily coinsurance amount that is the beneficiary's responsibility. (See § 409.62.)

(3) *Order of payment for inpatient hospital services.* Medicare pays for inpatient hospital services in the following order:

(i) The 60 full benefit days;

(ii) The 30 coinsurance days;

(iii) The remaining lifetime reserve days.

(b) *Extended care services in a SNF.* Up to 100 days are available in each benefit period after discharge from a hospital. For the first 20 days, Medicare pays for all covered services. For the 21st through 100th day, Medicare pays for all covered services except for a daily coinsurance amount that is the beneficiary's responsibility. (Section 409.63 specifies the SNF coinsurance amounts.)

(c) *Home health visits.* Medicare pays for all covered home health services. There are no deductible or coinsurance requirements. Up to 100 visits are available—

(1) After the beginning of one benefit period and before the beginning of the next; and

(2) Within one year after the later of the following:

(i) The individual's most recent discharge from a hospital, following a stay of at least 3 consecutive days.

(ii) The individual's most recent discharge from a SNF, following receipt of service for which he or she was entitled to have payment made.

(d) *Renewal of inpatient benefits.* The beneficiary's full entitlement to the 90 inpatient hospital regular benefit days, the 100 SNF benefit days, is renewed each time he or she begins a benefit period. However once lifetime reserve days are used, they can never be renewed.

§ 409.52 Lifetime maximum on inpatient psychiatric care.

There is a lifetime maximum of 190 days on inpatient psychiatric hospital services available to any beneficiary. Therefore, once an individual receives benefits for 190 days of care in a psychiatric hospital, no further benefits of that type are available to that individual.

§ 409.53 Reduction of inpatient psychiatric benefit days available in the intitial benefit period.

(a) *Reduction rule.*

(1) If the idividual was an inpatient in a psychiatric hospital on the fist day of Medicare entitlement and for any of the 150 days immediately before that first day of entitlement, those days are subtracted from the 150 days (90 regular days plus 60 lifetime reserve days) which would otherwise be available in the initial benefit period for inpatient psychiatric services in a psychiatric or general hospital.

(2) Reduction is required only if the hospital was participating in Medicare as a psychiatric hospital on the individual's first day of entitlement.

(3) The reduction applies only to the beneficiary's first benefit period. For subsequent benefit periods, the 90 benefits days, plus any remaining lifetime reserve days, subject to the 190 day lifetime limit on psychiatric hospital care, are available.

(b) *Application to general hospital days.*

(1) Days spent in a general hospital before entitlement are not subtracted under paragraph (a) of this section even if the stay was for diagnosis or treatment of mental illness.

(2) After entitlement, all psychiatric care days, whether in a general or a psychiatric hospital, are counted toward the number of days available in the initial benefit period.

(c) *Examples:*

(1) The individual was an inpatient of a participating psychiatric hospital for 20 days before the first day of entitlement and remained there for another 6 months. Therefore, 130 days of benefits (150 minus 20) are payable. Payment could be made for: 60 full benefit days, 30 coinsurance days, and 40 lifetime reserve days.

(2) During the 150-day period preceding Medicare entitlement, an individual had been a patient of a general hospital for 60 days of inpatient psychiatric care and had spent 90 days in a psychiatric hospital, ending with the first day of entitlement. During the initial benefit period, the beneficiary spent 90 days in a general hospital and received psychiatric care there. The 60 days spent in the general hospital for psychiatric treatment before entitlement do not reduce the benefits available in the first benefit period. Only the 90 days spent in the psychiatric hospital before entitlement reduce such benefits, leaving a total of 60 available psychiatric days. However, after entitlement, the reduction applies not only to days spent in a psychiatric hospital, but also to days of psychiatric treatment in a general hospital. Thus, Medicare payment could be made only for 60 of the 90 days spent in the general hospital.

(3) An individual was admitted to a general hospital for a mental condition and, after 10 days, transferred to a participating psychiatric hospital. The individual remained in the psychiatric hospital for 78 days before becoming entitled to hospital insurance benefits and for 130 days after entitlement. The beneficiary was then transferred to a general hospital and received treatment of a medical condition for 20 days.

The 10 days spent in the general hospital during the 150-day pre-entitlement period have no effect on the inpatient hospital benefit days available to the individual for psychiatric care in the first benefit period, even though the general hospital stay was for a mental condition. Only the 78 days spent in the psychiatric hospital during the pre-entitlement period are subtracted from the 150 benefit days.

Accordingly, the individual has 72 days of psychiatric care (150 days less 78 days) available in the first benefit period.

Benefits could be paid for the individual's hospitalization during the first benefit period in the following manner: For the 130-day psychiatric hospital stay, 72 days (60 full benefit days and 12 coinsurance days), and for the general hospital stay, 20 days (18 coinsurance and 2 lifetime reserve days).

§ 409.54 Services that are counted toward allowable amounts.

(a) Except as provided in paragraph (b) of this section for lifetime reserve days, all covered inpatient days and home health visits are counted toward the allowable amounts specified in §§ 409.51–409.53 if:

(1) They are paid for by Medicare; or

(2) They would be paid for by Medicare if the following requirements had been met:

(i) A proper and timely request for payment had been filed; and

(ii) The hospital, SNF, or home health agency had submitted all necessary evidence, including physician certification of need for services when such certification was required; or

(3) They could not be paid for because the total payment due was equal to, or less than, the applicable deductible and coinsurance amounts.

(b) *Exception.* Even though the requirements of paragraph (a)(2) of this section are met, lifetime reserve days are not counted toward the allowable amounts if the beneficiary elected or is deemed to have elected not to use them, as set forth in § 409.55.

§ 409.55 Lifetime reserve days.

(a) *Election not to use lifetime reserve days.*

(1) Whenever a beneficiary has exhausted the 90 regular benefit days,

the hospital may bill Medicare for lifetime reserve days unless the beneficiary elects not to use them or, in accordance with paragraph (b) of this section, is deemed to have elected not to use them.

(2) It may be advantageous to elect not to use lifetime reserve days if the beneficiary has private insurance coverage that begins after the first 90 inpatient days in a benefit period, or if the daily charge is only slightly higher than the lifetime reserve days coinsurance amount. In such cases, the beneficiary may want to save the lifetime reserve days for future care that may be more expensive.

(3) If the beneficiary elects not to use lifetime reserve days for a particular hospital stay, they are still available for a later stay. However, once the beneficiary uses lifetime reserve days, they can never be renewed.

(4) If the beneficiary elects not to use lifetime reserve days, the hospital may require him or her to pay for any services furnished after the regular days are exhausted.

(b) *Deemed election.* A beneficiary will be deemed to have elected not to use lifetime reserve days if the average daily charges for such days is equal to or less than the applicable coinsurance amount specified in § 409.62. A beneficiary would get no benefit from using the days under those circumstances.

(c) *Who may file an election.* An election not to use reserve days may be filed by—

(1) The beneficiary; or

(2) If the beneficiary is physically or mentally unable to act, by the beneficiary's legal representative. In addition, if some other payment source is available, such as private insurance, any person authorized under § 405.1664 of this chapter to execute a request for payment for the beneficiary may file the election.

(d) *Filing the election.*

(1) The beneficiary's election not to use lifetime reserve days must be filed in writing with the hospital.

(2) The election may be filed at the time of admission to the hospital or at any time thereafter up to 90 days after the beneficiary's discharge.

(3) A retroactive election (i.e., one made after lifetime reserve days have been used because the regular days were exhausted), is not acceptable unless it is approved by the hospital.

(e) *Period covered by election.* An election not to use lifetime reserve days may apply to an entire hospital stay or to a single period of consecutive days in a stay, but cannot apply to selected days in a stay. For example, a beneficiary may restrict the election to the period covered by private insurance but cannot use individual lifetime reserve days within that period. If an election not to use reserve days is effective after the first day on which reserve days are available, it must remain in effect until the end of that stay, unless it is revoked in accordance with § 409.56.

§ 409.56 Revocation of election not to use lifetime reserve days.

(a) Except as provided in paragraph (c) of this section, a beneficiary (or anyone authorized to execute a request for payment, if the beneficiary is incapacitated) may revoke an election not to use lifetime reserve days during hospitalization or within 90 days after discharge.

(b) The revocation must be submitted to the hospital in writing and identify the stay or stays to which it applies.

(c) *Exceptions.* A revocation of an election not to use lifetime reserve days may not be filed—

(1) After the beneficiary dies; or

(2) After the hospital has filed a claim under the supplementary medical insurance program (Medicare Part B), for medical and other health services furnished to the beneficiary on the days in question.

§ 409.58 Guarantee of payment for inpatient hospital services furnished before notification of exhaustion of benefits.

(a) *Conditions for payment.* Payment may be made for inpatient hospital services furnished a beneficiary after he or she has exhausted the coverage days if the following conditions are met:

(1) The services were furnished before HCFA or the intermediary notified the hospital that the beneficiary had exhausted the available days of coverage and was not entitled to have payment made for those services.

(2) At the time the hospital furnished the services, it was unaware that the beneficiary had exhausted the available days of coverage and could reasonably have assumed that he or she was entitled to have payment made for these services.

(3) Payment would be precluded solely because the beneficiary has exhausted all regular and lifetime benefit days available in the benefit period.

(4) The hospital claims reimbursement for the services and refunds any payments made for these services by the beneficiary or by another person on his or her behalf.

(b) *Limitations on payment*

(1) If all of the conditions in paragraph (a) of this section are met, Medicare payment may be made for up to 6 days, plus the day of admission, but not counting intervening Saturdays, Sundays, and Federal holidays.

(2) Payment may not be made under this section for any day after the hospital is notified that the beneficiary has exhausted the available benefit days.

(c) *Recovery from the beneficiary.* Any payment made to a hospital under this section is considered an overpayment to the beneficiary and may be recovered from him or her under the provisions set forth elsewhere in this chapter.

Deductibles and Coinsurance

§ 409.60 Inpatient deductible and coinsurance: General provisions.

(a) *What they are.*

(1) The inpatient deductible and coinsurance amounts are portions of the cost of covered hospital or SNF services that Medicare does not pay.

(2) The hospital or SNF may charge these amounts to the beneficiary or someone on his or her behalf.

(b) *Changes in the inpatient deductible and coinsurance amounts.*

(1) The law requrires the Secretary to adjust the inpatient hospital deductible each year to reflect changes in the average cost of hospital care. In adjusting the deductible, the Secretary must use a formula specified in section 1813(b)(2) of the Act. Under that formula, the inpatient hospital deductible is increased each year by about the same percentage as the increase in the average Medicare daily hospital costs. The result of the deductible incease is that the beneficiary continues to pay about the same proportion of the hospital bill.

(2) Since the coinsurance amounts are, by statute, specific fractions of the deductible, they change when the deductible changes.

(3) The coinsurance amounts are based on the inpatient hospital deductible for the year in which the benefit period begins. (Section 409.50 specifies when benefit periods begin.) The coinsurance amounts do not change during a beneficiary's benefit period even though the coinsurance days may fall in a subsequent year for which a higher deductible amount has been determined.

§ 409.61 Inpatient hospital deductible.

(a) *General provisions.*

(1) The inpatient hospital deductible is a fixed amount chargeable to the beneficiary when he or she is admitted to a hospital for the first time in a benefit period.

(2) Although the beneficiary may be hospitalized several times during a

benefit period, the deductible is charged only once during that period. If the beneficiary begins more than one benefit period in the same year, a deductible is charged for each of those periods.

(b) *Specific deductible amounts.*

Benefit period began—	Amount of deductible
Before 1969	$40
In:	
1969	44
1970	52
1971	60
1972	68
1973	72
1974	84
1975	92
1976	104
1977	124
1978	144
1979	160
1980	180

If the total hospital charge in a benefit period is less than the amount shown in the chart, the deductible is the amount of the charge.

§ 409.62 Inpatient hospital coinsurance.

(a) *General provisions.*

(1) Inpatient hospital coinsurance is the amount chargeable to a beneficiary for each day after the first 60 days of inpatient hospital care in a benefit period.

(2) For each day from the 61st to the 90th day, the coinsurance amount is ¼ of the deductible applicable for that benefit period.

(3) For each day from the 91st to the 150th day (lifetime reserve days), the coinsurance amount is ½ of the deductible applicable for that benefit period.

(b) *Specific amounts of daily hospital coinsurance.*

Benefit period began—	61st to 90th day—	91st to 150th day—
Before 1969	$10	$20
In:		
1969	11	22
1970	13	26
1971	15	30
1972	17	34
1973	18	36
1974	21	42
1975	23	46
1976	26	52
1977	31	62
1978	36	72
1979	40	80
1980	45	90

§ 409.63 Skilled nursing facility (SNF) coinsurance.

(a) *General provisions.*

(1) SNF coinsurance is the amount chargeable to a beneficiary after the first 20 days of SNF care in a benefit period.

(2) For each day from the 21st through the 100th day, the coinsurance is ⅛ of the inpatient hospital deductible applicable for that benefit period.

(b) *Specific amounts of daily SNF coinsurance.*

Benefit period began—	Daily amount
Before 1969	$5.00
In:	
1969	5.50
1970	6.50
1971	7.50
1972	8.50
1973	9.00
1974	10.50
1975	11.50
1976	13.00
1977	15.50
1978	18.00
1979	20.00
1980	22.50

§ 409.64 Blood deductible.

(a) *General provisions.*

(1) As used in this section, packed red cells means the red blood cells that remain after plasma is separated from whole blood.

(2) Medicare does not pay for the first 3 pints of whole blood or units of packed red cells that a beneficiary receives as an inpatient of a hospital or SNF during a benefit period. For example, if an individual receives 2 pints of blood in a hospital and 3 pints in a SNF during a single benefit period, the 2 pints furnished in the hospital and the first pint furnished in the SNF would be the responsiblity of the individual. Medicare would pay for the other 2 pints furnished in the SNF.

(3) The deductible does not apply to other blood components such as platelets, fibrinogen, plasma, gamma globulin, and serum albumin, or to the cost of processing, storing, and administering blood.

(4) The blood deductible is in addition to the inpatient hospital deductible and daily coinsurance.

(5) There is also a separate Part B (supplementary medical insurance) blood deductible. Blood funished under Part B of Medicare cannot be applied to satisfy the Part A (hospital insurance) blood deductible and blood furnished under Part A of Medicare cannot be applied to satisfy the Part B blood deductible.

(b) *Beneficiary's responsibility to pay for or arrange for the replacement of the first 3 pints or units of blood.*

(1) The beneficiary has the option of paying the hospital's charges for the first 3 pints or units of blood, or arranging for them to be replaced. (A unit of packed red cells is considered equivalent to a pint of whole blood.)

(2) A provider may charge a beneficiary its customary charge for any of the first 3 pints or units of blood for which replacement has not been arranged.

(3) The provider may not charge for the blood if it (or its blood supplier) receives, from an invidual or a blood bank, a replacement offer that meets the criteria specified in paragraph (c) of this section. The provider is precluded from charging even if it or its blood supplier rejects the replacement offer.

(c) *Criteria for replacement of blood.*

A blood replacement offer made by a beneficiary, or an individual or a blood bank on behalf of a beneficiary, discharges the beneficiary's obligation to pay for deductible blood or packed red cells if—

(1) The replacement blood would not endanger the health of a recipient; and

(2) The prospective donor's health would not be endangered by making a blood donation.

§ 409.65 Exemption of kidney donors from deductible and coinsurance requirements.

The deductible and coinsurance requirements set forth in this subpart do not apply to any services furnished to an individual in connection with the donation of a kidney for transplant surgery.

6. Section 440.40(a)(1)(i) is revised to read as follows:

§ 440.40 Skilled nursing facility services for individuals age 21 or older (other than services in an institution for tuberculosis or mental diseases). EPSDT, and family planning services and supplies.

(a) *Skilled nursing facility services.*

(1) "Skilled nursing facility for individuals age 21 or older, other than services in an institution for tuberculosis or mental diseases," means services that are—

(i) Needed on a daily basis and required to be provided on an inpatient basis under §§ 409.31–409.35 of this chapter.

(Secs. 226, 226A, 1102, 1812, 1813, 1814, 1818, 1861, 1871 and 1881 of the Social Security Act (42 U.S.C. 426, 426a, 1302, 1395d, 1395e, 1395f, 1395i–2, 1395x, 1395hh and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: April 1, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: May 20, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-16500 Filed 5-29-80; 8:45 am]

BILLING CODE 4110-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1102

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Extension of Comment Period

AGENCY: Interstate Commerce Commission.

ACTION: Extension of comment period.

SUMMARY: The previously established due date for comments on the Commission's proposal to modify its procedures for the filing of railroad general rate increases [See 45 FR 29103 (May 1, 1980)] is being extended by 45 days.

DATE: Comments are now due on or before July 17, 1980.

ADDRESS: An original and 15 copies of comments should be sent to:

Office of Proceedings—Room 5340 Interstate Commerce Commission Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane Mackall (202) 275–7693 or 275–7656.

SUPPLEMENTARY INFORMATION: By petition filed May 9, 1980, the Western Railroad Association requests a 45-day extension of time (until July 17, 1980) to file comments in this proceeding. It states that the Association of American Railroads (AAR), on behalf of the railroad industry, is currently preparing an improved railroad cost index designed to more accurately measure changes in rail operating costs and that more time is needed to complete the index.

We recognize the importance and the complexity of the task undertaken by AAR. In order to ensure the best possible results, a 45-day extension for the submission of comments is warranted.

Decided: By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich

Secretary.

[FR Doc. 80–16457 Filed 5–29–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing Regulations; Fees; Advance Notice of Proposed Rulemaking

AGENCY: National Marine Fisheries Service (NOAA)/Commerce.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The National Marine Fisheries Service (NMFS) is developing and evaluating alternative methods of assessing fees for foreign fishermen under the Fishery Conservation and Management Act of 1976 (FCMA). Comments on the options and prices under consideration are requested.

DATE: Written comments may be submitted until June 27, 1980.

ADDRESS: Comments should be sent to: Dr. Roland F. Smith, Acting Chief, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC 20235, (202) 634–7432 or 653–5526.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Jelley, Fishery Management Specialist, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC 20235, (202) 634–7432 or 653–5526.

SUPPLEMENTARY INFORMATION: The present foreign fishing fee schedule, set forth in 50 CFR 611.22, includes a permit fee, and a "poundage fee" assessed at the rate of 3.5 percent of the U.S. exvessel value of each country's catch. As a result of Congressional and public interest, and based on experience gained in implementing the FCMA, a thorough review of the system used to determine foreign fishing fees is being conducted.

NMFS has reviewed the basis upon which fees may be assessed as set forth in section 204(b)(10) of the Fishery Conservation and Management Act of 1976. This section says, in part, "In determining the level of such fees, the Secretary [of Commerce] may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement." NMFS is examining alternative fee structures appropriate to this basis. One possible alternative is to charge foreign fishing vessels a fee for each day spent on the fishing grounds in the fishery conservation zone (FCZ) (an "effort fee"). This fee could be set to recover all or a portion of the costs to the federal government of administering the foreign fishing aspects of the FCMA. To recover total costs, the fee would have to be set, on a nationwide basis, at a level of approximately $483 per vessel per day on ground; or by area, at levels of approximately $315 per vessel per day on ground in the Gulf of Alaska, Aleutian Islands, and Bering Sea, in the Atlantic $548 per day, and in the northeast Pacific $2,000 per day. The charges would vary since the costs of foreign fishing distributed over the amount of foreign fishing vary widely by area. Alternatively, the fee might be varied by the tonnage of the vessel.

Another option is to increase the percentage assessment based on U.S. exvessel value to a level higher than 3.5%. To recover all costs, on a nationwide basis the fee would have to be set approximately 9%; or, alternatively, on a regional basis, at 5.6% of the value in the Alaska region, 31.3% in the Atlantic, and 38.6% in the northeast Pacific.

If this review supports the recovery of 100 percent of the U.S. costs for foreign fishing, 1981 fees could be charged approximately at the levels noted above. Information is needed to assess the impact of such fees, or fees imposed udner other alternative systems, on foreign fishing strategies.

Advice is requested on options of charging by day on ground or relating fees to the value of catch. Advice is also requested on any other options which may be suggested by the public. NMFS invites public comment on the following issues for evaluation of each option:

(1) What administrative and enforcement burdens would be incurred?

(2) Should foreign processing vessels receiving fish from U.S. fishermen ("joint ventures") be treated in a different manner, since fish received by foreign vessels from U.S. vessels are products of United States harvest?

(3) What impact would each alternative have on United States consumers?

(4) What impact would each alternative have on management of foreign and U.S. fishing in the fishery conservation zone?

(5) What impact would each alternative have on foreign fishing operations?

(6) What alternative would allow the most efficient and practical means of carrying out the provisions of the FCMA with respect to foreign fishing?

(7) What other alternative fee systems are available either under the present law or by legislative amendment, and what would be the implications of such systems?

Any confidential business information submitted on this subject will be protected to the extent possible under existing law if it is clearly identified as confidential business information. Each page of written comments containing such information must be clearly noted at the upper right-hand corner with the words "PRIVATE BUSINESS INFORMATION, FEES."

(16 U.S.C. 1801 *et seq.*)

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-16519 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 106
Friday, May 30, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gospel-Hump Advisory Committee; Meeting

The Gospel-Hump Advisory Committee will meet at 8 a.m., June 23, 1980, at the Nezperce Forest Supervisor's Office, Grangeville, Idaho. The purpose of this meeting will be a three-day field trip on the Nezperce National Forest to gain first-hand knowledge of mining activity, timber resources and management, fire management, wildlife management, and recreation use.

Public participation is welcome, however, participants will be responsible for their own transportation, subsistence and lodging. Persons who wish to participate should notify Ed Laven, 319 East Main, Grangeville, Idaho, telephone 208/983–1950.

Don Biddison,

Forest Supervisor.

May 22, 1980.

[FR Doc. 80–16446 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–11–M

Humboldt National Forest Grazing Advisory Board; Meeting

The Humboldt National Forest Grazing Advisory Board will meet on July 18, 1980 at 10:00 a.m. PDST, at the Ruby Valley Guard Station, Ruby Valley, Nevada. Bring a sack lunch.

The meeting is open to the public.

The purpose of the meeting is to discuss:

1. Allotment management planning.
2. Utilization of Range Betterment Fund.

Dated: May 20, 1980.

John A. Hafterson,

Forest Supervisor.

[FR Doc. 8–16452 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Corn Belt Power Cooperative, Humboldt, Iowa; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $5,100,000 to Corn Belt Power Cooperative of Humboldt, Iowa, for financing the borrower's 10 percent share of modifications and improvements to the existing Duane Arnold 550 MW nuclear power plant. No additional generating capacity is being provided.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. George W. Toyne, Manager, Corn Belt Power Cooperative, P.O. Box 508, Humboldt, Iowa 50548.

In order to be considered, proposals must be submitted on or before June 30, 1980, to Mr. Toyne. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Corn Belt Power Cooperative and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 22nd day of May, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80–16303 Filed 5–29–80; 8:45 am]

BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

[Dockets 26487 and 37392; Order 80–5–125]

Transatlantic, Transpacific, and Latin American Service Mail Rates Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–5–125 on Reconsideration and fixing final International Mail Rates, Dockets 26487 and 37392.

DATES: Adopted May 19, 1980.

PERSON TO CONTACT FOR FURTHER INFORMATION: James E. Gardner, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5391.

SUPPLEMENTARY INFORMATION: The Board, except for technical modifications denies the petition for reconsideration of Order 80–1–25 which fixed final international mail rates for the last half of 1979 and proposed final rates for the first quarter of 1980.

The Board makes final the International rates for the first quarter of 1980 as set forth in the appendix.

By the Civil Aeronautics Board: May 19, 1980.

Phyllis T. Kaylor,

Secretary.

International Service Mail Rates

[January 1, 1980 through March 31, 1980]

	CY 1975 rates [1]	Escalation factors [2]	Final rates 1/ 1/80 thru 3/ 31/80
	(cents)	(percent)	(cents)
Atlantic rate area:			
Linehaul charge per billing ton-mile:			
Priority amd military ordinary mail	20.22	70.81	34.54
Space available mail	12.96		22.14

International Service Mail Rates—Continued

[January 1, 1980 through March 31, 1980]

	CY 1975 rates [1]	Escalation factors [2]	Final rates 1/ 1/80 thru 3/ 31/80
	(cents)	(percent)	(cents)
Terminal charge per pound originated:			
Priority amd military ordinary mail	11.39	74.81	19.91
Space available mail	10.27		17.95
pacific rate area:			
Linehaul charge per billing ton-mile:			
Priority amd military ordinary mail	21.88	71.30	37.48
Space available mail	13.49		23.11
Terminal charge per pound originated:			
Priority amd military ordinary mail	13.39	55.86	20.87
Space available mail	11.59		18.06
Latin america rate area:			
Linehaul charge per billing ton-mile:			
Priority amd military ordinary mail	21.35	73.83	37.11
Space available mail	16.44		28.58
Terminal charge per pound originated:			
Priority amd military ordinary mail	9.83	32.28	13.00
Space available mail	9.10		12.04

[1] Order 80-1-25.
[2] Appendices B-1, B-2 and B-3.

[FR Doc. 80-16290 Filed 5-29-80; 12:26 pm]
BILLING CODE 6320-01-M

[Order 80-5-126; Docket 37392]

Transatlantic, Transpacific and Latin American Service Mail Rates Investigation; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of May, 1980.

By Order 78-12-159, the Board adopted a review procedure and updating formula for establishing final international service mail rates for future periods on a semi-annual basis. The procedure was further modified by Orders 79-7-17, 79-7-96, 80-1-25 and 80-5-125. The present order to show cause reflects all revisions adopted by the Board and proposes tentative final rates for the second quarter of 1980.

The tentative final service mail rates set forth in the attached Appendix A reflect the application of the following cost excalation factors:

1. Fuel costs: The change in average price per gallon over the last four months (November through March) is added to the March 1980 average price per gallon to arrive at the projected average price per gallon at May 15, 1980, the midpoint of the quarter for which the rates are to be effective; and

2. Other costs: Cost excalation from March 31, 1979, to March 31, 1980, is based on a comparison of unit costs for the year ended September 30, 1979 with unit costs for the year ended September 30, 1978.

The proposed rates represent increases in the linehaul rates of approximately 6.1, 8.3, and 5.8 percent in the Atlantic, Pacific, and Latin American rate areas, respectively, over the final service mail rates established for the first quarter of 1980. The cause for the increase is the continued increase in fuel prices.

The Board tentatively finds and concludes that:

1. The fair and reasonable rates compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of Section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of space-available mail, military ordinary mail and all other mail over their respective routes in the Atlantic, Pacific, and Latin American rate areas,[1] the facilities used and useful therefor, and the services connected therewith, for the period from April 1 through June 30, 1980, or until further Board order, are those set forth in the attached Appendix A.

2. The fair an reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period July 1, 1980, until further Board order shall be the final rates established for the period April 1 through June 30, 1980.

3. The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79-7-16.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302.

1. We direct all interested persons to show cause why the Board should not adopt the foregoing tentative findings and conclusions, and fix, determine and publish the final rates specified above to be effective April 1 through June 30, 1980, or until further Board order.

2. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of this order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

3. If no notice is filed, or, if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem all further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix A.

4. We shall serve this order upon all parties to the proceeding in Docket 26487.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board. All Members concurred.

Phyllis T. Kaylor,
Secretary.

[1] The Atlantic, Pacific and Latin American rate areas are delineated in Attachments 1, 2, and 3, respectively, to Order 79-7-17.

Appendix A.—*International Service Mail Rates*

[April 1 through June 30, 1980]

	CY 1975 rates [1]	Escalation factors [2]	Final rates 4/ 1/80 thru 6/ 30/80
	(cents)	(percent)	(cents)
Atlantic rate area:			
Linehaul charge per billing ton-mile:			
Priority and military ordinary mail	20.22	81.19	36.64
Space available mail	12.96		23.48
Terminal charge per pound orginated:			
Priority and military ordinary mail	11.39	74.81	19.91
Space available mail	10.27		17.95
Pacific rate area:			
Linehaul charge per billing ton-mile:			
Priority and military ordinary mail	21.88	85.47	40.58
Space available mail	13.49		25.02

Appendix A.—*International Service Mail Rates*—Continued

[April 1 through June 30, 1980]

	CY 1975 rates [1]	Escalation factors [2]	Final rates 4/ 1/80 thru 6/ 30/80
	(cents)	(percent)	(cents)
Terminal charge per pound originated:			
Priority and military ordinary mail	13.39	55.86	20.87
Space available mail	11.59		18.06
Latin American rate area:			
Linehaul charge per billing ton-mile:			
Priority and military ordinary mail	21.35	83.88	39.26
Space available mail	16.44		30.23
Terminal charge per pound originated:			
Priority and military ordinary mail	9.83	32.28	13.00
Space available mail	9.10		12.04

[1] Order 79-7-17, Appendices D-1, D-2 and D-3, as amended.
[2] Appendices B-1, B-2 and B-3. (Filed as part of the original with the Office of the Federal Register.)

[FR Doc. 80-16291 Filed 5-29-80; 12:26 pm]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Portable Electric Typewriters From Japan; Antidumping: Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Duty

AGENCY: U.S. Department of Commerce.

ACTION: Notice of Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Duty for Certain Exporters of Portable Electric Typewriters.

SUMMARY: This notice is to advise the public that the Secretary has determined that on the basis of information received from certain manufacturers of portable electric typewriters subject to an antidumping duty order a determination of foreign market value and United States price may be made within 90 days from the date of publication of the Antidumping Duty Order. The posting of bond or other security in lieu of the deposit of estimated dumping duties will be permitted for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and before August 8, 1980, for the manufacturers identified below.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230 (202-377-1776).

SUPPLEMENTARY INFORMATION: On May 9, 1980, an Antidumping Duty Order was published in the **Federal Register** relating to portable electric typewriters from Japan (45 FR 30618 and 30619). It was announced that pursuant to section 736 of the Tariff Act of 1930, as amended (93 Stat. 172, 19 U.S.C. 1673e) (hereinafter, "the Act") Customs officers were directed to require, at the same time as estimated normal customs duties on the merchandise are deposited, a deposit of estimated antidumping duties pending liquidation of entries of the subject merchandise for all entries, or withdrawals from warehouse, for consumption.

On May 14 and 15, 1980, two manufacturers of the subject merchandise requested that the deposit of estimated duties be waived and an early determination of duty be made. Section 736(c) of the Act (93 Stat. 173, 19 U.S.C. 1673e(c)) provides that if certain conditions are met, the administering authority may permit, for not more than 90 days after the date of publication of an Order, the posting of bond or other security in lieu of the deposit of estimated antidumping duties. Before granting such a waiver, the administering authority must be satisfied that based upon information presented by manufacturers, producers or exporters, he will be able to determine, within 90 days after the date of the publication of the Antidumping Duty Order, the foreign market value and the United States price for all merchandise of such manufacturers described in that Order which was entered, or withdrawn from warehouse, for consumption on or after the date publication of the affirmative preliminary determination under section 733(b) of the Act and before the date of publication of the affirmative final determination by the International Trade Commission under section 735(a) of the Act.

Two manufacturers of merchandise subject to the Antidumping Duty Order, Brother Industries, Ltd., and Silver Seiko Company, have presented the above-described information. After reviewing the information submitted by these two manufacturers, the Department is satisfied that it will be able to determine foreign market value and United States price for all of the subject merchandise entered, or withdrawn from warehouse, for consumption, during the relevant time period. Accordingly, Customs officers are being directed to waive deposit of estimated duty and accept the posting of a bond or other security for all entries of portable electric typewriters manufactured by Brother Industries and Silver Seiko entered or withdrawn from warehouse, for consumption, from the date of publication of this notice. A deposit of estimated antidumping duty shall be collected on entries of the subject merchandise manufactured by any other manufacturer or producer, in accordance with the Antidumping Duty Order published in the **Federal Register** on May 9, 1980 (45 FR 30618 and 30619). The Department will publish a notice in the **Federal Register** of the result of this determination of its foreign market value and United States price before August 8, 1980. Interested parties may request a hearing to present views orally in accordance with section 774 of the Act (19 Stat. 186, 19 U.S.C. 1677c). Requests for a hearing should be made before June 13, 1980, and should be accompanied by a statement outlining the issues which the person wishes to discuss.

This notice is published pursuant to section 736(c)(2)(A) of the Act (93 Stat. 173, 19 U.S.C. 1673e(c)(2)(A)).

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.
May 27, 1980.

[FR Doc. 80-16420 Filed 5-29-80; 8:45 am]
BILLING CODE 3510-25-M

Maritime Administration

Participation by Vessels Built With Construction-Differential Subsidy in the Carriage of Crude Oil in the Domestic trade; Application by Boston VLCC Tankers, Inc. IV

Notice is hereby given that an application has been filed by Boston VLCC tankers, Inc. IV (Boston IV) to permit Boston IV's 264,073-deadweight-ton tanker, *New York,* built with construction-differential subsidy, to operate in the Alaska/Panama oil trade for six months, with first loading at Valdez, Alaska, on or about July 9, 1980. The *New York* is currently under subtime charter to Clermont Shipping Company, Inc. (Clermont) who will relet the vessel to Exxon Company, U.S.A. (Exxon) for operation in the Alaskan oil trade.

Clermont advises that the *New York* would replace the Exxon-chartered

vessel, *Massachusetts*, in the Alaska/Panama oil trade which vessel will be leaving the trade in mid-June 1980. Clermont notes that Exxon must move 1.7 million barrels of Alaskan crude oil per month, requiring the full capacity of the *New York*, and that no unsubsidized vessel of suitable size is available to meet this requirement.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration, Room 3099–B, Department of Commerce Building, 14th and E Streets, NW., Washington, D.C. 20230.

Any person, firm, or corporation who desires to protest such application should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20230. Protests must be received within five working days after the date of publication of this Notice in the **Federal Register**. If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Assistant Secretary for Maritime Affairs. Within five working days after the due date for the applicant's response, the Assistant Secretary will advise the applicant, as well as those submitting protests, of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Assistant Secretary will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance program No. 11.500 Construction-Differential Subsidies (CDS))

By Order of the Assistant Secretary for Maritime Affairs.

Dated: May 27, 1980.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80–16523 Filed 5–29–80; 8:45 am]

BILLING CODE 3510–15–M

[Docket No. S–668]

Richmond Tankers, Inc.; Extension of Time To File Comments

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Extension of time to file comments.

SUMMARY: On May 15, 1980 (45 FR 32035), the Maritime Subsidy Board published in the **Federal Register** a Notice of Application seeking comments by May 30, 1980, on the application of Richmond Tankers, Inc. to approve the total repayment of construction-differential subsidy paid in connection with the construction of the *TT Bay Ridge* and thereby lift the domestic trading restrictions imposed pursuant to Board Contract No. MA/MSB-284, dated July 29, 1973. The American Martime Association has requested a ten day extension of time to file comments. Notice is hereby given that the closing date for comments on the application is extended to the close of business on June 9, 1980.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr. (202) 377–2188.

Dated: May 27, 1980.

Robert J. Patton, Jr.,

Secretary, Maritime Subsidy Board.

[FR Doc. 80–16522 Filed 5–29–80; 8:45 am]

BILLING CODE 3510–15–M

Approval of Request for Removal, Without Disapproval, from Roster of Approved Trustees

On April 2, 1980, there was published in the **Federal Register** (FR Vol. 45, No. 65), pursuant to 46 CFR 221.28, a Notice of Request for Removal, Without Disapproval, from Roster of Approved Trustees pursuant to the request of Marine Midland Bank, N.A., with offices at 250 Park Avenue, New York, New York.

Therefore, pursuant to Pub. L. 89–346 and 46 CFR 221.21–221.30, Marine Midland Bank, N.A. is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication (May 30, 1980).

Dated: May 22, 1980.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80–16373 Filed 5–29–80; 8:45 am]

BILLING CODE 3510–15–M

Minority Business Development Agency

Financial Assistance Application Announcement; San Diego, Calif.

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning August 1, 1980, in San Diego, California, Standard Metropolitan Statistical Area. The cost of the project is estimated to be $214,000 and the Project Number is 09–10–50490–00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. This proposed project is specifically designed to provide the following services to eligible clients: (1) business information, (2) client screening and selection, (3) business plans, and (4) business packaging and marketing assistance.

Eligibility Requirements: There are no restrictions. Any for-profit or non-profit institution is eligible to submit an application.

Application Materials: An application kit for this project may be requested by writing to the following address:

San Francisco Regional Office,
Minority Busienss Development Agency,
U.S. Department of Commerce,
450 Golden Gate Ave.,
Box 36014, Rm. 15043,
San Francisco, CA 94102.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local government, federally recognized Indian tribunal unit, educational institution, hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked according to the capability of the staff assigned to the project, the management capability of the applicant, the proposed program plan, the budget allocation plan, and the applicant's knowledge of the area to be served. Specific criteria will be included in the application kit.

Renewal Process: If an award is made, continuation awards for up to two additional years may be made to the successful recipient without competition, provided that funds have been appropriated for a project of this kind, and MBDA has determined that such funds are available, there is a continuing need for a project of this kind, and the recipient has performed satisfactorily.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of June 19, 1980. Detailed submission procedures are outlined in each application kit.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Dated May 23, 1980.

Allan A. Stephenson,

Deputy Director.

[FR Doc. 80-16385 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee; Meeting

AGENCY: National Marine Fisheries Service.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee which will meet to review the draft fishery management plans (FMP's) for spiny lobster and sharks and to select species to be included in an FMP for tropical reef fish.

DATES: The meetings will convene on Thursday, June 19, and Friday, June 20, 1980, at 9 a.m., both days and adjourn at approximately 5 p.m., both days. The meetings are open to the public.

ADDRESS: The meetings will take place in the Tampa Room of the Barclay Airport Inn, 5303 West Kennedy Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: May 23, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-16489 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council, its Scientific and Statistical Committee, and its Groundfish Subpanel; Cancellation of Public Meeting With Partially Closed Session

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: Notice is hereby given that the scheduled meeting of June 10-12, 1980, of the Pacific Fishery Management Council, its Scientific and Statistical Committee, and its Groundfish Subpanel, as published in the **Federal Register**, Volume 45, No. 87, Friday, May 2, 1980, page 29383, has been canceled.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

Dated: May 21, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-16490 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name, Sea Lions Promotions Limited (P245).
   b. Address, 9 Auckland Terrace, Parliament Street, Ramsey, Isle of Man.
2. Type of Permit Public Display.
3. Name and Number of Animals: California sea lion (Zalophus californianus).
4. Type of Take: Capture for public display.
5. Location of Activity: Santa Barbara Channel Islands, California.
6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 30, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) it is submitted to the Assistant Administrator for Fisheries, National Marine fisheries Service, through the appropriate agency of the foreign government;

(b) it includes:

i. a certification from such appropriate government agency verifying the information set forth in the application;

ii. a certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. a statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Board of Agriculture and Fisheries, Isle of Man, have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 23, 1980.

William Aron,

Director, Office of Marine Mammals & Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-16488 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

Coastal Plains Economic Development Region; Modification of Boundary

Pursuant to the provisions of Section 501(a) of the Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. 3181(a)), and having examined pertinent data, I have determined that the Coastal Plains Economic Development Region, composed of parts of Florida, Georgia, North Carolina, South Carolina, and Virginia, meets requirements for enlargement to include certain additional counties in Florida. Accordingly, in response to a request from the Coastal Regional Commission Governors, I have today, May 12, 1980, modified the boundary of the Coastal

Plains Region so that it now includes the following counties in Florida.

Brevard	Manatee
Broward	Martin
Charlotte	Monroe
Collier	Okeechobee
Dade	Orange
DeSoto	Osceola
Glades	Palm Beach
Hardee	Pasco
Hendry	Pinellas
Highlands	Polk
Hillsborough	St. Lucie
Indian River	Sarasota
Lake	Seminole
Lee	Volusia

Inquiries relating to this modification should be addressed to the Special Assistant to the Secretary for Regional Economic Development, Room 2092, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Philip M. Klutznick,

Secretary of Commerce.

[FR Doc. 80-16374 Filed 5-29-80; 8:45 am]

BILLING CODE 3510-36-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1980 a commodity to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 2, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-11450

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested parties an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1980, November 27, 1979 (44 F.R. 67925):

Class 8465

Strap, Webbing, Nylon Waist with Lower Back, Pad, LC-2, 8465-01-075-8164.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-16392 Filed 5-29-80; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Blood Products and Preservation; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting.

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Blood Products and Preservation.

Date of Meeting: 27 June 1980.

Time and Place: 0900 hours, Room AS3102, Letterman Army Institute of Research, Presidio, San Francisco, California.

Proposed Agenda: This meeting will be open to the public from 0900-1145 hrs to discuss the scientific research program on Blood Products and Preservation at Letterman Army Institute of Research and from 1700-1715 for the summation of the meeting. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on 27 June 1980 from 1300-1700 hrs for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

J. Ryan Neville, Ph.D., Letterman Army Institute of Research, Bldg 1110, Presidio, San Francisco, CA 94129, (415) 561-4367, will furnish summary minutes, roster of Committee members and substantive program information.

LeeRoy G. Jones,

Colonel, MC, Acting Commander.

[FR Doc. 80-16382 Filed 5-29-80; 8:45 am]

BILLING CODE 3710-08-M

U.S. Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Laser Bioeffects; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting.

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Laser Bioeffects.

Date of Meeting: 24 June 1980.

Time and Place: 0900 hours, Room AS3102, Letterman Army Institute of Research, Presidio, San Francisco, California.

Proposed Agenda: This meeting will be open to the public from 0900-1145 hours to discuss the scientific research program on Laser Bioeffects at Letterman Army Institute of Research and from 1700-1715 for the summation of the meeting. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on 24 June 1980 from 1300-1700 hours for the review, discussion and evaluation of individual programs and projects conducted by the United States Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

J. Ryan Neville, Ph. D., Letterman Army Institute of Research, Bldg. 1110, Presidio, San Francisco, CA 94129, (415) 561-4367, will furnish summary minutes, roster of Committee members, and substantive program information.

LeeRoy C. Jones, M.D.,

Colonel, MC, Acting Commander.

[FR Doc. 80-16381 Filed 5-29-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: Education Department, National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policies, Practices, and Programs, Civil Rights and WEEA Program Committees. It also describes the functions of Council. Notice of the meeting is required pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). This document is intended to notify the general public of its opportunity to attend.

DATE: June 16, 1980, 7:30 p.m. to 9:30 p.m.; June 17, 1980, 8:30 a.m. to 5:00 p.m.; and June 18, 1980, 9:00 a.m. to 4:00 p.m.

ADDRESS: On June 16 from 7:30 to 9:30 and on June 17 from 8:30 to 5:00, meetings will be held at the Council's offices at 1832 M Street, N.W., #821, Washington, D.C. 20036. The June 18 meeting will be held 9:00 a.m. to 4:00 p.m. in the Education Division Conference Room, FOB–6, Room 3000, 400 Maryland Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Dauito, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., #821, Washington, D.C. 20036, (202) 653–5846.

The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on June 16, 1980, from 7:30 p.m. to 9:30 p.m. The agenda will include plans for the Council meeting as well as a discussion of current activities and future plans.

The meeting of the Federal Policies, Practices, and Programs Committee, the Civil Rights Committee, and the WEEA Program Committee will take place on June 17, 1980, from 9:00 a.m. to 3:00 p.m.

The agenda for the Federal policies, Practices, and Programs Committee will include a review of the status of pending legislation on higher education and on youth employment and education, review of the progress of the study of implementation of the sex equity provisions in vocational education programs, and a consideration of actions for responding to recommendations received at three recent Council public hearings on educational needs of women.

The agenda for the Civil Rights Committee will include discussion of matters concerning the implementation of Title IX, 1972 Education Amendments, and other non-discrimination initiatives.

The agenda for the Program Committee will include a review of the follow-up survey report of WEEA grantees and a status report on WEEAP regulation and grant activities for fiscal year 1980.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 8:30 a.m. to 9:00 a.m. and from 3:00 p.m. to 5:00 p.m. on June 17 and from 9:00 a.m. to 4:00 p.m. on June 18, 1980. The agenda will include reports of the Executive Director and the Women's Educational Equity Act Program; recommendations of the Council's standing Committees; review of Council Policies and Procedures; and a discussion of the handling of Council public hearing recommendations.

The meetings of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection.

Signed at Washington, D.C., on May 23, 1980.

Joy R. Simonson,

Executive Director.

[FR Doc. 80–16405 Filed 5–29–80; 8:45 am]

BILLING CODE 4110–02–M

National Advisory Council on Women's Educational Programs and the National Advisory Council on Vocational Education; Meeting

AGENCY: Department of Education, National Advisory Council on Women's Educational Programs and the National Advisory Council on Vocational Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Advisory Council on Women's Educational Programs and the National Advisory Council on Vocational Education. It also describes the functions of both Councils. Notice of the meeting is required pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). This document is intended to notify the general public of its opportunity to attend.

DATE: June 16, 1980, 1:00 p.m. to 5:00 p.m.

ADDRESS: The meeting will be held in the Education Division Conference Room, FOB–6, Room 3000, 400 Maryland Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Martine Brizius, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C., 20036, (202) 653–5846; or Ralph Bregman or Sarah Bennett, National Advisory Council on Vocational Education, 425 13th Street, N.W., Suite 412, Washington, D.C., 20004, (202) 376–8873.

The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The National Advisory Council on Vocational Education was established under Section 104 of the Vocational Education Amendments of 1968, Public Law 90–576. The Council is directed to: (a) advise the President, Congress, and the Secretary concerning the administration of, preparation of general regulations for, and operation of vocational education programs supported with assistance under this title; (b) review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and (c) conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

On June 16, 1980, from 1:00 p.m. to 5:00 p.m. the National Advisory Council on Women's Educational Programs and the National Advisory Council on Vocational Education will hold the first of two forums in Washington, D.C., on sex equity in vocational education. The purpose of the forum is to share information concerning the implementation of the sex equity provisions of the Vocational Education Amendments of 1976, and assessments

of the provisions' effectiveness. Participants will include members of the vocational education community and other informed citizens and organizations.

The agenda will include discussion of data from several contemporary studies and projects, and of testimony presented at two regional public hearings held by the Councils during May in Denver and in New York City.

The meeting will be open to the public. Records will be kept of the proceedings and will be available for public inspection.

Signed at Washington, D.C., on May 23, 1980.

Joy R. Simonson,

Executive Director, National Advisory Council on Women's Educational Programs.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 80-16406 Filed 5-29-80; 8:45 am]

BILLING CODE 4110-02-M

Territorial Teacher Training Assistance Program; Closing Date for Transmittal of Applications for New Projects for Fiscal Year 1980

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Transmittal of Applications for New Projects for Fiscal Year 1980.

Applications are invited for new projects under the Territorial Teacher Assistance Training Program.

Authority for this program is contained in Title XV, Part C, Section 1525, of the Education Amendments of 1978 (Pub. L. 95-561).

(20 U.S.C. 1172)

This program issues awards to the State educational agency (SEA) of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

The purpose of the awards is to provide assistance to the territories in the training of school teachers.

Closing date for transmittal of applicantions: An application for a grant must be mailed or hand delivered by July 14, 1980.

To be assured of consideration for funding, an application for an award should be mailed or hand delivered by July 14, 1980. If the application is late, the Department of Education may lack sufficient time to review it with other applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 13.694, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legible dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room, 5673, Regional Office Building 3, 7th and D Street, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, execpt Saturday, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: It is expected that approximately $2.0 million will be available for the Territorial Teacher Training Assistance Program. It is estimated that these funds will support 5 projects.

The anticipated award for each project will be between $100,000 and $500.000.

However, these estimates do not bind the Department of Education to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms may be obtained by the Territorial SEA's by writing to the Bureau of School Improvement, Department of Education, (Room 3700, Donohoe Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared an submitted in accordance with the regulations.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations govering the Territorial Teacher Training Assistance Program (45 CFR Part 151):

These regulations were published as a notice of proposed rulemaking on April 8, 1980 (45 FR 24070). Applicants should base their applications on the notice of proposed rulemaking. When they are published as final regulations and become effective, these regulations will govern applications and grants under this program. If there are substantial changes in the final regulations. an applicant will be allowed to amend its application.

(b) The Education Division General Administrative Regulations (45 CFR Parts 100a and 100c).

EDGAR was published in final form in the **Federal Register** on April 3, 1980 (45 FR 22497). EDGAR supersedes the General Provisions Regulations for the Department of Education Programs (the current 45 CFR Parts 100a through 100d).

Further Information: For further information contact Dr. Thomas W. Fagan, Bureau of School Improvement, Department of Education (Room 3700, Donohoe Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone: (202) 472-2649.

(Catalog of Federal Domestic Assistance Number 13.694, Territorial Teacher Training Assistance Program.)

Dated: May 23, 1980.

Steven A. Minter, Acting

Secretary of Education.

[FR Doc. 80-16395 Filed 5-29-80; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement; Correction

In 45 FR page 34045, published May 21, 1980, the second paragraph should read "RTD/EU(JA)-30, from Fukushima I, units 1, 3 and 4, owned by the Tokyo Electric Power Company, 224 fuel assemblies, containing 42,045 kilograms of uranium enriched to 0.84% in U-235, and 266.4 kilograms of plutonium."

Since this correction does not alter the proposed transaction in any significant way, the subsequent arrangement will take effect on June 5, 1980, which is

fifteen days after publication of the original notice in the **Federal Register.**

Dated: May 29, 1980.

Frederick McGoldrick,

Acting Director for Nuclear Affairs, International Programs.

[FR Doc. 80-16698 Filed 5-29-80; 11:00 am]

BILLING CODE 6450-01-M

Uranium Mill Tailings Remedial Actions Project Office, Albuquerque Operations Office; Solicitation of Expressions of Interest to Reprocess Uranium Mill Tailings

AGENCY: U.S. Department of Energy, Uranium Mill Tailings Remedial Actions Project Office, Albuquerque Operations Office.

ACTION: Program Information Notice: Request for Expressions of Interest in Remilling Pursuant to Pub. L. 95–604.

SUMMARY: The Uranium Mill Tailings Remedial Actions Project Office (UMTRA–PO) of the Albuquerque Operations Office (ALO) of the Department of Energy (DOE) is requesting expressions of interest from qualified, private parties regarding the remilling of the residual radioactive materials at the inactive uranium mill tailings sites designated pursuant to Pub. L. 95–604, the "Uranium Mill Tailings Radiation Control Act of 1978." This request for expressions of interest will implement the authority of DOE derived from section 108(b) of Pub. L. 95–604 to determine interest in remilling the uranium mill tailings.

EFFECTIVE DATE: July 14, 1980.

FOR FURTHER INFORMATION CONTACT:

(1) Mr. Richard H. Campbell, Project Manager, Uranium Mill Tailings Remedial Actions Project Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115, Telephone (505) 844–3941, or

(2) Mr. Mark L. Matthews, Project Engineer, Uranium Mill Tailings Remedial Actions Project Office, U.S. Department of Energy, Albuquerque, New Mexico 87115, Telephone (505) 844–2185.

SUPPLEMENTARY INFORMATION:

The "Uranium Mill Tailings Radiation Control Act of 1978," Pub. L. 95–604, authorizes the Department of Energy (DOE) to undertake a program of remedial action at designated inactive uranium mill tailings processing sites and vicinity properties. The program is being undertaken in order to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public. Remedial actions undertaken pursuant to the Act are to be accomplished in cooperation with the interested States, Indian tribes, and the persons who own or control the mill tailings sites. Remedial actions are to include, where appropriate and practical, the remilling of tailings to extract residual uranium and other mineral values.

Pursuant to section 108b of the Act, prior to undertaking any remedial action at a designated site, the Secretary is directed to request expressions of interest from private parties regarding the remilling of the residual radioactive materials at the site and, upon receipt of any expression of interest, the Secretary must evaluate the mineral concentration of the residual radioactive materials at each designated site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary may, with the concurrence of the Nuclear Regulatory Commission, permit the recovery of such minerals under such terms and conditions as he may prescribe. Section 101(7) of the Act defines "residual radioactive materials" as "(1) waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ore or low-grade materials." Section 101(8) of the Act defines "tailings" as "the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted." No recovery is permitted unless the recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral must pay to the Secretary a share of the net profits derived from the recovery as determined by the Secretary. After payment of such share to the United States, the person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from the recovery as determined by the Secretary. The person recovering the minerals bears all costs of such recovery. Any person carrying out mineral recovery activities under this program is required to obtain a license under the Atomic Energy Act of 1954 or under State law as permitted under section 274 of the Act.

The Uranium Mill Tailings Remedial Actions Project Office (UMTRA–PO) of the Albuquerque Operations Office (ALO) of the Department of Energy is presently requesting expressions of interest from qualified, private parties regarding the remilling of the residual radioactive materials at the inactive uranium mill tailings sites designated pursuant to Pub. L. 95–604.

The locations and current owners of those inactive uranium mill tailings sites upon which remilling may be permitted under Pub. L. 95–604 are as follows:

Site, location, and owner

1. Cannonsburg, Pennsylvania, Canon Development Company (V. Crile).
2. Salt Lake City, Utah, Salt Lake County Suburban Sanitary District.
3. Durango, Colorado, Ranchers Exploration and Development Corporation (H. Campbell).
4. Grand Junction, Colorado, Shumway Drilling Company (R. Shumway), AMAX, Inc.
5. Riverton, Wyoming, Lome Drilling & Well Service, Inc. (H. S. Harnsberger, Jr.).
6. Gunnison, Colorado, Decker, Bishop & McEachern (N. M. Bishop).
7. Rifle (Old), Colorado, Union Carbide Corp. (R. Beverly).
8. Rifle (New), Colorado, Union Carbide Corp. (R. Beverly).
9. Lakeview Oregon, Precision Pine Co. (N. Stock).
10. Ambrosia Lake, New Mexico, United Nuclear Corp. (H. J. Abiss)
11. Green River, Utah, Union Carbide Corp. (R. Beverly)
12. Slick Rock (North Continent), Colorado, Union Carbide Corp. (R. Beverly)
13. Slick Rock (Union Carbide), Colorado, Union Carbide Corp. (R. Beverly)
14. Maybell, Colorado, Union Carbide Corp. (R. Beverly)
15. Converse County (Spook), Wyoming, Western Nuclear (G. Bogden)
16. Monument Valley, Arizona, Navajo Tribe (P. MacDonald)
17. Tube City, Arizona, Navajo Tribe (P. MacDonald)
18. Shiprock, New Mexico, Navajo Tribe (P. MacDonald)
19. Mexican Hat, Utah, Navajo Tribe (P. MacDonald)
20. Falls City, Texas, Solution Engineering Co. (T. Fife), Lyssey Dairy Farms (V. Lissey), S. Niestroy
21. Lowman, Idaho, Velsicol Chemical Corp. (W. Giblin)
22. Belfield, North Dakota, Burlington Northern Railway
23. Bowman, North Dakota, Chicago Minneapolis St. Paul and Pacific Railroad
24. Baggs, Wyoming, Information not available

Expressions of interest for tailings remilling are requested at this time. After review of these expressions of interest, DOE may at some time in the future solicit remilling proposals from those who have expressed interest.

Parties interested in obtaining specific information regarding the mill tailings are advised to contact either the owner directly or the following person: Richard H. Campbell, Project Manager; Uranium

Mill Tailings Remedial Actions Project Office, U.S. Department of Energy, Albuquerque Operations Office.

Qualified firms intending to express interest should submit, within 45 days from publication of this announcement, an expression of interest including a brief statement of their capability to conduct remilling operations and any other pertinent data, not to exceed a total of three single-spaced typewritten pages.

Responses should be addressed to: Richard H. Campbell, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115.

Issued in Washington, D.C. May 23, 1980.

John W. Crawford,

Acting Assistant Secretary for Nuclear Energy.

[FR Doc. 80-16398 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Cumberland Basin Projects; Order Extending Confirmation and Approval of Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Extension of approval on interim basis of Cumberland Basin Projects' rates.

SUMMARY: The Federal Energy Regulatory Commission (FERC) has not taken action on the rate schedules for Cumberland Basin power approved, on an interim basis, by the Assistant Secretary for Resource Applications and submitted to FERC on May 22, 1979. Since action by FERC is not expected prior to June 30, 1980, when the interim approval expires, the Assistant Secretary has extended the effective period for the applicable rate schedules as provided in Rate Order No. SEPA-8.

EFFECTIVE DATES: Extension of confirmation and approval of rates on an interim basis effective July 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Sidney M. Cleveland, Acting Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635 (404) 283-3261.

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633-8336.

SUPPLEMENTARY INFORMATION: Cumberland Basin Power Rate Schedules CR-1-D and CR-2-D were approved, on an interim basis, by the Assistant Secretary for Resource Applications pursuant to Delegation Order No. 0204-33, 43 FR 60636, for a period beginning July 1, 1978, and ending June 30, 1980.

Rate Order No. SEPA-8 provides that the rate schedules shall remain in effect on an interim basis for an additional 12 months unless such period is extended or until these or substitute rates are confirmed and approved by FERC on a final basis.

Issued in Washington, D.C., May 22, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Department of Energy

Assistant Secretary for Resource Applications

In the Matter of Southeastern Power Administration, Cumberland Basin Projects' Power Rates; Rate Order No. SEPA-8.

Order Extending Confirmation and Approval of Power Rates on an Interim Basis

May 22, 1980.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This Rate order is issued pursuant to the delegation to the Assistant Secretary.

Background

On May 22, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. SEPA-4 confirming and approving on an interim basis, as of July 1, 1978, Wholesale Power Rate Schedules CR-1-D and CR-2-D, applicable to power from the Cumberland Basin Projects, Tennessee and Kentucky. Rate Schedule CR-1-D applies to the Tennessee Valley Authority (TVA) and consists of an Annual Charge paid in monthly increments reduced by credits for power retained and sold to customers outside the TVA area. Rate Schedule CR-2-D applies to retained peaking power and/or standby power sold to Big Rivers Electric Corporation; Indiana Statewide Rural Electric Cooperative, Incorporated, Hoosier Energy Division; Southern Illinois Power Cooperative; and East Kentucky Power Cooperative and delivered at the Cumberland Projects or TVA interconnection points. These rate schedules were to remain in effect on an interim basis through June 30, 1980, unless such period was extended or until FERC confirmed and approved them or substitute rate schedules on a final basis.

These rate schedules, together with an April 1979 Repayment Study and other supporting data, copies of a transcript of a public meeting and applicable power contracts, were submitted to FERC with the request that the rate schedules be confirmed and approved on a final basis.

Discussion

Because of the extraordinary number of Federal power rate actions submitted for final approval since the issuance of Delegation Order No. 0204-33, FERC has been unable to take action on rate schedules applicable to Cumberland Basin power. It is necessary, therefore, for the Assistant Secretary for Resource Applications to extend interim approval of the Cumberland Basin Rate Schedules for an additional 1-year period.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend confirmation and approval on an interim basis, effective July 1, 1980, of attached Rate Schedules CR-1-D and CR-2-D. These rate schedules shall remain in effect on an interim basis through June 30, 1981, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, D.C., this 22nd day of May 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Department of Energy

Southeastern Power Administration

Wholesale Power Rate Schedule CR-1-D

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability: This rate shedule shall be applicable to electric power and energy generated at the Dale Hollow, Center Hill, Wolf Creek Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and sold under contract between the Department of Energy and TVA.

Character of Service: The electric power and accompanying energy sold hereunder will be three-phase alternative current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Rates: The payments to the Department of Energy by TVA hereunder for availability of capacity and deliveries of energy from the Cumberland Projects are estimated to produce over a period of years an average annual payment of $18,450,000, which amount

is hereinafter referred to as the "Basic Annual Charge."

The Basic Annual Charge shall be the applicable annual charge for each year (ending June 30) in which the average unregulated flow of water into Wolf Creek Reservoir as determined hereinafter is between 8,500 and 9,250 c.f.s. To determine the applicable annual charge in other years, the Basic Annual Charge shall be adjusted in accordance with variations in said flow of water as follows: For each 750 c.f.s. or fraction thereof by which said flow of water for the year is greater than 9,250 c.f.s., the applicable annual charge shall be greater by $680,000; for each 500 c.f.s. or fraction thereof by which said flow of water for the year is less than 8,500 c.f.s., the applicable annual charge shall be less by $750,000; provided, that the applicable annual charge for any year shall be not less than $15,450,000 nor more than $21,170,000.

Unless otherwise mutually agreed, the annual unregulated flow of water into the Wolf Creek Reservoir will be established from a consideration of the unadjusted discharge registered at Rowena gauging stations as determined by the U.S. Geological Survey, adjusted for changes in storage at all reservoirs upstream from said station, in accordance with capacity ratings by the owners thereof, and for other possible factors which may be mutually agreed upon by the parties.

TVA shall pay the applicable annual charge to Energy in monthly installments as follows:

A. For each of the months July through December, the monthly installment payment shall be $1,210,000.

B. For the month of January and for each succeeding month through June, the installment payment for each month shall be the amount computed for that month as follows:

1. The estimated applicable annual charge will first be computed using an estimated average flow for the year determined by combining the inflow from the beginning of the fiscal year through the month for which the installment is being computed with the minimum probable inflow for the remainder of the fiscal year as listed in Table I below opposite the month for which said payment is being computed.

2. The installment payment will then be determined by taking the difference between the estimated applicable annual charge for the fiscal year as determined under 1. and the total of the installment payments for the preceding months in that fiscal year and multiplying said difference by the percentage listed in Table II opposite the month for which the installment payment is being computed.

Month	Table I (second-foot days)	Table II (percentage)
January	800,000	20
February	700,000	25
March	290,000	30
April	50,000	40
May	7,800	50
June	0	100

C. In the event that the total of the monthly installment payments for any fiscal year exceeds the applicable annual charge for that fiscal year, the excess shall be credited against the monthly installment payments for the succeeding fiscal year.

Credits for Retained Power: The applicable annual charge shall be adjusted as follows to compensate for the retention of Peaking Power, Standby Power, and "special" emergency Standby Power and the transfer of retained power and energy for sale by the Administrator of Southeastern Power Administration to Other Customers. For each Supply Year, beginning November 1, the applicable charges shall be reduced by:

a. $17.88 per kw of Peaking Power Base Amount retained by Administrator.

b. $4.86 per kw of the Contract Standby Demand of the Administrator's first Other Customer, plus $3.24 per kw of the sum of the Contract Standby Demands of the second and third Other Customers. For purposes hereof, such "first" Other Customer shall be the one with the largest Contract Standby Demand.

c. 6.4 cents per calendar day (or fraction thereof) per kw of emergency Standby Power used in November, April, May, June, September, and October of each Supply Year, and 9.9 cents per calendar day (or fraction thereof) per kw of the emergency Standby Power used during any other period of the year.

d. 3.26 mills per kwh of energy associated with the Peaking Power Base Amount and of the energy scheduled with the use of maintenance Standby Power.

e. 5.32 mills per kwh of energy scheduled with the use of emergency Standby Power.

f. $25.50 per kilowatt of the maximum amount, if any, by which the capacity used by the Other Customers exceeds the amount of the Cumberland Capacity to which the Administrator is entitled. For purposes of this subsection, the Administrator shall be entitled at any time to the sum of the following:

(1) The total of Peaking Power retained by the Administrator for use at that time by all of the Other Customers, and

(2) If the Administrator at that time is delivering Standby Power to any Other Customer, the Contract Standby Demand of that Customer and any amount that is being retained as "special" emergency Standby Power at that time.

Notwithstanding the foregoing, insofar as such excess consists of excess emergency Standby Power takings, the reduction provided for in this subsection f. shall not apply to the first 100 mw for the first 24 hours of the first four occasions of the emergency excess takings in any Supply Year caused by outages of generating units of the Administrator's Other Customers occurring simultaneously with scheduled outages or other emergency outages.

g. 5.32 mills per kwh of the energy taken in any hour in excess of the amount of energy to which the Administrator is entitled.

During each month of a Supply Year, the monthly installments due shall be reduced by one-twelfth of the sum of the amounts of the annual reductions computed under a. and b. above, and by the sum of the amounts of the reductions computed under c, d, e, f, and g above for the month.

Service Interruption: When delivery of power to TVA is interrupted or reduced due to failure of facilities at any of the Cumberland Projects and whenever such interruption or reduction results in a loss for a continuous period of more than 31 days of installed capacity (name plate) in excess of 50 megawatts or loss of an entire project, the payments to be made by TVA for the months in which such interruption affects the delivery of power shall be adjusted; provided, however, that no monthly bill will be adjusted until there is a net cumulative monetary credit due TVA. Monthly adjustments will be determined as follows:

a. Adjustments for changes in energy deliveries will be determined by multiplying the change in energy determined by the Administrator to have resulted from the interruption or reduction by 3.16 mills per kilowatt-hour.

b. Ajustments for installed capacity losses for each month in which the interruption or reduction occurs for more than half the hours in the month will be determined by multiplying the name plate capacity determined by the Administrator to have been lost as a result of the Interruption or the reduction by $0.90 per kilowatt.

July 1, 1978.

Wholesale Power Rate Schedule CR–2–D

Availability: This rate schedule shall be available to the Big Rivers Electric Corporation; Indiana Statewide Rural Electric Cooperative, Incorporated, Hoosier Energy Division; Southern Illinois Power Cooperative; and East Kentucky Power Cooperative (hereinafter individually called Customer; collectively, Customers).

Applicability: This rate schedule shall be applicable to Peaking Power, Standby Power, and "special" emergency Standby Power, together with accompanying energy generated at the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of 60 cycles per second and shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of the Big Rivers Electric Corporation and the East Kentucky Power Cooperative. The points of delivery to the Big Rivers EC transmission system will be one at 13,800 volts and two at 161,000 volts in the vicinity of the Barkley dam power plant and another point of delivery at 161,000 volts from the TVA transmission system in the vicinity of Paradise, Kentucky. The point of delivery for East Kentucky PC will be at the 161,000 volt bus of the Wolf Creek power plant. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $16.80 per Supply Year for each kilowatt of the Contract Peaking Demand, payable $1.40 per billing month.

$4.26 per Supply Year for each kilowatt of the Contract Standby Demand, payable in equal monthly installment payments of one-twelfth of the annual charge.

$0.064 per calendar day (or fraction thereof) per kw of Standby Power delivered for emergency purposes in November, April, May, June, September, and October of each Supply Year, and $0.099 per calendar day (or fraction thereof) per kilowatt of the Standby Power delivered for emergency purposes during any other period of the year.

Whenever a Customer's use of standby capacity for emergency outage is reduced during a day because of emergency outage of another or other Customers, the Customer first using emergency standby capacity shall pay the daily use charge to the extent of his maximum usage. Other Customers shall pay a daily use charge that day only to the extent that they cause a higher maximum to be established.

A Supply Year is a year beginning November 1.

Energy Charge: 4.20 mills per kilowatt-hour for all Peaking Energy.

3.26 mills per kilowatt-hour for all maintenance Standby Energy.

5.32 mills per kilowatt-hour for all emergency Standby Energy.

"Special" Emergency Standby Power: "Special" emergency Standby Power from the Cumberland capacity can be made available by the Government to any particular Customer for periods of not less than one week. Any such amounts of power so made available and bought by said Customer shall be at rates as agreed upon by the operating representatives of the parties prior to commencing delvery.

Billing Month: The billing month of power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service: The Standby Capacity and Peaking Capacity and the associated Standby Energy and Peaking Energy sold to Customers under this rate schedule shall come exclusively from capacity and energy available from the Cumberland Projects and retained by the Administrator. Standby Capacity shall be used by Customers only to replace loss of generation on their systems because of maintenance and/or emergency outages of their generating equipment. Maintenance outages shall be a matter of coordination between the Government and the Customers.

The rates and charges for Standby Capacity purchased are predicated upon the purchase of such capacity by three customers.

Each Customer is prohibited from using in any supply year any Standby Capacity and Peaking Capacity in excess of the capacity to which it is entitled. Should the power used by any individual Customer exceed the capacity to which it is entitled in any sixty (60) consecutive minute period in any Supply Year, such Customer shall pay the Government $25.50 per kilowatt of the largest such excess occurring during that year through the current billing period. Notwithstanding the foregoing, insofar as such excess consists of emergency Standby Power takings by a Customer caused by outages of generating units of any of the three Customers occurring simultaneously with scheduled outages or other emergency outages, the payment provided herein shall not apply to the first 100 mw for the first 24 hours of the first four occasions of the emergency takings in any Supply Year; provided, that the first four occasions provided herein are a total for the three Customers and will be applied to the first four excess emergency takings by the Customers in the order of their occurrence. Each Customer shall also pay the Government 5.32 mills per kilowatt-hour for Standby Energy taken in any hour in excess of the amount of energy to which such Customer is entitled.

The terminal equipment required for delivery of power at the Barkley switchyard will be furnished by the Government, and the terminal equipment required at any other points of delivery agreed upon with Big Rivers will be furnished by Big Rivers. The costs of the terminal equipment required for delivery of power at the Wolf Creek power plant to East Kentucky shall be borne by the Government.

Unless otherwise agreed, the interconnected electric systems of the Customers and the system of TVA shall be operated in parallel and such Customers shall not interconnect their respective systems with other power systems that are normally operated in parallel with TVA's system.

Service Interruption: When capacity made available and sold under this rate schedule is reduced or interrupted for sixty (60) minutes or longer and such reduction or interruption is not due to conditions on the individual Customer's system, (a) the monthly demand charge for Standby Capacity for the billing month shall be reduced for billing purposes for each hour (the nearest number of whole hours) that such capacity is reduced or interrupted, by an amount equal to one-twelfth of the annual charge divided by the number of hours in the billing month times the reduction, in kilowatts, of such capacity, (b) the monthly charge for Peaking Capacity for the billing month shall be reduced for billing purposes, for each hour (the nearest number of whole hours) that such capacity is reduced or interrupted, by an amount equal to $1.40 divided by the number of hours in the billing month times the reduction, in kilowatts, of such capacity, and (c) the amount of Peaking Energy which such Customer had scheduled but did not receive on the day or days of interruption may be rescheduled and taken by such Customer not later than the close of the then current Supply Year.

July 1, 1978.

[FR Doc. 80-16425 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP80-100]

Amoco Production Co.; Section 108 NGPA Determination Purdum Unit No. 1, JD80-25602; Preliminary Finding

May 23, 1980.

On April 9, 1980, the Corporation Commission of the State of Oklahoma notified the Federal Energy Regulatory Commission (Commission) that it had made an affirmative determination that the Purdum Unit No. 1 well qualified as a "seasonally affected" stripper well under § 271.804(d) of the Commission's regulations implementing the Natural Gas Policy Act of 1978 (NGPA).

Section 271.804(d)(1) provides that in order to qualify for a designation as a "seasonally affected" well, the 24-month production reports must "demonstrate that the well is subject to seasonal fluctuations which temporarily increase average production above 60 Mcf per production day" and the jurisdictional agency must find that the seasonal fluctuations "have not increased and cannot reasonably be expected to increase production levels above an average of 60 Mcf per production day for any 12-month period." In addition, § 274.206(d)(4) requires the applicant to file "a description of the nature of the seasonal fluctuations as inferred from the data supplied." The record shows that from June, 1977, to February, 1979, production from the Purdum Unit No. 1 well was relatively stable and averaged 15.3 Mcf per production day. However, the subject well has experienced production in excess of 60 Mcf per production day during a 90-day period from March, 1979 through May, 1979. In its application, Amoco stated that, "Pipeline company's line pressure lowered, we swabbed off fluid and well produced more for the 90-day period March, April and May 1979."

In order to qualify as a seasonally affected well, the applicant must demonstrate that any fluctuations above 60 Mcf per day for a 90-day period are seasonal and predictable.[1] Because the applicant has not demonstrated that the well has experienced fluctuations that are seasonal and predictable, the determination is not supported by substantial evidence that the well qualifies as a "seasonally affected" stripper well under § 271.804(d) of the Commission's regulations.

The Commission finds:

[1] *See* "Final Order on Well Category Determinations", Docket No. GP79—123, issued January 8, 1980.

The Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i) that the notice of determination submitted by the Oklahoma Corporation Commission for the above listed well is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-16477 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-325]

Consumers Power Co.; Filing Certificate of Concurrence

May 23, 1980.

The filing Company submits the following:

Take notice that Consumers Power Company (Consumers) tendered for filing on May 15, 1980, its Certificate of Concurrence with the filing by American Electric Power Service Corporation on behalf of its affiliate Indiana and Michigan Electric Company (I & M) of a change of rate schedule, Amendment No. 17, among I & M, Consumers and the Detroit Edison Company (Detroit) (Consumers and Detroit being herein jointly referred to as the Michigan Companies. This Amendment provides for the sale of Unit Power by I & M and the purchase of the electric power by the Michigan Companies for the Contract Period and in the demand quantities as follows:

	kW
From the Amos Station: May 1, 1980—September 30, 1980	100,000
From the Gavin Station: May 1, 1980—September 30, 1980	100,000

Consumers states that the Amos Station and the Gavin Station are owned by affiliation of I & M.

I & M has requested the Commission to accept the Amendment for filing on or before May 1, 1980, as it intends to commence the sale of Unit Power to the Michigan Companies as of that date.

The proposed change would increase the demand rate for Unit Power from $4.50 per kilowatt month to $5.35 per kilowatt month which would increase anticipated revenues on 200,000 kW of sales from $2,805,344 to $2,975,344 per month. There have been no sales of Unit Power since 1978.

A copy of this filing has been served upon the Detroit Edison Company, the American Electric Power Service Corporation, the Public Service Commission of Indiana, Michigan Public Service Commission, and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure on or before June 13, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-16478 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CP78-391, et al.]

Great Plains Gasification Associates, et al.; Filing, Scheduling Public Conference and Setting Time Limit for Comments

May 23, 1980.

On May 23, 1980, Great Plains Gasification Associates and the pipeline company applicants submitted a motion for modification and clarification of prior Opinions No. 69 and 69–A in this proceeding and for acceptance and approval of modified tariffs and related agreements. A number of documents accompanied the motion. Copies of the motion and the documents also were filed on all parties to the proceeding. The documents are as follows:

(1) Great Plains Coal Gasification rate Adjustment provisions proposed by the Customer Pipeline Companies (Attachments E, F, G, H, and I), together with a related refund undertaking (Attachment J);

(2) Credit Agreement (Attachment K);

(3) Restatement of Coal Sales Agreement (Attachments L and M);

(4) Partnership Agreements (Attachment N); and

(5) Basin Electric Agreements (Attachments O and P).

In most instances the materials submitted are modifications of documents previously included in the record and which have been amended to reflect either explicit directives in the Commission's Opinions and/or changes suggested at the public conferences held on several occasions since the decisions issued. The Credit Agreement and materials related there to were not in the record; however, an earlier version was made available at the public conferences. With the concurrence of the applicants this earlier version, together with the partnership agreement and the gas funding and gas purchase agreements, was reviewed at the Commission's request by the U.S. Treasury Department from a financial viewpoint in order to assist in the Commission's evaluation. The copies of this notice which are being sent to the participants have attached a copy of the Treasury Department's report.

On April 18, 1980, Great Plains filed modified Gas Purchase and Funding Agreements (Attachments A, B, C, and D) on the Commission and the parties, along with a motion requesting their acceptance. The documents have not been changed in the interim and have not been refiled. They will be considered together with the other documents referred to herein.

The Commission desires that all participants in the proceeding have as full an understanding as they may desire of these materials and of the amendments which have been made. Accordingly, a public conference has been scheduled for Tuesday, June 3, 1980, in the Offices of the Commission, commencing at 10:00 a.m. at which representatives of the applicants will explain the several documents. All persons present will be free to participate and pose clarifying questions. Thereafter, following the conclusion of the conference, the parties and staff will have until June 10, 1980, to submit written comments regarding these materials for the Commission's consideration.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-16479 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CP75-154 and CP75-227; Docket No. CP75-57]

Montana Dakota Utilities Co. and Kansas-Nebraska Natural Gas Co. Inc; Informal Conference

May 23, 1980.

Take notice that on June 5, 1980, at 9:30 a.m. an informal conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 among the applicants in the above-captioned dockets, the intervenors to those dockets and members of the Commission Staff.

At Docket No. CP75–154 Montana-Dakota Utilities Company (MDU) has filed a petition to amend the order issued May 11, 1977 in the instant docket so as to authorize an additional exchange, and to use in interstate

commerce certain existing facilities which have previously been used solely in intrastate commerce.

At Docket No. CP75–227 MDU has filed a petition to amend the Commission order issued February 25, 1977 so as to remove an intrastate supply condition prescribed therein so that the communities of Sheridan and Buffalo, Wyoming may continue to be served from the aforementioned facilities.

At Docket No. CP75–57 Kansas-Nebraska Natural Gas Company Inc., (K-N) has filed a petition to amend the order issued May 11, 1977 in the instant docket so as to authorize an additional delivery point under the Bowdoin exchange agreement between KN and MDU dated May 10, 1974.

This informal conference is open to the public, however, attendance or participation at the informal conference will not serve to make the attendees parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the KN and the MDU filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–16480 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP80–347]

Natural Gas Pipeline Co. of America; Informal Conference

May 22, 1980.

Take notice that on June 3, 1980; at 1:30 p.m. an informal conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 among the Petitioner in the above-captioned docket, Getty Synthetic Fuels Inc. (GSF) and members of the Commission Staff.

The informal conference is being held at the request of Petitioner to discuss certain aspects of Petitioner's request filed in Docket No. CP80–347 pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure (18 CRF 1.7) for a declaratory order concerning the jurisdictional status of certain landfill gas operations and to permit Petitioner to recover through the Purchased Gas Adjustment Clause of its tariff the cost of the gas to be purchased; and an application pursuant to Section 7(c) of the Natural Gas Act (15 USC 717f(c)) for a certificate of public convenience and necessity authorizing the construction of a side tap to enable Petitioner to receive said gas into its existing interstate system, all as more fully set forth in the petition for declaratory order.

The informal conference is open to the public, however attendance or participation at the informal conference will not serve to make the attendees parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the Petitioner's filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–16481 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. RP80–88]

Northern Natural Gas Co., Division of InterNorth, Inc.; Order Accepting Tariff Sheets for Filing, and Suspending Rate Increase Subject to Conditions and Refunds, Granting Waiver, Initiating Hearing and Granting Intervention

May 23, 1980.

On April 25, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) filed revised tariff sheets [1] proposed to be effective May 27, 1980. Northern states that the purpose of this filing is to provide for increased jurisdictional rates for Northern's principal market area sales which, when applied to test period sales volumes, will result in increased annual revenues of $163,226,857. Northern further states that this filing provides for increased rates for its jurisdictional field sales made in the three operational areas (Panhandle, Plains and Permian) south of the principal market area. When applied to the test period sales volumes, these latter increased rates will result in increased annual revenues of $812,501. Northern's proposed rates are based on actual data for calendar year 1979, adjusted for changes known and measurable through September 30, 1980.

Public notice of this filing was issued May 2, 1980 providing for protests or petitions to intervene to be filed on or before May 16, 1980. Petitions to intervene were filed by those listed in the appendix, and a notice of intervention was filed by the Public Service Commission of Wisconsin. All of these petitioners have sufficient interest in this proceeding to justify their invention.

Based upon a review of Northern's filing, the Commission finds that the proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept for filing Northern's tariff sheets, subject to conditions, and suspend their effectiveness so that they shall become effective, subject to refund on October 27, 1980, at the end of the full five month statutory period.

Northern stated that the principal reasons for this filing are increases in the cost of obtaining new gas supplies, revenue requirements to provide an overall return of 13.32 percent on its rate base, and operating costs. Northern claims the need for an overall rate of return of 13.32 percent which would provide a 15.50 percent return on common equity. This represents an increase above the overall rate of return of 10.06 percent reflecting a 12 percent return on common equity approved in the settlement in Docket No. RP78–56.[2] Northern has also proposed revisions to its FERC Gas Tariff to modify the general terms and conditions pursuant to an Initial Decision issued November 18, 1977, and the subsequent Commission order issued on September 6, 1979, in Docket No. RP71–107 (Phase II) to reduce minimum Btu provisions and the elimination of building adjustment provisions.

Northern has requested a waiver of Section 154.63(e)(2)(ii) of the Commission's rules and regulations to conditionally permit inclusion in rates of $40.8 million in additional facilities, not in service at this time, which Northern states, may be required in order for Northern to deliver the sales and transportation volumes contemplated by the filing. Since the facilities are expected by Northern to be in service by the end of the nine month adjustment period, the requested waiver of the regulations should be granted to permit the inclusion of costs related to facilities not yet certificated, subject to the condition that Northern file revised tariff sheets prior to September 30, 1980, reflecting the elimination of all costs associated with facilities not in service by that date.

The Commission Orders:

(A) Northern's proposed Twenty-Third Revised Sheet No. 4a, Thirteenth Revised Sheet No. 4b, Second Revised Sheet Nos. 25, 63 and 79, First Revised Sheet Nos. 54, 55, 64a and 64b, Original

[1] Twenty-Third Revised Sheet No. 4a, Thirteenth Revised Sheet No. 4b, Second Revised Sheet Nos. 25, 63 and 79, First Revised Sheet Nos. 54, 55, 64a and 64b, Original Sheet No. 64c, all to FERC Gas Tariff Third Revised Volume No. 1, and Twenty-Third Revised Sheet No. 1c to FERC Gas Tariff Original Volume No. 2.

[2] In Docket No. RP78–56 common equity was 54.27 percent of the total capitalization whereas in this filing common equity constitutes approximately 53.71 percent of the total capitalization.

Sheet No. 64c, all to its FERC Gas Tariff Third Revised Volume No. 1, and Northern's Twenty-Third Revised Sheet No. 1c to its FERC Gas Tariff Original Volume No. 2 are accepted for filing, suspended and shall become effective on October 27, 1980, subject to refund and conditions as described in paragraphs (B) and (C) below.

(B) Waiver of Section 154.63(E)(2)(ii) of the Regulations, to permit the inclusion in its cost of service of facilities not in service as of September 30, 1980, is granted subject to the condition that Northern file on or before October 27, 1980, a revised tariff sheet reflecting the elimination of all costs associated with facilities not in service by that date, and provided that no off-setting adjustments to the suspended rates shall be permitted prior to hearing except for those adjustments made (1) pursuant to Commission approved tracking provisions, (2) required by this order, or (3) required by other Commission orders.

(C) Northern shall further be required to revise its tariff sheet to reflect the actual balance of advance payments as of September 30, 1980, provided that the inclusion of a higher advance payment balance shall not be permitted to increase the level of the original suspended rates.

(D) Pursuant to Sections 4, 5, 8, and 15 of the Natural Gas Act and the Commission's Rules and Regulations thereunder, a public hearing shall be held concerning the lawfulness of the rates proposed by Northern.

(E) Staff shall serve top sheets on or before August 27, 1980.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR § 3.5 (d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. to establish such further and additional procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided in the rules of practice and procedure.

(G) The petitions to intervene listed in the appendix are granted subject to the provisions of the Commission's Rules and Regulations, *Provided,* However, that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further* that the admission of such intervenors shall be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix

Petitions to Intervene were filed by: Michigan Power Company, Great Plains Natural Gas Company, North Central Public Service Company, Columbia Gas Transmission Corporation, Kansas-Nebraska Natural Gas Company, Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, Iowa-Southern Utilities Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin).

[FR Doc. 80-16482 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP79-150]

Northwest Pipeline Corp.; Amendment to Application

May 23, 1980

Take notice that on May 9, 1980, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP79-150 pursuant to Section 7(c) of the Natural Gas Act, an amendment to its application pending in the instant docket so as to reduce the scope of the authorization requested, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant, in an application filed in the instant docket, on January 17, 1979, and supplemented on November 26, 1979, requested authority to construct and operate certain natural gas facilities and to transport natural gas for Northern Natural Gas Company (Northern), it is stated. In the original application and the supplement thereto, it is stated that Applicant then had gas purchase contracts with Amoco Production Company (Amoco) and with Chevron U.S.A. Inc. (Chevron) covering 87.5 percent of the natural gas reserves in the Ryckman Field, Uintah and Lincoln Counties, Wyoming; additionally, it is stated that Applicant also sought permission to transport Northern's 50 percent interest in the Painter Reservoir.

Subsequently, Applicant states, subject to the execution of a gas purchase contract, it has acquired Amoco's 37.5 percent interest in the Painter Reservoir Field, and that Northern has abrogated the gas transportation agreement between Applicant and Northern in favor of such gas being transported for Northern by the proposed Trailblazer, *et al.*, project.

In view of the withdrawal of Northern's transportation request, Applicant has redesigned its facilities to provide only for the gathering and transportation of gas under contract to Applicant inasmuch as Northern's transportation needs from the Painter Reservoir Field would be met by the Overthrust-CIG-Trailblazer pipeline network, it is asserted. To effectuate these design changes, Applicant proposes to construct and operate the following facilities:

(A) 26.84 miles of 16-inch main trunkline from the Ryckman-Painter junction to a point of interconnection with applicant's existing 16-inch Big Piney Lateral at Applicant's Opal gasoline plant;

(B) 6.36 miles of 8-inch trunkline from the Ryckman-Painter Junction to the Ryckman Field;

(C) 15.49 miles of 10-inch trunkline from the Ryckman-Painter Junction to the Painter Reservoir field;

(D) 4,000 compressor horsepower, 2,725 horsepower to be installed in the Ryckman Field and 1,275 horsepower to be installed in the Painter Reservoir Field; and

(E) Facilities appurtenant thereto.

The cost of the above proposed facilities is estimated to be $20,281,000 which cost would be financed with interim loans to be later supplemented with a permanent form of financing consistent with Applicant's overall financing requirements, it is said.

It is further stated that the gas to be purchased by Applicant is "wet" gas and would, therefore, require processing at Applicant's Opal gasoline plant, and that the producers, Amoco and Chevron, have the right to take their liquid hydrocarbons in kind. In the event the producers elect to take their liquid hydrocarbons in kind, Applicant proposes to charge the producers a 30.2 cents per million Btu rate for gathering liquid and liquefiable hydrocarbons and 5.72 cents per Mcf for processing the gas at Applicant's Opal gasoline plant.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition

to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-16483 Filed 5-29-80; 8:45 am]

BILLING CODE 6450-85-M

[No. 208]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

May 23, 1980

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Kansas Corporation Commission

1. Control Number (FERC/State)
2. API well number
3. Sector of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No
8. Estimated Annual Volume
9. Date received at FERC
10. Purchaser(s)

1. 80-33186/K-79-0797
2. 15-175-00000-0000
3. 108 000 000
4. Mallonee-Mahoney Inc
5. Beck No 1
6. Evalyn-Condit
7. Seward KS
8. 21.0 million cubic feet
9. May 9, 1980
10. Northern Natural Gas Co

1. 80-33187/K-79-0585
2. 15-175-00000-0000
3. 108 000 000
4. Cabot Corp
5. Kelly No 1
6. Kansas-Hugoton
7. Seward KS
8. 9.0 million cubic feet
9. May 9, 1980
10. Cities Service Gas Co

1. 80-33188/K-79-0699
2. 15-093-00000-0000
3. 108 000 000
4. Amoco Production Co
5. Rosener Gas Unit No 1
6. Hugoton Chase
7. Kearny KS
8. 21.0 million cubic feet
9. May 9, 1980
10. Cities Service Gas Co

West Virginia Department of Mines, Oil and Gas Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS area name
7. County, State or Block No
8. Estimated Annual Volume
9. Date received at FERC
10. Purchaser(s)

1. 80-32868
2. 47-099-21677-0000
3. 103 000 000
4. Davco Drilling Co
5. Pat Napier No 1
6. Lincoln
7. Wayne WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80-32869
2. 47-085-01473
3. 108 000 000
4. Sioux Gas Company
5. C A & J O Nay No 1
6. Union District
7. Ritchie WV
8. .9 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32870
2. 47-033-00378-0000
3. 108 000 000
4. Chicago Bears Football Club Inc
5. L L Crawford No 1
6. Elk District
7. Harrison WV
8. 11.1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32871
2. 47-097-00097-0000
3. 108 000 000
4. Galloway Company Inc
5. S R Hill
6.
7. Upshur WV
8. 150.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80-32872
2. 47-013-01916-0000
3. 108 000 000
4. Lowell Sampson
5. William Taylor No 1
6.
7. Calhoun WV
8. 1.3 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32873
2. 47-103-01274-0000
3. 108 000 000
4. C B Westfall
5. Deward Offutt No 1
6.
7. Calhoun WV
8. 4.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32874
2. 47-045-00956-0000
3. 103 000 000
4. Devon Corporation
5. Dingess Rum Coal Co No 855
6. Stollings
7. Logan WV
8. 300.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans Corp

1. 80-32875
2. 47-021-02741-0000
3. 108 000 000
4. Trio Petroleum Corp
5. Despard A No 1
6. Glenville South
7. Gilmer WV
8. 16.4 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32876
2. 47-097-00818-0000
3. 108 000 000
4. Ross-Wharton Gas
5. Corathers 104-A
6. Pringle Fork
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas

1. 80-32877
2. 47-013-00595-0000
3. 108 000 000
4. W H Hildreth
5. T P Mccune No 1
6. Orma
7. Calhoun WV
8. 1.6 million cubic feet
9. May 12, 1980
10. Cabot Corp

1. 80-32878
2. 47-047-00750-0000
3. 108 000 000
4. Energy Development Corp
5. EDC No 9-MCD-750
6. Big Sandy
7. McDowell WV
8. 14.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80-32879
2. 47-107-00622-0000
3. 108 000 000
4. Big B Drilling Co Inc
5. C E McPherson No 2
6. Clay District
7. Wood WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Co

1. 80-32880
2. 47-085-24253-0000
3. 103 000 000
4. Green L Haught & Sons
5. Betty Semmelman No H-727
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80-32881
2. 47-045-00962-0000
3. 103 000 000
4. Devon Corp
5. Dingess Rum Coal Co No 863
6. Stollings
7. Logan WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80-32882
2. 47-013-02000-0000
3. 108 000 000
4. Lowell Sampson
5. Denver Chenoweth
6.

7. Calhoun WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32883
2. 47–097–00290–0000
3. 108 000 000
4. Galloway Company Inc
5. E C Allman
6.
7. Upshur WV
8. 150.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–32884
2. 47–097–00125–0000
3. 108 000 000
4. Galloway Company Inc
5. Hugh Marple 214A
6.
7. Upshur WV
8. 500.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–32885
2. 47–097–00232–0000
3. 108 000 000
4. Galloway Company Inc
5. S R Hill 400A
6.
7. Upshur WV
8. 150.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–32886
2. 47–039–03393–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 6
6. Cabin Creek
7. Kanawha WV
8. 80.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32887
2. 47–013–01917–0000
3. 108 000 000
4. Lowell Sampson
5. Sarah C Taylor No 1
6.
7. Calhoun, WV
8. 3.0 million cubic feet
9. May 12, 1980
10 Consolidated Gas Supply Corp

1. 80–32888
2. 47–045–00963–0000
3. 103 000 000
4. Devon Corp
5. Dingess Rum Coal Co No 864
6. Stollings
7. Logan, WV
8. 72.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32889
2. 47–077–00128–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Halbritter-A No 1
6. South Burns Chapel
7. Preston, WV
8. 16.4 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32890
2. 47–061–0322–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Roby-D No 1
6. South Burns Chapel
7. Monongalia, WV
8. 15.6 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32891
2. 47–061–00314–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Sellaro A No 1
6. South Burns Chapel
7. Monongalia WV
8. 17.4 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32892
2. 47–085–01574–0000
3. 108 000 000
4. Garold F Fox
5. Rex Snyder & Susanne Fox
6. Murphy District
7. Ritchie, WV
8. 2.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32893
2. 47–013–02181–0000
3. 108 000 000
4. Garold F Fox
5. Floyd Fox Farm No 1
6. Center District
7. Calhoun County WV
8. 4.6 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32894
2. 47–013–01911–0000
3. 108 000 000
4. Garold F Fox
5. E H Dye No 1
6. Shenidan District
7. Calhoun WV
8. 6.3 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32895
2. 47–013–01832–0000
3. 108 000 000
4. Garold F Fox
5. K. W. Fox No 1
6. Sheridan District
7.
7. Calhoun WV
8. 6.3 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32896
2. 47–061–00324–0000
3. 108 000 000
4. Consolidated Gas Supply Corp
5. J Shafer
6. Greer-Cascode 290235
7. Monongalia, WV
8. 11.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–32897
2. 47–013–01188–0000
3. 108 000 000
4. Garold F. Fox
5. Rex Snider-O A Skimer
6. Sheridan District
7. Calhoun WV
8. 3.1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32898
2. 47–045–01018–0000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Charleston Nat Bk 12511
6. Pineville Field Area A–59442
7. Logan WV
8. 24.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–32899
2. 47–033–01944–0000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Luther H Coffman
6. West Virginia Other–A–85772
7. Harrison
8. 30.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–32900
2. 47–033–01261–0000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Paul S Horner
6. West Virginia-Other A-85772
7. Harrison WV
8. 40.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–32901
2. 47–039–03470–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 19
6. Cabin Creek
7. Kanawha WV
8. 47.0 million cubic feet
9. May 12, 1980
10. Columia Gas Transmission Corp

1. 80–32902
2. 47–001–00966–0000
3. 103 000 000
4. Patrick Petroleum Corp of Michigan
5. Clarence Poe No 1
6. Philippi 76 Prog
7. Barbour WV
8 .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32903
2. 47–001–00900–0000
3. 103 000 000
4. Patrick Petroleum Corp of Michigan
5. G McDermitt No 1
6. Philippi 76 Prog
7. Barbour WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32904
2. 47–013–02972–0000
3. 103 000 000
4. United Petro Ltd
5. E C Knotts No 3–UPL
6. Orma-Minnora Gas Field
7. Calhoun WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32905
2. 47–073–00640–0000
3. 108 000 000
4. A F Marple & Co
5. Bertha F Rawson No 1
6. Jefferson District
7. Pleasants County WV
8. 1.7 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32906
2. 47–073–00605–0000
3. 108 000 000
4. A F Marple & Co
5. Bertha F Rawson No 2
6. Jefferson District
7. Pleasants County WV
8. 1.7 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32907
2. 47–041–02091–0000
3. 103 000 000
4. United Petro Ltd
5. G E Wilfong No 1–UPL
6. Copley Field
7. Lewis WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32908
2. 47–017–22366–0000
3. 103 000 000
4. Carl E Smith Inc
5. E Davidson Est 3–182
6. West Union Dist
7. Doddridge WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32909
2. 47–021–03227–0000
3. 103 000 000
4. Gulf Oil Corporation
5. Bailey B No 1
6. W Glenville
7. Gilmer WV
8. 112.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32910
2. 47–015–01611–0000
3. 103 000 000
4. Stonestreet Lands Company
5. Orla Siers No 1–S–35
6. Elmira
7. Clay WV
8. 39.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32911
2. 47–085–02143–0000
3. 108 000 000
4. Thunder Oil & Gas Corp
5. T K Layfield No 1
6. T K Layfield
7. Ritchie WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32912
2. 47–013–02971–0000
3. 103 000 000
4. United Petro Ltd
5. E C Knotts No 4–UPL
6. Orma-Minnora Gas Field
7. Calhoun WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32913
2. 47–013–02968–0000
3. 103 000 000
4. United Petro Ltd
5. E C Knotts No 2–UPL
6. Orma-Minnora Gas Field
7. Calhoun WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32914
2. 47–033–20920–0000
3. 103 000 000
4. James F Scott
5. Harry C Morrison
6. Coal
7. Harrison WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32915
2. 47–013–02967–0000
3. 103 000 000
4. United Petro Ltd
5. E C Knotts No 1–UPL
6. Orma-Minnora Gas Field
7. Calhoun WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32916
2. 47–107–00893–0000
3. 103 000 000
4. B & W Producers
5. Dunlap Well No 2
6. Walker Field
7. Wood WV
8. 2.7 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32917
2. 47–107–00892–0000
3. 103 000 000
4. B7W Producers
5. Dunlap Well No 1
6. Walker Field
7. Wood, WV
8. 3.6 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32918
2. 47–085–02617–0000
3. 108 000 000
4. W R Funk
5. Dotson
6. Clay District
7. Ritchie County, WV
8. 1.9 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32919
2. 47–013–02452–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. E F Fox No 2
6.
7. Calhoun, WV
8. 1.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32920
2. 47–013–02466–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. E F Fox No 4
6.
7. Calhoun WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32921
2. 47–013–02507–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. Arthur No 1
6.
7. Calhoun WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32922
2. 47–013–02511–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. Gary Campbell N. 1
6.
7. Calhoun WV
8. 5.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32923
2. 47–105–00522–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. Walter & Herman Depue No 1 (Bear Run)
6.
7. Wirt WV
8. 4.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32924
2. 47–105–00625–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. P L Depue No 1
6.
7. Wirt WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32925
2. 47–105–00626–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. P L Depue No 3
6.
7. Wirt WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32926
2. 47–105–00627–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. P L Depue No 4
6.
7. Wirt WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32927
2. 47–013–02512–0000
3. 108 000 000
4. Seminole Oil & Gas Corp
5. Ernest Campbell No 1

6.
7. Calhoun WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32928
2. 47–061–00108–0000
3. 108 000 000
4. W R Funk
5. Morris E E
6. Grant District
7. Monongalia WV
8. 2.3 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32929
2. 47–039–03217–0000
3. 108 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 11
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32930
2. 47–039–03216–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 5
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32931
2. 47–039–03215–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 4
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32932
2. 47–039–32070–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 3
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32933
2. 47–039–03206–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 2
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32934
2. 47–039–02806–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. C B Canterbury No 1
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32935
2. 47–039–02803–0000
3. 103 000 000
4. Trinity Oil & Gas Corp
5. Woodrow Smith No 1
6. Wills Creek
7. Kanawha WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32936
2. 47–041–00818–0000
3. 108 000 000
4. Triangle Trucking
5. Mary Moneypenny No 1
6.
7. Lewis WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32937
2. 47–041–00416–0000
3. 108 000 000
4. Triangle Trucking
5. Cox No 2
6.
7. Lewis WV
8. 1.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32938
2. 47–041–00384–0000
3. 108 000 000
4. Triangle Trucking
5. Cox No 3
6.
7. Lewis WV
8. 1.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32939
2. 47–041–00808–0000
3. 108 000 000
4. Four Star Oil & Gas Co
5. Sleeth No 1
6.
7. Lewis WV
8. 2.8 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32940
2. 47–095–00678–0000
3. 103 000 000
4. Carter-Jones Lumber Co
5. Mildred Tuttle No 1
6. Lincoln District
7. Tyler WV
8. 15.0 million cubic feet
9. May 12, 1980
10.

1. 80–32941
2. 47–095–00690–0000
3. 103 000 000
4. Carter Jones Lumber Co Ind Div
5. W Kimble No 2
6. Ellsworth District
7. Tyler WV
8. 15.0 million cubic feet
9. May 12, 1980
10

1. 80–32942
2. 47–021–03521–0000
3. 103 000 000
4. Waco Oil & Gas Co Inc
5. Carson 1B
6. Ellis
7. Gilmer WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32943
2. 47–021–03522–0000
3. 103 000 000
4. Waco Oil & Gas Co Inc
5. Carson No 1A
6. Ellis
7. Gilmer County WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32944
2. 47–021–03542–0000
3. 103 000 000
4. Waco Oil & Gas Co
5. Carson 2B
6. Ellis
7. Gilmer WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32945
2. 47–033–00425–0000
3. 108 000 000
4. Queen Oil Co
5. Ward No 1
6. Elk District
7. Harrison WV
8. 4.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32946
2. 47–033–00442–0000
3. 108 000 000
4. Queen Gas Co
5. Drane No 1 Well
6. Elk District
7. Harrison WV
8. 12.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32947
2. 47–041–00937–0000
3. 108 000 000
4. Four Star Oil and Gas
5. T P Sleeth Jr #3
6.
7. Lewis WV
8. 1.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32948
2. 47–097–00742–0000
3. 108 000 000
4. Queen Gas Co
5. Cutright #1
6. Buckhannon District
7. Upshur WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32949
2. 47–097–00594–0000
3. 108 000 000
4. Queen Gas Co
5. Gower #1
6. Warren District
7. Upshur WV
8. 3.1 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–32950
2. 47–041–01004–0000
3. 108 000 000
4. Queen Gas Company
5. Hall #3
6. Skin Creek District
7. Lewis County WV
8. 9.1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32951
2. 47–041–00887–0000
3. 108 000 000
4. Queen Gas Co
5. Hall #2
6. Skin Creek District
7. Lewis County WV
8. 2.9 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32952
2. 47–041–00733–0000
3. 108 000 000
4. Queen Gas Co
5. Hall #1
6. Skin Creek District
7. Lewis County WV
8. 2.9 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32953
2. 47–035–01474–0000
3. 107 000 000
4. Allegheny & Western Energy Corp
5. John J Pfost Farm No 2
6. Washington
7. Jackson WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–32954
2. 47–035–01473–0000
3. 107 000 000
4. Allegheny & Western Energy Corp
5. John J Pfost Farm No 1
6. Washington
7. Jackson WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–32955
2. 47–011–00336–0000
3. 108 000 000
4. R H Adkins
5. Charles McCrosky #1
6. Guyan-Trace (Grant Dist)
7. Cabell WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32956
2. 47–035–01478–0000
3. 107 000 000
4. Allegheny & Western Energy Corp
5. John J Pfost Farm No 4
6. Washington
7. Jackson WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–32957
2. 47–035–01477–0000
3. 107 000 000
4. Allegheny & Western Energy Corp
5. John J Pfort Farm No 3
6. Washington
7. Jackson WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–32958
2. 47–085–02670–0000
3. 108 000 000
4. Allegheny Land & Mineral Co
5. A–199
6. Murphy District
7. Ritchie WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32959
2. 47–021–22951–0000
3. 108 000 000
4. Franklin Adkins
5. Gainer #2
6. Dekalb
7. Gilmer WV
8. 12.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32960
2. 47–001–21046–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–184
6. Philippi
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32961
2. 47–001–01038–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–214
6. Valley
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32962
2. 47–001–21029–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–170
6. Pleasant
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32963
2. 47–001–21028–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–166
6. Pleasant
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32964
2. 47–001–01026–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–187
6. Elk
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32965
2. 47–001–01016–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–182
6. Union
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32966
2. 47–001–00976–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–172
6. Philippi
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32967
2. 47–001–00990–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–183
6. Philippi
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32968
2. 47–001–00979–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–186
6. Elk
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32969
2. 47–001–00970–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–167
6. Pleasant
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32970
2. 47–001–29610–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–179
6. Philippi
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32971
2. 47–079–20148–0000
3. 108 000 000
4. Randolph Gas Company
5. Riley Phelps #1
6. Curry District
7. Putnam WV
8. 200.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32972
2. 47–079–20113–0000
3. 108 000 000
4. Randolph Gas Company
5. Essie Sponaugle #1

6. Curry District
7. Putnam WV
8. 290.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32973
2. 47–079–20111–0000
3. 108 000 000
4. Randolph Gas Company
5. D L Craddock #1
6. Curry District
7. Putnam WV
8. 3.4 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32974
2. 47–079–20060–0000
3. 108 000 000
4. Randolph Gas Company
5. C A Fizer Heirs #1
6. Curry District
7. Putnam WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32975
2. 47–043–20343–0000
3. 108 000 000
4. Stinson Gas Co
5. W R Elkins #1
6. Jefferson District
7. Lincoln WV
8. 13.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32976
2. 47–043–20118–0000
3. 108 000 000
4. Paraner Gas Co
5. Albert & Everett Elkins #1
6. Jefferson District
7. Lincoln WV
8. 7.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32977
2. 47–043–20106–0000
3. 108 000 000
4. Martin Gas Co
5. Sherman Johnson No 1
6. Sheridan District
7. Lincoln WV
8. 1.4 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32978
2. 47–043–20105–0000
3. 108 000 000
4. Martin Gas Co
5. Elisha Bias Heirs No 3
6. Sheridan District
7. Lincoln WV
8. 1.9 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32979
2. 47–043–20086–0000
3. 108 000 000
4. Martin Gas Co
5. Elisha Bias Heirs No 2
6. Sheridan District
7. Lincoln WV
8. 2.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32980
2. 47–043–20052–0000
3. 108 000 000
4. Martin Gas Co
5. Black & Yeager No 1
6. Sheridan District
7. Lincoln WV
8. 1.9 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32981
2. 47–005–00429–0000
3. 108 000 000
4. Ottawa Gas Co
5. Mary F Ellis No 1
6. Washington
7. Boone WV
8. 400.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–32982
2. 47–011–00300–0000
3. 108 000 000
4. Curry Gas Co
5. B F Morris No 2
6. Tylers Creek
7. Cabell WV
8. 5.4 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32983
2. 47–011–00303–0000
3. 108 000 000
4. Marval Gas Co
5. Morrison No 1
6. Tylers Creek
7. Cabell WV
8. 4.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32984
2. 47–033–20127–0000
3. 108 000 000
4. Eagle Gas Co
5. Fannie E Dawson No 1–69
6. Eagle District
7. Harrison WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Lumberport-Shinnston Gas Co

1. 80–32985
2. 47–011–00034–0000
3. 108 000 000
4. Russell Gas Co
5. Reynolds No 1
6. Trace Creek
7. Cabell WV
8. 1.1 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32986
2. 47–011–00031–0000
3. 108 000 000
4. Russell Gas Co
5. Russell W Morris No 1
6. Trace Creek
7. Cabell WV
8. 2.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32987
2. 47–043–00292–0000
3. 108 000 000
4. Brooks Gas Co
5. Homer Cummings No 1
6. Mud River
7. Lincoln WV
8. 2.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32988
2. 47–043–00302–0000
3. 108 000 000
4. Brooks Gas Co
5. Cooper No 1
6. Mud River
7. Lincoln WV
8. 2.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32989
2. 47–043–00307–0000
3. 108 000 000
4. Brooks Gas Co
5. Adkins No 1
6. Mud River
7. Lincoln WV
8. 2.6 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32990
2. 47–043–00350–0000
3. 108 000 000
4. Mud River Gas Co
5. E Adkins No 1
6. Mud River
7. Lincoln WV
8. 1.8 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32991
2. 47–005–00129–0000
3. 108 000 000
4. Riverhead Gas Co
5. Nelson No 5
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32992
2. 47–005–00179–0000
3. 108 000 000
4. Riverhead Gas Co
5. W R Nelson Estate No 10
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32993
2. 47–011–00301–0000
3. 108 000 000
4. Gibbs Gas Co
5. C C Phillips No 1
6. Trace Creek
7. Cabell WV
8. 1.3 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32994
2. 47–011–00354–0000
3. 108 000 000
4. Gibbs Gas Co
5. Hattie Bias No 1
6. Trace Creek
7. Cabell WV
8. .9 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32995
2. 47–011–00148–0000
3. 108 000 000
4. Curry Gas Co
5. Ben Bledsoe No 1
6. McComes
7. Cabell WV
8. 16.0 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–32996
2. 47–043–00885–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 3
6. Harts Creek
7. Lincoln WV
8. 13.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans

1. 80–32997
2. 47–043–00926–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 4
6. Harts Creek
7. Lincoln WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans

1. 80–32998
2. 47–043–00955–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 6
6. Harts Creek
7. Lincoln WV
8. 13.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans

1. 80–32999
2. 47–043–00985–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 5
6. Harts Creek
7. Lincoln WV
8. 13.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans

1. 80–33000
2. 47–011–00227–0000
3. 108 000 000
4. Morris Adkins
5. Caldwell No 3
6. Salt Rock
7. Cabell WV
8. .0 million cubic feet
9. May 12, 1980
10. Devon Corp

1. 80–33001
2. 47–039–03355–0000
3. 108 000 000
4. Allegheny & Western Energy Corp
5. Imperial Coal Co No 2
6. Cabin Creek
7. Kanawha WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33002
2. 47–039–03350–0000
3. 108 000 000
4. Allegheny & Western Energy Corp
5. Eastern Associated Coal No 15
6. Cabin Creek
7. Kanawha WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33003
2. 47–039–03361–0000
3. 108 000 000
4. Allegheny & Western Energy Corp
5. Imperial Coal Co No 1
6. Cabin Creek
7. Kanawha WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33004
2. 47–039–03349–0000
3. 108 000 000
4. Allegheny & Western Energy Corp
5. Eastern Associated Coal No 14
6. Cabin Creek
7. Kanawha WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33005
2. 47–013–02870–0000
3. 103 000 000
4. Keith Crihfield
5. Joe Conley No 3
6. Chloe
7. Calhoun WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33006
2. 47–041–21654–0000
3. 108 000 000
4. R Wayne Christenson
5. Alfred No 2
6. Freemans Creek District
7. Lewis WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33007
2. 47–007–00508–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. Denver Ice No 1
6. Birch District
7. Braxton WV
8. .0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33008
2. 47–043–00990–0000
3. 108 000 000
4. Burks Gas Co
5. A F Morris No 1
6. Harts Creek
7. Lincoln WV
8. 3.8 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans Co

1. 80–33009
2. 47–043–00991–0000
3. 108 000 000
4. Burks Gas Co
5. A F Morris No 2
6. Harts Creek
7. Lincoln WV
8. 3.8 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans Co

1. 80–33010
2. 47–001–00216–0000
3. 108 000 000
4. Morris & Adkins
5. Caldwell No 2
6. Salt Rock
7. Cabell WV
8. .1 million cubic feet
9. May 12, 1980
10. Devon Corp

1. 80–33011
2. 47–043–00822–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 1
6. Harts Creek
7. Lincoln WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans Co

1. 80–33012
2. 47–043–00823–0000
3. 108 000 000
4. Adams Gas Co
5. United Fuel Gas No 2
6. Harts Creek
7. Lincoln WV
8. 9.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Trans

1. 80–33013
2. 47–043–01134–0000
3. 108 000 000
4. Sweetland Land and Mineral Co
5. Cremeans No 1
6. Harts Creek
7. Lincoln WV
8. 5.7 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33014
2. 47–099–01197–0000
3. 108 000 000
4. Sweetland Land and Mineral Co
5. Lafayette Ferguson No 2
6. Butler
7. Wayne WV
8. 9.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33015
2. 47–043–01193–0000
3. 108 000 000
4. Sweetland Land and Mineral Co
5. Joe Phipps No 1
6. Harts Creek
7. Lincoln WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33016
2. 47–099–01249–0000
3. 108 000 000
4. Sweetland Land and Mineral Co
5. George Odell No 1
6. Butler
7. Wayne WV
8. 5.1 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33017
2. 47–043–00306–0000
3. 108 000 000
4. Sweetland Land and Mineral Co
5. Pearson No 1

6. Union
7. Lincoln WV
8. 6.7 million cubic feet
9. May 12, 1980
10. Pennzoil Company

1. 80–33018
2. 47–047–00749–0000
3. 108 000 000
4. Energy Development Corp
5. EDC No 8
6. Big Sandy
7. McDowell WV
8. 14.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33019
2. 47–039–02794–0000
3. 108 000 000
4. Reel Energy Program
5. Central Appalachian Coal No 6–A
6. Cabin Creek
7. Kanawha WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33020
2. 47–033–01084–0000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Matheny-Calkins 12383
6. West Virginia Other A–85772
7. Harrison WV
8. 30.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–33021
2. 47–085–24249–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Betty Semmelman H–729
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33022
2. 47–085–24199–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Betty Semmelman No H–652
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33023
2. 47–085–24155–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Betty Semmelman H–651
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33024
2. 47–107–00649–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. D A Ruley No 4
6. Clay District
7. Wood WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Co

1. 80–33025
2. 47–039–03450–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 7
6. Cabin Creek
7. Kanawha WV
8. 130.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33026
2. 47–085–24263–0000
3. 103 000 000
4. Glenn L Haught & Son
5. G P Ryan Hrs No H–737
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33027
2. 47–085–24262–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. G P Ryan Hrs No H–736
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33028
2. 47–039–03454–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 11
6. Cabin Creek
7. Kanawha WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33029
2. 47–039–03453–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Imperial Coal No 11–B
6. Cabin Creek
7. Kanawha WV
8. 60.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33030
2. 47–039–03452–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 8
6. Cabin Creek
7. Kanawha WV
8. 27.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33031
2. 47–039–03451–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 4–B
6. Cabin Creek
7. Kanawha WV
8. 40.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33032
2. 47–013–02274–0000
3. 108 000 000
4. D A Dorward
5. Barr No 2
6. Lee
7. Calhoun WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33033
2. 47–021–01362–0000
3. 108 000 000
4. D A Dorward
5. Moody No 3
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33034
2. 47–021–01401–0000
3. 108 000 000
4. D A Dorward
5. Moody No 4
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33035
2. 47–021–01522–0000
3. 108 000 000
4. D A Dorward
5. J P Tomblin No 2
6. Glenville
7. Gilmer WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33036
2. 47–021–01586–0000
3. 108 000 000
4. D A Dorward
5. Smith-McHenry No 1
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33037
2. 47–021–01607–0000
3. 108 000 000
4. D A Dorward
5. Smith-McHenry No 2
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33038
2. 47–021–01777–0000
3. 108 000 000
4. D A Dorward
5. J L Moore Heirs No 2
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33039
2. 47–021–01823–0000
3. 108 000 000
4. D A Dorward
5. Heater No 2
6. Glenville
7. Gilmer WV
8. .2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33040
2. 47–021–01824–0000
3. 108 000 000
4. D A Dorward
5. Heater No 1
6. Glenville
7. Gilmer
8. .7 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33041
2. 47–021–01841–0000
3. 108 000 000
4. D A Dorward
5. Greynolds No 1
6. Glenville
7. Gilmer WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33042
2. 47–041–02564–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–252
6. Hackers Creek
7. Lewis WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33043
2. 47–073–20710–0000
3. 103 000 000
4. Energy Unlimited Inc
5. Donald Petty No 1
6. Grant
7. Pleasants WV
8. 5.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33044
2. 47–073–20712–0000
3. 103 000 000
4. Energy Unlimited Inc
5. Rawson-Drake No 2
6. Grant
7. Pleasants WV
8. .1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33045
2. 47–073–20716–0000
3. 103 000 000
4. Energy Unlimited Inc
5. Farson-Johnson Unit No 1
6. Grant
7. Pleasants WV
8. 4.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33046
2. 47–107–20801–0000
3. 103 000 000
4. Energy Unlimited Inc
5. Ina Todd No 1
6. Union
7. Wood WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33047
2. 47–013–01825–0000
3. 108 000 000
4. D A Dorward
5. Hays Collins No 1
6. Sheridan
7. Calhoun WV
8. .5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33048
2. 47–013–01845–0000
3. 108 000 000
4. D A Dorward
5. Hays Collins No 2
6. Sheridan
7. Calhoun WV
8. .1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33049
2. 47–013–01878–0000
3. 108 000 000
4. D A Dorward
5. Hays Collins No 3
6. Sheridan
7. Calhoun WV
8. .1 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33050
2. 47–043–00315–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Kelly No 1
6. Sheridan
7. Lincoln WV
8. 6.7 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–33051
2. 47–043–00321–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Kelly No 2
6. Sheridan
7. Lincoln WV
8. 6.7 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–33052
2. 47–043–00329–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Pearson No2
6. Union
7. Lincoln WV
8. 6.7 million cubic feet
9. May 12, 1980
10. Pennzoil Co

1. 80–33053
2. 47–043–00688–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Spears No 1
6. Laurel Hill
7. Lincoln WV
8. 5.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33054
2. 47–043–00986–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Vernatter No 1
6. Harts Creek
7. Lincoln WV
8. 7.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33055
2. 47–043–01112–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Minnie W. Mullins No 1
6. Harts Creek
7. Lincoln WV
8. 7.5 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33056
2. 47–021–01875–0000
3. 108 000 000
4. D A Dorward
5. Marshall No 1
6. Glenville
7. Gilmer WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33057
2. 47–021–01958–0000
3. 108 000 000
4. D A Dorward
5. Lynch No 1
6. Glenville
7. Gilmer WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33058
2. 47–041–01693–0000
3. 108 000 000
4. D A Dorward
5. Hull No 1
6. Freeman Creek
7. Lewis WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33059
2. 47–041–01663–0000
3. 108 000 000
4. D A Dorward
5. Hull No 1
6. Freemans Creek
7. Lewis WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33060
2. 47–041–01724–0000
3. 108 000 000
4. D A Dorward
5. Erwin No 1
6. Hackers Creek
7. Lewis WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33061
2. 47–041–01770–0000
3. 108 000 000
4. D A Dorward
5. Gould No 1
6. Hackers Creek
7. Lewis WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33062
2. 47–041–01545–0000
3. 108 000 000
4. D A Dorward
5. Fealy DF1

6. Court House
7. Lewis WV
8. 4.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33063
2. 47–041–01591–0000
3. 108 000 000
4. D A Dorward
5. Devaney No 4 D1
6. Court House
7. Lewis WV
8. 4.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33064
2. 47–041–01557–0000
3. 108 000 000
4. D A Dorward
5. Finster No 2
6. Court House
7. Lewis WV
8. 11.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33065
2. 47–041–01605–0000
3. 108 000 000
4. D A Dorward
5. McCray 1–A
6. Court House
7. Lewis WV
8. 9.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33066
2. 47–041–01523–0000
3. 108 000 000
4. D A Dorward
5. Finster No 1
6. Court House
7. Lewis WV
8. 1.5 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33067
2. 47–085–03867–0000
3. 103 000 000
4. Werco
5. A D Wilson No 1–A
6. Grant
7. Ritchie WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33068
2. 47–085–03868–0000
3. 103 000 000
4. Werco
5. S C Parks No 7
6. Grant
7. Ritchie WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33069
2. 47–085–03872–0000
3. 103 000 000
4. Werco
5. Lafayette Moss No 1
6. Grant
7. Ritchie WV
8. 14.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33070
2. 47–085–03873–0000
3. 103 000 000
4. Werco
5. John Lynch No 4
6. Grant
7. Ritchie WV
8. 12.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33071
2. 47–041–21204–0000
3. 108 000 000
4. Glenn H Johnson Co
5. Wimer No 1–TC
6. Collins Settlement
7. Lewis WV
8. 1.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33072
2. 47–073–20705–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Bertha Freshwater No 1
6. Grant
7. Pleasants WV
8. 3.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33073
2. 47–097–21567–0000
3. 108 000 000
4. Glenn H Johnson
5. Kesling No 1
6. Union
7. Upshur WV
8. 4.4 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33074
2. 47–097–21562–0000
3. 108 000 000
4. Glenn H Johnson
5. Regester No 1
6. Union
7. Upshur WV
8. 9.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33075
2. 47–097–20858–0000
3. 108 000 000
4. Glenn H Johnson
5. Brinkley No 1
6. Warren
7. Upshur WV
8. 1.3 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33076
2. 47–097–20808–0000
3. 108 000 000
4. Glenn H Johnson Co
5. Post No 1–T3
6. Buckhannon
7. Upshur WV
8. 2.5 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33077
2. 47–097–20676–0000
3. 108 000 000
4. Glenn H Johnson Co
5. Wingrove No 1
6. Meade
7. Upshur WV
8. 17.8 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33078
2. 47–019–00387–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. L A Harrah No 2
6. Mt Cove
7. Fayette WV
8. 54.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33079
2. 47–019–00369–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. H T Boone No 1
6. Mt Cove
7. Fayette WV
8. 73.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33080
2. 47–019–00364–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. Hofmier Gas Unit No 1
6. Mt Cove
7. Fayette WV
8. 73.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33081
2. 47–019–00363–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. J G Mohr No 1
6. Mt Cove
7. Fayette WV
8. 54.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33082
2. 47–019–00357–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. G Steele No 2
6. Mt Cove
7. Fayette WV
8. 60.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33083
2. 47–019–00356–0000
3. 102 000 000
4. Appalachian Exploration & Devel Inc
5. G Steele No 1
6. Mt Cove
7. Fayette WV
8. 73.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33084
2. 47–021–03521–0000
3. 107 000 000
4. Waco Oil and Gas Co Inc
5. Carson No 1B
6. Ellis
7. Gilmer WV
8. 30.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33085
2. 47–073–20713–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Rawson-Drake No 3
6. Grant
7. Pleasants WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33086
2. 47–073–20717–0000
3. 108 000 000
4. Energy Unlimited Inc
5. L McClure No 1
6. Grant
7. Pleasants WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33087
2. 47–073–20718–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Fulmer-Smith No 1
6. Grant
7. Pleasants WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33088
2. 47–107–20792–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Miracle-Naish No 1
6. Union
7. Wood WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33089
2. 47–107–20805–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Naish-Powell No 1
6. Union
7. Wood WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33090
2. 47–107–20806–0000
3. 108 000 000
4. Energy Unlimited Inc
5. George W Moore No 1
6. Union
7. Wood WV
8. 3.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33091
2. 47–107–20807–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Oris Johnson No 2
6. Union
7. Wood WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33092
2. 47–083–00235–0000
3. 103 000 000
4. R & B Petroleum Inc
5. Morris No 1
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33093
2. 47–083–00238–0000
3. 103 000 000
4. R & B Petroleum Inc
5. Morris No 2
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33094
2. 47–083–00247–0000
3. 103 000 000
4. R & B Petroleum Inc
5. Morris No 4
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33095
2. 47–083–00248–0000
3. 103 000 000
4. R & B Petroleum Inc
5. Morris No 3
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33096
2. 47–083–00258–0000
3. 103 000 000
4. R & B Petroleum Inc
5. Morris No 5
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33097
2. 47–097–01888–0000
3. 103 00 000
4. Union Drilling Inc
5. Rachel & French Reeder No 2
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33098
2. 47–097–01927–0000
3. 103 00 000
4. Union Drilling Inc
5. S. H. Winemiller #2
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33099
2. 47–097–01933–0000
3. 103 00 000
4. Union Drilling Inc
5. A Boyles Carter No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33100
2. 47–097–01939–0000
3. 103 00 000
4. Union Drilling Inc
5. Harrison Ritchie O & G No 1
6. Washington District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33101
2. 47–097–01950–0000
3. 103 00 000
4. Union Drilling Inc
5. Brent T Scott No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33102
2. 47–097–01951–0000
3. 103 00 000
4. Union Drilling Inc
5. Woody Lumber Co Inc No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33103
2. 47–097–01952–0000
3. 103 00 000
4. Union Drilling Inc
5. Barbara Ervin Et Al No 2
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33104
2. 47–097–01911–0000
3. 103 00 000
4. Union Drilling Inc
5. J L Killingsworth No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33105
2. 47–097–01912–0000
3. 103 00 000
4. Union Drilling Inc
5. J L Killingsworth No 2
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33106
2. 47–097–01922–0000
3. 103 00 000
4. Union Drilling Inc
5. Gladys Z Sampson No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33107
2. 47–097–01923–0000
3. 103 00 000
4. Union Drilling Inc
5. Barbara Ervin No 1

6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33108
2. 47–083–00259–0000
3. 103 00 000
4. R & B Petroleum Inc
5. Morris No 6
6. Roaring Creek
7. Randolph WV
8. 36.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33109
2. 47–097–01834–0000
3. 103 00 000
4. Union Drilling Inc
5. Bertha Waugh No 1
6. Banks District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33110
2. 47–097–01861–0000
3. 103 00 000
4. Union Drilling Inc
5. William E Newcome No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33111
2. 47–097–01878–0000
3. 103 00 000
4. Union Drilling Inc
5. French Reeder No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33112
2. 47–033–22019–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–266
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33113
2. 47–097–01889–0000
3. 103 00 000
4. Union Drilling Inc
5. Rachel & French Reeder No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33114
2. 47–097–01909–0000
3. 103 00 000
4. Union Drilling Inc
5. Arthur C Hanline et al No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33115
2. 47–097–01910–0000
3. 103 00 000
4. Union Drilling Inc
5. Bertie Frances Hunt No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33116
2. 47–033–22049–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–237
6. Union
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33117
2. 47–033–02053–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–244
6. Union
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33118
2. 47–033–22081–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–238
6. Union
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33119
2. 47–041–02675–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–89 Lew–2675
6. Hackers Creek
7. Lewis WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33120
2. 47–041–02564–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–252
6. Hackers Creek
7. Lewis WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33121
2. 47–097–01832–0000
3. 103 00 000
4. Union Drilling Inc
5. Dewey F Harris No 1
6. Meade District
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33122
2. 47–033–02020–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–268
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas SupplyCorp

1. 80–33123
2. 47–033–02021–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–269
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33124
2. 47–033–02023–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–265
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33125
2. 47–033–02028–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–264
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33126
2. 47–001–01084–0000
3. 103 00 000
4. J & J Enterprises Inc
5. B–203
6. Union
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33127
2. 47–033–02014–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–263
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33128
2. 47–033–01950–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–201
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33129
2. 47–033–21917–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–229
6. Clark
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33130
2. 47–033–01721–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–197
6. Sardis
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33131
2. 47–033–21713–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–209
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33132
2. 47–033–01692–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–163
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33133
2. 47–017–22327–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–262
6. West Union
7. Doddridge WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33134
2. 47–017–02326–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–261
6. West Union
7. Doddridge WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33135
2. 47–001–21131–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–218
6. Elk
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33136
2. 47–001–01095–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–205
6. Philippi
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33137
2. 47–001–01093–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–188
6. Elk
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33138
2. 47–001–21092–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–256
6. Union
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33139
2. 47–001–01090–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–204
6. Union
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33140
2. 47–001–01070–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–150
6. Union
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33141
2. 47–001–01053–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–171
6. Pleasant
7. Barbour WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33142
2. 47–107–00663–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. D A Ruley #5
6. Clay District
7. Wood WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Corp

1. 80–33143
2. 47–085–21567–0000
3. 108 000 000
4. R & S Gas Co
5. Burns Cunningham No 1
6. Murphy District
7. Ritchie WV
8. 1.5 million cubic feet
9. May 12, 1980
10. Warren Associates Inc

1. 80–33144
2. 47–085–21727–0000
3. 108 000 000
4. R & S Gas Co
5. L B Maxwell No 3
6. Murphy District
7. Ritchie WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Warren Associates Inc

1. 80–33145
2. 47–085–21693–0000
3. 108 000 000
4. R & S Gas Co
5. L B Maxwell No 2
6. Murphy District
7. Ritchie WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Warren Associates Inc

1. 80–33146
2. 47–085–21616–0000
3. 108 000 000
4. R & S Gas Co
5. L B Maxwell No 1
6. Murphy District
7. Ritchie WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Warren Associates Inc

1. 80–33147
2. 47–085–00386–1000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. V M Wilson
6. West Virginia other A–85772
7. Ritchie WV
8. 84.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–33148
2. 47–033–00122–8000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Jordon Carter
6. West Virginia other A–85772
7. Harrison WV
8. 30.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–33149
2. 47–039–02799–0000
3. 108 000 000
4. Reel Energy Program
5. Central Appalachian Coal #3–A
6. Cabin Creek
7. Kanawha WV
8. 10.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33150
2. 47–085–21615–0000
3. 108 000 000
4. R & S Gas Co
5. B I Cunningham No 1
6. Murphy District
7. Ritchie WV
8. 1.5 million cubic feet
9. May 12, 1980
10. Warren Associates Inc

1. 80–33151
2. 47–107–00658–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. Letha Bungard #2
6. Clay District
7. Wood WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Quakerstate Oil Ref Co

1. 80–33152
2. 47–021–02920–0000
3. 103 000 000
4. Consolidated Gas Supply Corp
5. Lohan-Pearcy

6. West Virginia other A–85772
7. Gilmer WV
8. 37.0 million cubic feet
9. May 12, 1980
10. General System Purchasers

1. 80–33153
2. 47–097–00813–0000
3. 108 000 000
4. Ross-Whasten Gas
5. Corathus 50 A
6. Pringle Fork
7. Upshur WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas

1. 80–33154
2. 47–033–01949–0000
3. 103 000 000
4. Pennzoil Co
5. Beeson H Brown #14
6. Ten Mile
7. Harrison WV
8. 43.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33155
2. 47–081–00407–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co B–3
6. Marsh Fork
7. Raleigh WV
8. 5.0 million cubic feet
9. May 12, 1980
10.

1. 80–33156
2. 47–081–00398–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co B–2
6. Marsh Fork
7. Raleigh WV
8. 40.0 million cubic feet
9. May 12, 1980
10.

1. 80–33157
2. 47–081–00387–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co A–4
6. Marsh Fork
7. Raleigh WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–33158
2. 47–081–00381–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co A–2
6. Marsh Fork
7. Raleigh WV
8. 50.0 million cubic feet
9. May 12, 1980
10.

1. 80–33159
2. 47–081–00379–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co A–5
6. Marsh Fork
7. Raleigh WV
8. 50.0 million cubic feet
9. May 12, 1980
10.

1. 80–33160
2. 47–007–01351–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Dana S Engel Et al No 1
6. Otter
7. Braxton WV
8. 100.0 million cubic feet
9. May 12, 1980
10.

1. 80–33161
2. 47–007–01348–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Dana S Engel Et al No 2
6. Otter
7. Braxton WV
8. 18.0 million cubic feet
9. May 12, 1980
10.

1. 80–33162
2. 47–007–01227–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Robert G Berry No 1
6. Salt Lick
7. Braxton WV
8. 100.0 million cubic feet
9. May 12, 1980
10.

1. 80–33163
2. 47–007–01226–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Lawrence O Berry No 1
6. Salt Lick
7. Braxton WV
8. 50.0 million cubic feet
9. May 12, 1980
10.

1. 80–33164
2. 47–085–03619–0000
3. 108 000 000
4. R & B Petroleum Inc
5. Haught No 2
6. Murphy District
7. Ritchie WV
8. 10.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33165
2. 47–085–03609–0000
3. 108 000 000
4. R & B Petroleum Inc
5. Haught No 1
6. Murphy
7. Ritchie WV
8. 10.2 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33166
2. 47–039–03466–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 13
6. Cabin Creek
7. Kanawha WV
8. 46.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33167
2. 47–039–03461–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 15
6. Cabin Creek
7. Kanawha WV
8. 50.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33168
2. 47–039–03460–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 9
6. Cabin Creek
7. Kanawha WV
8. 44.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33169
2. 47–039–03459–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 10
6. Cabin Creek
7. Kanawha WV
8. 46.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33170
2. 47–039–03412–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 14
6. Cabin Creek
7. Kanawha WV
8. 43.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33171
2. 47–081–00421–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co B–5
6. Marsh Fork
7. Raleigh WV
8. .0 million cubic feet
9. May 12, 1980
10.

1. 80–33172
2. 47–039–03469–0000
3. 103 000 000
4. Allegheny & Western Energy Corp
5. Ohley Trust No 20
6. Cabin Creek
7. Kanawha WV
8. 45.0 million cubic feet
9. May 12, 1980
10. Columbia Gas Transmission Corp

1. 80–33173
2. 47–081–00419–0000
3. 103 000 000
4. Texas Internl Pet Corp
5. Rowland Land Co B–4
6. Marsh Fork
7. Raleigh WV
8. 50.0 million cubic feet
9. May 12, 1980
10.

1. 80–33174
2. 47–073–20709–0000
3. 108 000 000
4. Energy Unlimited Inc
5. Tom Hammett No 1
6. Grant
7. Pleasants WV
8. 2.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33175
2. 47–073–20707–0000
3. 108 000 000
4. Energy Unlimited Inc
5. A C Campbell No 1
6. Grant
7. Pleasants WV
8. 1.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33176
2. 47–017–02313–0000
3. 103 000 000
4. Stonewall Gas Co
5. L S McGee No 1
6. Central
7. Doddridge WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33177
2. 47–043–20139–0000
3. 108 000 000
4. Turtle Lick Gas Company
5. George W. Thompson No 2
6. Jefferson District
7. Lincoln WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Pennzoil Company

1. 80–33178
2. 47–043–20121–0000
3. 108 000 000
4. Turtle Lick Gas Company
5. James Thompson No 1
6. Jefferson
7. Lincoln WV
8. 6.0 million cubic feet
9. May 12, 1980
10. Pennzoil Company

1. 80–33179
2. 47–007–01367–0000
3. 103 000 000
4. Sterling Drilling & Production Co I
5. Fleming No 3
6. Birch District
7. Braxton WV
8. 4.5 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33180
2. 47–015–01588–0000
3. 103 000 000
4. Sterling Drilling & Production Co I
5. Bailes No 2
6. Buffalo District
7. Clay WV
8. 34.2 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33181
2. 47–015–01608–0000
3. 103 000 000
4. Sterling Drilling & Production Co I
5. Aloi No 5
6. Buffalo District
7. Clay WV
8. 27.0 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33182
2. 47–013–02969–0000
3. 103 000 000
4. Sterling Drilling & Production Co I
5. Chenoweth 111
6. Washington District
7. Calhoun WV
8. 4.5 million cubic feet
9. May 12, 1980
10.

1. 80–33183
2. 47–017–02311–0000
3. 103 000 000
4. Stonewall Gas Co
5. Howard Husk No 1
6. Jims Run
7. Doddridge WV
8. .0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33184
2. 47–033–01691–0000
3. 103 000 000
4. J & J Enterprises Inc
5. B–161
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33185
2. 47–015–01505–0000
3. 103 000 000
4. Sterling Drilling & Production Co I
5. Boggs No 4
6. Otter District
7. Clay WV
8. 1.8 million cubic feet
9. May 12, 1980
10. Equitable Gas Co

1. 80–33189
2. 47–039–03297–0000
3. 108 000 000
4. Pennzoil Co
5. Dodd Mary S No 2
6. Elk
7. Kanawha WV
8. 2.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33190
2. 47–043–02306–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 5
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33191
2. 47–043–02298–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 6
6. Duval
7. Lincoln WV
8. .5 million cubic feeet
9. May 12, 1980
10. Consolidated Gas Supply Corp

1. 80–33192
2. 47–043–02129–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 4
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33193
2. 47–043–02128–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 3
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33194
2. 47–043–02127–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 2
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33195
2. 47–043–01367–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No W–1
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33196
2. 47–043–00212–0000
3. 108 000 000
4. Pennzoil Co
5. Jennie Jones No 8
6. Duval
7. Lincoln WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33197
2. 47–083–00025–0000
3. 108 000 000
4. Robert L Wharton
5. Brennan No 1
6. Pumpkintown
7. Randolph WV
8. 1.2 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33198
2. 47–061–00204–0000
3. 108 000 000
4. Weir Walker
5. John Fleming No 1
6. Cass District
7. Monongalia WV
8. 2.4 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33199
2. 47–017–22343–0000
3. 103 000 000
4. Industrial Gas Associates
5. E Shaughnessy No 1
6. Grant District
7. Doddridge WV
8. 10.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Co

1. 80–33200
2. 47–041–02028–0000
3. 108 000 000
4. Consolidated Gas Supply Corp
5. Charles W Meader 12107

6. West Virginia other A–85772
7. Lewis WV
8. 4.0 million cubic feet
9. May 9, 1980
10. General Systems Purchasers

1. 80–33201
2. 47–041–01974–0000
3. 108 000 000
4. Consolidated Gas Supply Corp
5. Darnall-Clark 11832
6. West Virginia other A–85772
7. Lewis WV
8. 1.5 million cubic feet
9. May 9, 1980
10. General System Purchasers

1. 80–33202
2. 47–013–02610–0000
3. 103 000 000
4. William Dye Riddle
5. Slider Lease
6. Barnes Run
7. Calhoun WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33203
2. 47–091–00182–0000
3. 103 000 000
4. NRM Petroleum Corp
5. Gorr-Arnold No 2
6. Flemington
7. Taylor WV
8. .0 million cubic feet
9. May 9, 1980
10. Petro-Lewis Corp

1. 80–33204
2. 47–091–00179–0000
3. 103 000 000
4. NRM Petroleum Corp
5.E Tomblyn #3
6. Simpson Creek
7. Taylor WV
8. .0 million cubic feet
9. May 9, 1980
10. Petro-Lewis Corp

1. 80–33205
2. 47–001–01108–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–778
6. Cove District
7. Barbour WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33206
2. 47–033–01992–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–773
6. Union District
7. Harrison WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33207
2. 47–033–02050–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–785
6. Ten Mile District
7. Harrison WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33208
2. 47–033–02069–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–775
6. Sardis District
7. Harrison WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33209
2. 47–033–02082–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–751
6. Eagle District
7. Harrison WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33210
2. 47–103–01148–0000
3. 103 00 000
4. Allegheny Land & Mineral Co
5. A–758
6. Grant District
7. Wetzel WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33211
2. 47–097–01877–0000
3. 103 00 000
4. Allegheny Land & Mineral Co
5. A–779
6. Union District
7. Upshur WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33212
2. 47–085–24238–0000
3. 103 000 000
4. Warren R Haught Agent
5. Hatfield H–726
6. Grant Dist
7. Ritchie WV
8. 45.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33213
2. 47–103–01151–0000
3. 103 000 000
4. Allegheny Land & Mineral Co
5. A–692
6. Grant District
7. Wetzel WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33214
2. 47–085–24206–0000
3. 103 000 000
4. Warren R Haught Agent
5. Hatfield H–603
6. Grant Dist
7. Ritchie WV
8. 30.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33215
2. 47–085–24189–0000
3. 103 000 000
4. Warren R Haught Agent
5. Weideman H–685
6. Murhpy Dist
7. Ritchie WV
8. 15.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33216
2. 47–085–24188–0000
3. 103 000 000
4. Warren R Haught Agent
5. Weideman H–684
6. Murphy District
7. Ritchie WV
8. 15.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33217
2. 47–021–02744–0000
3. 108 000 000
4. Trio Petroleum Corp
5. Bailey No 1
6. Glenville South
7. Gilmer WV
8. 18.4 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33218
2. 47–007–00950–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. J P Hardway No 3
6. Birch District
7. Braxton WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33219
2. 47–007–00911–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. J P Hardway No 2
6. Birch District
7. Braxton WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33220
2. 47–007–00563–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. Parkersburg Mill Co No 1
6. Birch District
7. Braxton WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33221
2. 47–007–00546–0000
3. 108 000 000
4. Big B Drilling Co Inc
5. Wanda Mae Hall No 1
6. Birch District
7. Braxton WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33222
2. 47–085–24187–0000
3. 103 000 000
4. Warren R Haught Agent
5. Weideman H–683
6. Murphy District
7. Ritchie WV
8. 15.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33223
2. 47–017–22339–0000
3. 103 000 000
4. Warren R Haught Agent
5. Hudson H–722
6. Central Dist
7. Doddridge WV
8. 60.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33224
2. 47–017–22340–0000
3. 103 000 000
4. Warren R Haught Agent
5. Hudson H–723
6. Central
7. Doddridge WV
8. 60.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33225
2. 47–017–22325–0000
3. 103 000 000
4. V–H Joint Venture
5. Coplin VH–711
6. New Milton Dist
7. Doddridge WV
8. 40.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33226
2. 47–017–22350–0000
3. 103 000 000
4. V–H Joint Venture
5. Coplin VH–715
6. New Milton District
7. Doddridge WV
8. 60.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33227
2. 47–021–23423–0000
3. 103 000 000
4. V–H Joint Venture
5. Garton H–713
6. Troy District
7. Gilmer WV
8. 15.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33228
2. 47–021–23428–0000
3. 103 000 000
4. V–H Joint Venture
5. Talbott VH–721
6. Troy District
7. Gilmer WV
8. 20.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33229
2. 47–085–24156–0000
3. 103 000 000
4. V–H Joint Venture
5. Allen E Vernon H–676
6. Union District
7. Ritchie WV
8. 6.0 million cubic feet
9. May 9, 1980
10. Carnegie Natural Gas Co

1. 80–33230
2. 47–085–24226–0000
3. 103 000 000
4. V–H Joint Venture
5. Orla J Adams VH–724
6. Union District
7. Ritchie WV
8. 12.0 million cubic feet
9. May 9, 1980
10. Carnegie Natural Gas Co

1. 80–33231
2. 47–085–24182–0000
3. 103 000 000
4. V–H Joint Venture
5. T J Broadwater H–697
6. Clay Dist
7. Ritchie WV
8. 15.0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33232
2. 47–085–24205–0000
3. 103 000 000
4. V–H Joint Venture
5. RSD Baptist Church VH–664
6. Union District
7. Ritchie WV
8. 20.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33233
2. 47–085–24250–0000
3. 103 000 000
4. Glenn L. Haught & Sons
5. Newton H–730
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33234
2. 47–085–24251–0000
3. 103 000 000
4. Glenn L. Haught & Sons
5. Martin Brothers No H–731
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33235
2. 47–085–24252–0000
3. 103 000 000
4. Glenn L. Haught & Sons
5. Martin Brothers H–650
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33236
2. 47–085–24254–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. T R Frashure No H–732
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33237
2. 47–085–24261–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Blaine Miller H–739
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33238
2. 47–085–24264–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. H W Barton H–738
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33239
2. 47–085–24266–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Mary Gardner H–744
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33240
2. 47–049–00533–0000
3. 108 00 000
4. Pennzoil Co
5. Higgins Harmon No 1
6. Mannington
7. Marion WV
8. .3 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33241
2. 47–103–00915–0000
3. 108 00 000
4. Pennzoil Co
5. Hays-Higgins No 1
6. Mannington
7. Wetzel WV
8. .7 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33242
2. 47–017–02445–0000
3. 103 000 000
4. United Operating Co
5. Cunningham No 3
6. Cabin Run
7. Doddridge County WV
8. .0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33243
2. 47–033–01558–0000
3. 108 00 000
4. Pennzoil Co
5. Webb G W No 3
6. Eagle
7. Harrison WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33244
2. 47–021–23000–0000
3. 107 00 000
4. Rockwell Petroleum Co
5. T F Reed No 2
6. Glenville District
7. Gilmer WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33245
2. 47–021–22999–0000
3. 107 00 000
4. Rockwell Petroleum Co
5. T F Reed No 3

6. Glenville District
7. Gilmer WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33246
2. 47–021–22914–0000
3. 107 00 000
4. Rockwell Petroleum Co
5. T F Reed No 1
6. Glenville District
7. Gilmer WV
8. .0 million cubic feet
9. May 9, 1980
10. Equitable Gas Co

1. 80–33247
2. 47–021–03512–0000
3. 103 000 000
4. United Operating Co
5. Martha Pitzer No 1
6. Little Kanawha River-Glenville 7½
7. Gilmer WV
8. .0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33248
2. 47–390–32980–0000
3. 108 000 000
4. Pennzoil Co
5. Dodd Virginia M No 1
6. Elk
7. Kanawha WV
8. 1.8 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33249
2. 47–039–03296–0000
3. 108 000 000
4. Pennzoil Co
5. Lincoln Dodd No 3
6. Elk
7. Kanawha WV
8. 2.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33250
2. 47–039–00817–0000
3. 108 000 000
4. Pennzoil Co
5. Lincoln Dodd #1
6. Elk
7. Kanawha WV
8. 10.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33251
2. 47–039–00648–0000
3. 108 000 000
4. Pennzoil Co
5. Monk W F #1
6. Poca
7. Kanawha WV
8. 10.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33252
2. 47–039–00567–0000
3. 108 000 000
4. Pennzoil Co
5. Newhouse T H #6
6. Poca
7. Kanawha WV
8. 9.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33253
2. 47–039–00536–0000
3. 108 000 000
4. Pennzoil Co
5. Monk Virginia E #1
6. Poca
7. Kanawha WV
8. 7.0 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33254
2. 47–039–00518–0000
3. 108 000 000
4. Pennzoil Co
5. Newhouse T H #5
6. Poca
7. Kanawha WV
8. .9 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33255
2. 47–039–00408–0000
3. 108 000 000
4. Pennzoil Co
5. Beane S S #2
6. Poca
7. Kanawha WV
8. 14.5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33256
2. 47–039–00330–0000
3. 108 000 000
4. Pennzoil Co
5. Newhouse T H #3
6. Poca
7. Kanawha WV
8. .5 million cubic feet
9. May 9, 1980
10. Consolidated Gas Supply Corp

1. 80–33257
2. 47–043–00900–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Bishop #1
6. Harts Creek
7. Lincoln WV
8. 17.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33258
2. 47–043–00917–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. U F G Co #4
6. Harts Creek
7. Lincoln WV
8. 17.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33259
2. 47–043–00934–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Workman #1
6. Harts Creek
7. Lincoln WV
8. 7.5 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33260
2. 47–043–00938–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Workman #2
6. Harts Creek
7. Lincoln WV
8. 7.5 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33261
2. 47–043–00942–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Workman #3
6. Harts Creek
7. Lincoln WV
8. 7.5 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33262
2. 47–043–01379–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Seth Miller #1
6. Jefferson
7. Lincoln WV
8. 3.1 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33263
2. 47–045–00536–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. W W Lucus #1
6. Chapmanville
7. Logan WV
8. 7.5 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33264
2. 47–099–01183–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Lafayette Ferguson #1
6. Butler
7. Wayne WV
8. 9.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33265
2. 47–005–00182–0000
3. 108 000 000
4. Riverhead Gas Co
5. F B Nelson #11
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33266
2. 47–005–00176–0000
3. 108 000 000
4. Riverhead Gas Co
5. Nelson #9
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33267
2. 47–005–00169–0000
3. 108 000 000
4. Riverhead Gas Co
5. Nelson #8
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33268
2. 47–005–00157–0000
3. 108 000 000
4. Riverhead Gas Co
5. Nelson #7
6. Mud River
7. Boone WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33269
2. 47–085–24267–0000
3. 103 000 000
4. Glenn L Haught & Sons
5. Blaine Miller # H–740
6. Murphy District
7. Ritchie WV
8. 25.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33270
2. 47–043–00857–0000
3. 108 000 000
4. Latin Gas Co
5. A F Morris #9
6. Laurel Hill
7. Lincoln WV
8. 11.0 million cubic feet
9. May 9, 1980
10. Industrial Gas Corp

1. 80–33271
2. 47–043–00038–0000
3. 108 000 000
4. A F Morris Trustee
5. J E Pridemore #2
6. Mud River
7. Lincoln WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33272
2. 47–043–00029–0000
3. 108 000 000
4. A F Morris Trustee
5. Edgar Ray #2
6. Mud River
7. Lincoln WV
8. 1.1 million cubic feet
9. May 9, 1980
10. Pennzoil Co

1. 80–33273
2. 47–043–00606–0000
3. 108 000 000
4. Latin Gas Co
5. A F Morris #3
6. Laurel Hill
7. Lincoln WV
8. 11.0 million cubic feet
9. May 9, 1980
10. Industrial Gas Corp

1. 80–33274
2. 47–043–00569–0000
3. 108 000 000
4. Latin Gas Co
5. A F Morris #2
6. Laurel Hill
7. Lincoln WV
8. 11.0 million cubic feet
9. May 9, 1980
10. Industrial Gas Corp

1. 80–33275
2. 47–043–00507–0000
3. 108 000 000
4. Latin Gas Co
5. A F Morris #1
6. Laurel Hill
7. Lincoln WV
8. 11.0 million cubic feet
9. May 9, 1980
10. Industrial Gas Corp

1. 80–33276
2. 47–043–00264–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. J J Smith #
6. Union
7. Lincoln WV
8. 2.6 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33277
2. 47–043–00813–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Toney #1
6. Harts Creek
7. Lincoln WV
8. 1.7 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33278
2. 47–043–00835–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. Robert Toney #1
6. Harts Creek
7. Lincoln WV
8. 17.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33279
2. 47–043–00870–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. UFG Co #2
6. Harts Creek
7. Lincoln WV
8. 17.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

1. 80–33280
2. 47–043–00884–0000
3. 108 000 000
4. Sweetland Land & Mineral Co
5. UFG Co #3
6. Harts Creek
7. Lincoln WV
8. 17.0 million cubic feet
9. May 9, 1980
10. Columbia Gas Transmission Corp

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission by June 16, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–16484 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–85–M

[No. 209]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

May 27, 1980.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Texas Railroad Commission Oil and Gas Division

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–33281/00157
2. 42–235–31228–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 6
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33282/00158
2. 42–235–31227–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 7
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33283/00159
2. 42–235–31214–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 6
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33284/00160
2. 42–235–31215–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 4
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet

9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33285/00161
2. 42–235–31216–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 3
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33286/00162
2. 42–235–31217–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 2
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33287/00163
2. 42–235–31218–000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B B No 1
6. Spraberry (Trend area)
7. Reagan TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33288/00164
2. 42–235–31219–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 8
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33289/00165
2. 42–235–31229–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 7
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33290/00166
2. 42–235–31230–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 6
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33291/00167
2. 42–235–31231–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 5
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33292/00168
2. 42–235–31232–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 4
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33293/00169
2. 42–235–31233–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 3
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33294/00170
2. 42–235–31234–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 2
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33295/00171
2. 42–235–31235–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B A No 1
6. Spraberry (Trend area)
7. Reagan TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33296/00172
2. 42–235–31225–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 8
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33297/00173
2. 42–235–31224–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 7
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33298/00174
2. 42–235–31223–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 6
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33299/00175
2. 42–235–31222–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 5
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33300/00176
2. 42–235–31221–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 4
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33301/00177
2. 42–235–31220–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 3
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33302/00178
2. 42–235–31208–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 2
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33303/00179
2. 42–235–31199–0000
3. 103 000 000
4. Lacy & Byrd Inc
5. Rocker B No 1
6. Spraberry (Trend area)
7. Reagan TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co
1. 80–33304/00180
2. 42–435–32085–0000
3. 103 000 000
4. Shenandoah Oil Corp
5. J W Ward No 2–118
6. Sonora (Canyon Upper)
7. Sutton TX
8. 182.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co
1. 80–33305/00181
2. 42–435–32084–0000
3. 103 000 000
4. Shenandoah Oil Corp
5. B M Halbert No 2–122
6. Sonora (Canyon Upper)
7. Sutton TX
8. 146.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co
1. 80–33306/00341
2. 42–483–00000–0000
3. 108 000 000
4. Morgas
5. George E #1
6. East Panhandle
7. Wheeler TX
8. 17.2 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co
1. 80–33307/00439

2. 42–185–30206–0000
3. 102 000 000
4. Wesley West
5. Sam B Harrison No 2
6. Bedias West (Chalk 8600)
7. Grimes TX
8. 365.0 million cubic feet
9. May 14, 1980
10.

1. 80–33308/00738
2. 42–365–30634–0000
3. 103 000 000
4. Gibson Drilling Co
5. Z L Daniels Gas Unit
6. Carthage South (Pettit Lower)
7. Panola County TX
8. 182.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33309/00959
2. 42–105–32054–0000
3. 103 000 000
4. Suburban Propane Gas Corp
5. Jones-Miller et al No 2
6. Ozona (Canyon Sand)
7. Crockett TX
8. 150.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33310/00983
2. 42–105–00000–0000
3. 108 000 000
4. Bill J Graham
5. University 12 #2
6. Howard Draw (Grayburg San Andres)
7. Crockett TX
8. 14.6 million cubic feet
9. May 14, 1980
10. Permian

1. 80–33311/01145
2. 42–089–30642–0000
3. 103 000 000
4. Mitchell Energy Corp
5. C W McDermott #4
6. Nada (Wilcox—9700 FB 3)
7. Colorado TX
8. 157.8 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33312/01522
2. 42–105–00000–0000
3. 103 000 000
4. Delta Drilling Co
5. Helbing 14 3
6. Ozona (Canyon)
7. Crockett TX
8. 84.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33313/01523
2. 42–105–00000–0000
3. 103 000 000
4. Delta Drilling Co
5. Helbing 17 2
6. Ozona (Canyon)
7. Crockett TX
8. 173.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33314/01525
2. 42–105–00000–0000
3. 103 000 000
4. Delta Drilling Co
5. Meadows 48 2
6. Ozona (Canyon)
7. Crockett TX
8. 165.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33315/01851
2. 42–389–30881–0000
3. 102 000 000
4. Wayman W Buchanan
5. J B Young No 1
6. J B Y (Delaware)
7. Reeves County TX
8. 91.3 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33316/01932
2. 42–173–30463–0000
3. 103 000 000
4. Mewbourne Oil Co
5. Chaney #1
6. Spraberry (Trend)
7. Glasscock TX
8. 6.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33317/01939
2. 42–295–3054–0000
3. 103 000 000
4. Mewbourne Oil Co
5. Burchfiel #1
6. Mammoth Creek No (Cleveland)
7. Lipscomb TX
8. 170.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33318/01942
2. 42–357–30832–0000
3. 103 000 000
4. Mewbourne Oil Co
5. Morris #1
6. Northrup (Cleveland)
7. Ochiltree TX
8. 105.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33319/01950
2. 42–357–30791–0000
3. 103 000 000
4. Mewbourne Oil Co
5. Daniel #1
6. Northrup (Cleveland)
7. Ochiltree TX
8. 75.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33320/01983
2. 42–295–30487–0000
3. 103 000 000
4. Mewbourne Oil Co
5. Ingle #1
6. Bechthold (Tonkawa)
7. Lipscomb TX
8. 20.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33321/02093
2. 42–123–30846–0000
3. 103 000 000
4. H–M Oil Co
5. Herbert Haun #1–T
6. Arneckeville S Y–6
7. Dewitt TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Texas Eastern Transmission Corp, UNI Oil Inc

1. 80–33322/02094
2. 42–123–30846–0000
3. 103 000 000
4. H–M Oil Co
5. Herbert Haun #1–C
6. Arneckeville S Y–1
7. Dewitt TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Texas Eastern Transmission Corp, UNI Oil Inc

1. 80–33323/02389
2. 42–461–31203–0000
3. 103 000 000
4. Gulf Oil Corp
5. J T McElroy Cons No 1008
6. McElroy
7. Upton TX
8. .8 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33324/02852
2. 42–039–30805–0000
3. 103 000 000
4. Sun Oil Co
5. Wisch-Saint Unit No S–U
6. Pledger (Markham 7700)
7. Brazoria TX
8. 1058.0 million cubic feet
9. May 14, 1980
10. United Texas Transmission Corp

1. 80–33325/02853
2. 42–039–30823–0000
3. 103 000 000
4. Su Oil Co
5. Wisch-Saint unit No 6–L
6. Pledger (Betts 8000)
7. Brazoria TX
8. 259.0 million cubic feet
9. May 14, 1980
10. United Texas Transmission Corp

1. 80–33326/02856
2. 42–039–30831–0000
3. 103 000 000
4. Sun Oil Co
5. Wisch-Saint Unit No 7–U
6. Pledger (Cayce 7650)
7. Brazoria TX
8. 492.0 million cubic feet
9. May 14, 1980
10. United Texas Transmission Corp

1. 80–33327/02919
2. 42–237–00000–0000
3. 108 000 000
4. Miles Production Co et al
5. Crawford-Woods #1
6. East Perrin (Caddo)
7. Jack TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Southwestern Gas Pipeline Co

1. 80–33328/02920
2. 42–237–00000–0000
3. 108 000 000
4. Miles Production Co et al
5. Vera Roney #2
6. Lost Valley (Caddo)
7. Jack TX
8. 7.0 million cubic feet
9. May 14, 1980
10. Emco Gas Pipeline Co, Southwestern Gas Pipeline Inc

1. 80–33329/02987
2. 42–475–31658–0000
3. 103 000 000

4. Gulf Oil Corp
5. E W Estes No 245
6. Estes Block 34 (Penn)
7. Ward TX
8. 23.0 million cubic feet
9. May 14, 1980
10. Cabot Corp

1. 80–33330/03064
2. 42–321–30850–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Richers A #1
6. Hamman E (10100 Frio)
7. Matagorda TX
8. 192.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33331/03068
2. 42–355–31327–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Prochaska #1
6. Agua Dulce (6400 Carter)
7. Nueces TX
8. 93.0 million cubic feet
9. May 14, 1980
10. Esperanza Energy Corp

1. 80–33332/03069
2. 42–239–31355–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Blankinship Gas Unit #2
6. Morales
7. Jackson TX
8. 66.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33333/03070
2. 42–239–31326–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Stafford A GU #1
6. Morales (3900)
7. Jackson TX
8. 255.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33334/03071
2. 42–239–31224–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Wearden #4
6. Morales
7. Jackson TX
8. 100.4 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33335/03072
2. 42–239–31328–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Watson B #1
6. Morales
7. Jackson TX
8. 95.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33336/03502
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J A Whittenburg D #3
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33337/03503
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J A Whittenburg D #1
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33338/03509
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J T Hodges #2
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33339/03514
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J J Perkins C #4–C
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33340/03578
2. 42–483–30483–0000
3. 103 000 000
4. Amarillo Oil Co
5. Evans #1–7 (Morrow) ID 76671
6. Buffalo Wallow (Morrow)
7. Wheeler TX
8. 634.0 million cubic feet
9. May 14, 1980
10. Pioneer Natural Gas Co

1. 80–33341/03591
2. 42–237–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Cap Yates No. 7
6. Boonsville Bend Conglomerate
7. Jack TX
8. 2.7 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33342/03594
2. 42–237–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Ada Worthington No. 1
6. Boonesville Bend Conglomerate
7. Jack TX
8. 5.8 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33343/03620
2. 42–483–30494–0000
3. 103 000 000
4. Davis Oil Co
5. Lee No. 1
6. Mobectic West (Ellenburger)
7. Wheeler TX
8. 175.0 million cubic feet
9. May 14, 1980
10. Michigan Wisconsin Pipeline Co

1. 80–33344/03621
2. 42–393–00000–0000
3. 103 000 000
4. Davis Oil Co
5. Byrum #1
6. Red Deer NE (Granite Wash)
7. Roberts TX
8. 350.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33345/03627
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. Gulf Whittenburg D #3
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33346/03874
2. 42–435–32052–0000
3. 103 000 000
4. El Paso Natural Gas Co
5. Davis A #3
6. Sonora
7. Sutton TX
8. 170.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33347/03972
2. 42–233–00000–0000
3. 108 000 000
4. Collins Oil and Gas Co
5. J J Perkins #2
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33348/03974
2. 42–233–00000–0000
3. 108 000 000
4. Collins Oil and Gas Co
5. J J Perkins #4
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33349/04073
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. C A Mason #1
6. Boonsville Bend Cong
7. Wise TX
8. 13.2 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33350/04082
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. H S Renshaw #1
6. Boonsville Bend Cong
7. Wise TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33351/04088
2. 42–367–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. H A Thomason #1
6. Boonsville Bend Cong
7. Parker TX

8. 5.2 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33352/04089
2. 42–237–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Ornee Stewart #3
6. Boonsville Bend Cong
7. Jack TX
8. 6.9 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33353/04118
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. G T Lemay #3
6. Leftwick (Congl 5220)
7. Wise TX
8. 4.4 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33354/04121
2. 42–497–30493–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Joe C Hanna et al #1
6. Alvord (Atoka 6400)
7. Wise TX
8. 4.1 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33355/04147
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. R E Petty #1
6. Boonsville Bend Cong
7. Wise TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33356/04175
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. H P Faith #3
6. Alvord (Atoka Cong)
7. Wise TX
8. 3.9 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33357/04202
2. 42–033–00000–0000
3. 103 000 000
4. Texaco Inc
5. Jo Mill Unit No. 3411
6. Jo Mill (Spraberry)
7. Borden TX
8. 21.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33358/04219
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. W E Howell #1
6. Alvord (Caddo Cong)
7. Wise TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33359/04220
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. H A Hedberg #1–C
6. Boonsville Bend Cong
7. Wise TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33360/04259
2. 42–501–00000–0000
3. 103 000 000
4. Texaco Inc
5. Roberts Unit No. 3315
6. Wasson
7. Yoakum TX
8. .4 million cubic feet
9. May 14, 1980
10. Shell Oil Co

1. 80–33361/04315
2. 42–135–00000–0000
3. 103 000 000
4. Texaco Inc
5. West Jordan Unit No. 3–13
6. Jordan
7. Ector TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33362/04339
2. 42–165–00000–0000
3. 103 000 000
4. Texaco Inc
5. A B Wharton Jr No. 93
6. Robertson (San Andres)
7. Gaines TX
8. 13.5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33363/04395
2. 42–227–31431–0000
3. 103 000 000
4. Amoco Production Co
5. Ellis Iden A No. 3
6. Oceanic (Penn)
7. Howard TX
8. 220.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co, El Paso Natural Gas Co

1. 80–33364/04654
2. 42–481–00000–0000
3. 103 000 000
4. Woods Exploration & Prdg Co Inc
5. Leveridge W C AAIF MD #1
6. East Bernard (7700)
7. Wharton TX
8. 170.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33365/04698
2. 42–105–31921–0000
3. 103 000 000
4. William N Beach
5. Owens 17–1
6. Clara Couch (Wolfcamp)
7. Crockett TX
8. 28000.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33366/04728
2. 42–133–31189–0000
3. 103 000 000
4. Leclair Westwood Inc
5. Brawner #1
6. Penn (Ranger)
7. Eastland TX
8. 17520.0 million cubic feet
9. May 14, 1980
10. Odessa Natural Corp

1. 80–33367/04794
2. 42–497–31074–0000
3. 103 000 000
4. Sun Oil Co
5. O Walker Unit No 2
6. Boonsville
7. Wise TX
8. 35.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33368/04847
2. 42–357–00000–0000
3. 103 000 000
4. Natomas North America Inc
5. Luthi A #4
6. Dickinson-Luthi
7. Ochiltree TX
8. 274.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33369/04891
2. 42–105–00000–0000
3. 103 000 000
4. Ladd Petroleum Corp
5. Vada Bean 2–22
6. Ozona Canyon Sand
7. Crockett TX
8. 150.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33370/04907
2. 42–105–31867–0000
3. 108 000 000
4. Ladd Petroleum Corp
5. J S Pierce #1–10
6. Ozona Canyon Sand
7. Crockett TX
8. 18.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33371/04918
2. 42–105–00000–0000
3. 103 000 000
4. American Quasar Petroleum Co
5. Henderson 1–4
6. 1904 FNL & 2132 Fel Henderson Lease
7. Crockett TX
8. 73.0 million cubic feet
9. May 14, 1980
10. Intratex Gas Co

1. 80–33372/04925
2. 42–105–31759–0000
3. 103 000 000
4. Ladd Petroleum Corp
5. Vada Bean 1–22
6. Ozona Canyon Sand
7. Crockett TX
8. 30.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33373/04957
2. 42–215–00000–0000
3. 108 000 000
4. Clark Fuel Producing Co
5. Sheldon-Wood Unit No 1
6. Sam Fordyce 2500
7. Hidalgo TX
8. 16.0 million cubic feet
9. May 14, 1980
10. South Texas Natural Gas Gath Co

1. 80–33374/04961

2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Louella Dethloff #1
6. Bridgeport Atoka Cong 5900
7. Wise TX
8. 9.3 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33375/04962
2. 42–497–31325–0000
3. 103 000 000
4. Mitchell Energy Corp
5. Ella Maeyers #2
6. Boonsville Bend Congl Gas
7. Wise TX
8. 170.3 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33376/05014
2. 42–233–00000–0000
3. 108 000 000
4. J M Huber Corp
5. Deal Johnson No 1
6. Pandandle West
7. Hutchinson TX
8. 5.6 million cubic feet
9. May 14, 1980
10. Colorado Interstate Gas Co

1. 80–33377/05048
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. L W Ratliff #1
6. Boonsville Bend Cong
7. Wise TX
8. 8.9 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33378/05058
2. 42–367–31230–0000
3. 103 000 000
4. Mitchell Energy Corp
5. Ethel Campbell #2
6. Toto Bend Congl Lower
7. Parker TX
8. 99.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33379/05075
2. 42–497–30163–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Jeff S Fox #1
6. Boonsville Bend Cong
7. Wise TX
8. 7.5 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33380/05091
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. G B Portwood #1
6. Boonsville Bend Cong
7. Wise TX
8. 13.9 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33381/05098
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. C F Hudnall #1
6. Boonsville Bend Cong
7. Wise TX
8. 3.7 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33382/05137
2. 42–103–00000–0000
3. 108 000 000
4. Getty Oil Co
5. North McElroy Unit No 2932
6. McElroy
7. Crane TX
8. .2 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33383/05140
2. 42–103–00000–0000
3. 108 000 000
4. Getty Oil Co
5. North McElroy Unit No 2935
6. McElroy
7. Crane TX
8. .2 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33384/05170
2. 42–497–30095–0000
3. 108 000 000
4. Mitchell Energy Corp
5. C C Stephens #1
6. Boonsville Bend Cong
7. Wise TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33385/05202
2. 42–179–00000—0000
3. 108 000 000
4. W L Bruce Co
5. Walberg #5
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33386/05267
2. 42–341–00000–0000
3. 108 000 000
4. W L Bruce Co
5. Morton #12
6. Panhandle
7. Moore TX
8. 11.2 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33387/05530
2. 42–179–00000–0000
3. 108 000 000
4. W L Bruce Co
5. Brinkley #3
6. Panhandle Field
7. Gray TX
8. 15.2 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33388/05551
2. 42–367–31004–0000
3. 103 000 000
4. Ladd Petroleum Corp
5. Carr J R Unit 2
6. Toto
7. Parker TX
8. 64.8 million cubic feet
9. May 14, 1980
10. Lone Star Gas Co

1. 80–33389/05573
2. 42–481–00000–0000
3. 102 000 000
4. Boling Production Co Inc
5. Stolle #1
6. Stolle (Frio) Field
7. Wharton TX
8. 1000.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33390/05578
2. 42–179–00000–0000
3. 108 000 000
4. W H Taylor Estate
5. Taylor Ranch (CTH) 39A
6. West Panhandle (Gas)
7. Gray TX
8. 14.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33391/05607
2. 42–233–00000–0000
3. 108 000 000
4. Aljean Harnon Inc
5. T D Lewis B #8
6. Panhandle Field
7. Hutchinson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33392/05619
2. 42–179–00000–0000
3. 108 000 000
4. W H Taylor Estate
5. Taylor Ranch (WHT) 22
6. West Panhandle (Gas)
7. Gray TX
8. 17.5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33393/05625
2. 42–179–00000–0000
3. 108 000 000
4. W H Taylor Estate
5. Taylor Ranch (TEH)
6. West Panhandle (Gas)
7. Gray TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33394/05650
2. 42–179–00000–0000
3. 108 000 000
4. W H Taylor Estate
5. Bollinger 25329
6. West Panhandle (Gas)
7. Gray TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33395/05664
2. 42–335–31368–0000
3. 103 000 000
4. Chevron USA Inc
5. W L Foster 1 #47
6. Iatan East (Howard)
7. Mitchell TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33396/05671
2. 42–475–31580–0000
3. 103 000 000
4. Chevron USA Inc
5. D B Durgin #80
6. South Ward

7. Ward TX
8. .1 million cubic feet
9. May 14, 1980
10. Nueces Co

1. 80–33397/05672
2. 42–475–31581–0000
3. 103 000 000
4. Chevron USA Inc
5. D B Durgin #81
6. South Ward
7. Ward TX
8. 1.5 million cubic feet
9. May 14, 1980
10. Nueces Co

1. 80–33398/05674
2. 42–179–00000–0000
3. 108 000 000
4. W H Taylor Estate
5. Taylor Ranch (TEH) 25338
6. West Panhandle (Gas)
7. Gray TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33399/05676
2. 42–479–31759–0000
3. 103 000 000
4. Chevron USA Inc
5. Bruni Mineral Trust #17
6. Laredo (Lobo)
7. Webb TX
8. 726.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering

1. 80–33400/05930
2. 42–357–00000–0000
3. 108 000 000
4. Texaco Inc
5. Patton-Holland Unit #LL
6. Farnsworth
7. Ochiltree TX
8. 10.7 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33401/06023
2. 42–427–00000–0000
3. 108 000 000
4. Conoco Inc
5. Frio D–5 Unit No 16
6. Rincon
7. Starr TX
8. .7 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33402/06024
2. 42–079–30473–0000
3. 103 000 000
4. Conoco Inc
5. Conoco-Dean Unit #99
6. Slaughter/San Andres
7. Cochran TX
8. 3.7 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33403/06032
2. 42–427–00000–0000
3. 108 000 000
4. Conoco Inc
5. T B Slick Est-B No 26
6. Rincon (H)
7. Starr TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33404/06097
2. 42–179–00000–0000
3. 108 000 000
4. Texaco Inc
5. E E Gething (NCT–1) #17
6. Panhandle East
7. Gray TX
8. 2.6 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33405/06219
2. 42–501–31491–0000
3. 103 000 000
4. Cornell Oil Co
5. Cornell Unit 3180
6. Wasson/San Andres
7. Yoakum TX
8. .6 million cubic feet
9. May 14, 1980
10. Shell Oil Co Coltexo Corp

1. 80–33406/06249
2. 42–131–32008–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. I R Foster #47
6. Hagist Ranch (Queen City Sand)
7. Duval TX
8. 3.2 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33407/06254
2. 42–329–30789–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. June Tippett No 42
6. Pegasus (San Andres) Field
7. Midland TX
8. 1.87 million cubic feet
9. May 14, 1980
10. Arco Oil and Gas Co

1. 80–33408/06268
2. 42–233–30609–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Ellis Cockrell #28
6. Panhandle Hutchinson
7. Hutchinson TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33409/06269
2. 42–233–30606–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Ellis Cockrell No 23
6. Panhandle Hutchinson
7. Hutchinson TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33410/06277
2. 42–233–30608–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Ellis Cockrell #29
6. Panhandle Hutchinson
7. Hutchinson TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33411/06291
2. 42–233–30605–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Ellis Cockrell #29
6. Panhandle Hutchinson
7. Hutchinson TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33412/06320
2. 42–435–31452–0000
3. 108 000 000
4. Arco Oil & Gas Co
5. Mildred Cauthorn 20 No 2
6. Jo Nell (Canyon D)
7. Sutton TX
8. 4.0 million cubic feet
9. May 14, 1980
10. United Texas Transmission Corp

1. 80–33413/06342
2. 42–215–30774–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Engleman Gardens Gas Unit #6
6. San Salvador (2600)
7. Hidalgo TX
8. 72.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipe Line Co

1. 80–33414/06348
2. 42–227–31537–0000
3. 103 000 000
4. Chevron USA Inc
5. A M Bell 40R
6. Iatan East (Howard)
7. Howard TX
8. 1.3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33415/06379
2. 42–131–32896–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. J R Foster #49
6. Hagist Ranch (Queen City Sand)
7. Duval TX
8. 8.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipe Line Co of America

1. 80–33416/06381
2. 42–227–31119–0000
3. 103 000 000
4. Chevron USA Inc
5. A M Bell 19
6. Iatan East (Howard)
7. Howard TX
8. 2.6 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33417/06416
2. 42–335–31392–0000
3. 103 000 000
4. Chevron USA Inc
5. W L Foster 1 #49
6. Iatan East (Howard)
7. Mitchell TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33418/06704
2. 42–499–30587–0000
3. 102 000 000
4. Taubert & Steed
5. David Lindley No 1
6. Neuhoff (Woodbine)
7. Wood TX
8. 70.0 million cubic feet
9. May 14, 1980
10.

1. 80–33419/06705

2. 42–499–3064–0000
3. 102 000 000
4. Taubert & Steed
5. Jack Lindley No 1
6. Neuhoff (Woodbine)
7. Wood TX
8. 68.0 million cubic feet
9. May 14, 1980
10.

1. 80–33420/06707
2. 42–499–30636–0000
3. 102 000 000
4. Taubert & Steed
5. J J Puckett Heirs No 1
6. Neuhoff (Woodbine)
7. Wood TX
8. 68.0 million cubic feet
9. May 14, 1980
10.

1. 80–33421/06893
2. 42–413–30646–0000
3. 102 000 000
4. Pennzoil Co
5. Edmiston #2
6. Page West (Wolfcamp)
7. Schleicher TX
8. 300.0 million cubic feet
9. May 14, 1980
10. Producers Gas Co

1. 80–33422/06894
2. 42–413–30647–0000
3. 102 000 000
4. Pennzoil Co
5. Edmiston #1
6. Page West (Wolfcamp)
7. Schleicher TX
8. 440.0 million cubic feet
9. May 14, 1980
10. Producers Gas Co

1. 80–33423/07064
2. 42–365–30644–0000
3. 103 000 000
4. Champlin Petroleum Co
5. Carthage Gas Unit 20 #4
6. Carthage (Cotton Valley)
7. Panola TX
8. 580.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33424/07102
2. 42–093–00000–0000
3. 103 000 000
4. Corpening Enterprises
5. Halbrook #1
6. Beattie (Marble Falls)
7. Comanche TX
8. 30.0 million cubic feet
9. May 14, 1980
10. Energy Pipeline Corp

1. 80–33425/07121
2. 42–089–30979–0000
3. 103 000 000
4. Everest Exploration Co
5. No 3C Pinchback Gas Unit No 2
6. Rhinehart (2210) Field
7. Colorado County TX
8. 210.0 million cubic feet
9. May 14, 1980
10. Hydrocarbon Gathering Inc

1. 80–33426/07128
2. 42–175–31102–0000
3. 102 000 000
4. Agoil Inc
5. J M Hensley Trust No A–1
6. La Bahia West (3100) Field
7. Goliad TX
8. 108.0 million cubic feet
9. May 14, 1980
10. Trunkline Gas Co

1. 80–33427/07130
2. 42–175–31077–0000
3. 102 000 000
4. Agoil Inc
5. J M Hensley Trust No 4
6. La Bahia East (Frio 3450) Field
7. Goliad TX
8. 108.0 million cubic feet
9. May 14, 1980
10. Trunkline Gas Co

1. 80–33428/07137
2. 42–287–30405–0000
3. 102 000 000
4. Thomas D Coffman
5. Winkler 1–A
6. Giddings (4100) Field
7. Lee TX
8. 360.0 million cubic feet
9. May 14, 1980
10. PGP Gas Products Inc

1. 80–33429/07186
2. 42–285–31191–0000
3. 108 000 000
4. Luling Oil & Gas Co Inc
5. Fojtik No 1
6. Moulton (Jackson)
7. Lavaca TX
8. 19.0 million cubic feet
9. May 14, 1980
10. Shiner Gas Pipeline Inc

1. 80–33430/07190
2. 42–483–00000–0000
3. 108 000 000
4. Komanche Oil & Gas
5. J J Perkins
6. East Panhandle
7. Wheeler TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33431/07270
2. 42–371–32552–0000
3. 103 000 000
4. Tenneco Oil Co
5. Nichols Yates #16
6. Millard
7. Pecos TX
8. 9.1 million cubic feet
9. May 14, 1980
10. Larco Gas Corp

1. 80–33432/07310
2. 42–365–00000–0000
3. 108 000 000
4. Tenneco Oil Co
5. Midyett-Gulley No 2
6. Bethany
7. Panola TX
8. 10.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33433/07311
2. 42–501–00000–0000
3. 103 000 000
4. Tenneco Oil Co
5. Bryson 15–SA
6. Prentice 5100
7. Yoakum TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33434/07460
2. 42–065–30586–0000
3. 103 000 000
4. Blair Oil Co
5. Burnett Lease #3–83
6. Panhandle-Carson County
7. Carson TX
8. 124.1 million cubic feet
9. May 14, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–33435/07594
2. 42–249–00000–0000
3. 108 000 000
4. Grace Petroleum Corp
5. Martha E Earhart A–1
6. Amargosa
7. Jim Wells TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33436/07597
2. 42–295–30544–0000
3. 103 000 000
4. Grace Petroleum Corp
5. Hill 2–416
6.
7. Lipscomb TX
8. 160.0 million cubic feet
9. May 14, 1980
10. Diamond Shamrock Corp

1. 80–33437/07598
2. 42–249–00000–0000
3. 108 000 000
4. Grace Petroleum Corp
5. Martha E Earhart A–2
6. Amargosa
7. Jim Wells TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33438/07605
2. 42–089–30989–0000
3. 103 000 000
4. Tartan Production Co
5. Louis Hoffman No 1
6. Nada (Yegua 6400)
7. Colorado TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Houston Pipeline Co

1. 80–33439/07623
2. 42–103–00000–0000
3. 108 000 000
4. Flag-Redfern Oil Co
5. Connell Estate 8 No 3
6. Sand Hills (Judkins)
7. Crane TX
8. .0 million cubic feet
9. May 14, 1980
10. Warren Petroleum Co

1. 80–33440/07631
2. 42–215–00000–0000
3. 103 000 000
4. Ike Lovelady Inc
5. Ramirez No 1
6. Sullivan City SE
7. Hidalgo TX
8. .0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33441/07638
2. 42–247–30848–0000
3. 103 000 000
4. Sun Oil Co
5. Ruth S Canales No 3
6. Jules Walker (Yegua 7500)

7. Jim Hogg TX
8. 103.0 million cubic feet
9. May 14, 1980
10. Texas Eastern Transmission Corp

1. 80–33442/07715
2. 42–355–00000–0000
3. 108 000 000
4. American Petrofina Co of Texas
5. M Elliff-#14
6. Agua Dulce
7. Nueces TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Tennssee Gas Pipeline

1. 80–33443/07718
2. 42–355–00000–0000
3. 108 000 000
4. American Petrofina Co of Texas
5. M Elliff-#11
6. Agua Dulce
7. Nueces TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33444/07719
2. 42–355–00000–0000
3. 108 000 000
4. American Petrofina Co of Texas
5. M Elliff-#8
6. Agua Dulce
7. Nueces TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33445/07153
2. 42–179–00000–0000
3. 108 000 000
4. Comps Inc
5. R A Massey B No 1
6. Panhandle East
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Warren Petroleum Corp

1. 80–33446/07758
2. 42–365–00000–0000
3. 102 000 000
4. Delta Drilling co
5. Hunt #1
6. Carthage Southeast/Cotton Valley
7. Panola TX
8. 884.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33447/07760
2. 42–365–30313–0000
3. 103 000 000
4. Delta Drilling Co
5. Harold Wilson #1
6. Carthage/Cotton Valley
7. Panola TX
8. 277.0 million cubic feet
9. May 14, 1980
10. Arkansas Louisiana Gas Co

1. 80–33448/07930
2. 42–105–31964–0000
3. 103 000 000
4. H&W Enterprises
5. University 13 #1
6. Farmer-San Andres
7. Crockett TX
8. 1.4 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33449/07931
2. 42–105–31869–0000
3. 103 000 000
4. H&W Enterprises
5. University 10 #1
6. Farmer San Andres
7. Crockett TX
8. 4.9 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33450/07932
2. 42–105–31958–0000
3. 103 000 000
4. H&W Enterprises
5. University 12–A #1
6. Farmer San Andres
7. Crockett TX
8. .1 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33451/07933
2. 42–105–31741–0000
3. 103 000 000
4. H&W Enterprises
5. University 12–B #2
6. Farmer San Andres
7. Crockett TX
8. 5.7 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33452/07938
2. 42–105–31613–0000
3. 103 000 000
4. H&W Enterprises
5. University 9–A well #1
6. Farmer San Andres
7. Crockett TX
8. 3.1 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33453/08028
2. 42–203–30481–0000
3. 102 000 000
4. Amoco Production Co
5. Davidson Foundation Inc well No 1
6. Woodlawn SW Cotton Valley
7. Harrison TX
8. 239.9 million cubic feet
9. May 14, 1980
10. East Texas Industrial Gas Co

1. 80–33454/08054
2. 42–203–00000–0000
3. 108 000 000
4. Amoco Production Co
5. Lewis Gas Unit B No 1
6. Woodlawn Pettit
7. Harrison TX
8. 16.3 million cubic feet
9. May 14, 1980
10. Miss River Transmission Corp

1. 80–33455/08094
2. 42–179–00000–0000
3. 108 000 000
4. Travelers Oil Co
5. Carpenter J–5
6. East Panhandle
7. Gray TX
8. 5.5 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33456/08135
2. 42–179–00000–0000
3. 108 000 000
4. Travelers Oil Co
5. Holly Ann
6. East Panhandle
7. Gray TX
8. .0 million cubic feet
9. May 14, 1980
10. Coltexo Corp Transwestern Pipeline Company

1. 80–33457/08140
2. 42–179–00000–0000
3. 108 000 000
4. Travelers Oil Co
5. Chapman C–2
6. East Panhandle
7. Gray TX
8. 5.9 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33458/08141
2. 42–179–00000–0000
3. 108 000 000
4. Travelers Oil Co
5. Chapman D–1
6. East Panhandle
7. Gray TX
8. 5.8 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33459/08170
2. 42–079–30775–0000
3. 103 000 000
4. Santa Fe Energy Co
5. West Levelland Unit #189
6. Levelland (San Andres)
7. Cochran TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33460/08195
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #18
6. Kingdom (ABO Reef)
7. Terry TX
8. 2.6 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33461/08196
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #20
6. Slaughter
7. Terry TX
8. 31.8 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33462/08197
2. 42–219–32436–0000
3. 103 000 000
4. Great Western Drilling Co
5. Glimp Unit #8–11
6. Slaughter
7. Hockley TX
8. 3.3 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33463/08198
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #21
6. Slaughter
7. Terry TX
8. 3.3 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33464/08200
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #11
6. Kingdom (ABO Reef)
7. Terry TX
8. 4.8 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33465/08201
2. 42–079–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Starnes Unit #5–15
6. Levelland
7. Cochran TX
8. 3.3 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33466/08202
2. 42–079–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Starnes Unit #5–13
6. Levelland
7. Cochran TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33467/08203
2. 42–079–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Starnes Unit #5–11
6. Levelland
7. Cochran TX
8. 6.2 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33468/08205
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #16
6. Kingdom (ABO Reef)
7. Terry TX
8. 4.7 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33469/08206
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #15
6. Kingdom (ABO Reef)
7. Terry TX
8. .0 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33470/08207
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #14
6. Kingdom (ABO Reef)
7. Terry TX
8. 2.2 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33471/08248
2. 42–383–00000–0000
3. 103 000 000
4. Brotherton Production Co
5. University 17 #2
6. Amigo (San Andres)
7. Reagan County TX
8. .0 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33472/08208
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #13
6. Kingdom (ABO Reef)
7. Terry TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33473/08209
2. 42–445–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. Jacobson #12
6. Kingdom (ABO Reef)
7. Terry TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33474/08246
2. 42–383–00000–0000
3. 103 000 000
4. Brotherton Production Co
5. University 17–3
6. Amigo (San Andres)
7. Reagan County TX
8. .0 million cubic feet
9. May 14, 1980
10. Big Lake Gas Corp

1. 80–33475/08287
2. 42–483–30568–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 3
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33476/08288
2. 42–163–31020–0000
3. 103 000 000
4. Dilley Production Co
5. Vivian Battaglia No 1
6. Pearsall (Austin Chalk)
7. Frio TX
8. 1.0 million cubic feet
9. May 14, 1980
10. South Slope Gas Co

1. 80–33477/08290
2. 42–483–30519–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 8
6. Panhandle (Osborne Area)
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–334478/08291
2. 42–163–31464–0000
3. 103 000 000
4. Dilley Production Co
5. A M Dunn A–1
6. Pearsall (Austin Chalk)
7. Frio TX
8. 1.0 million cubic feet
9. May 14, 1980
10. South Slope Gas Co

1. 80–33479/08292
2. 42–483–30555–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 2
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33480/08293
2. 42–483–30548–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 1
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33481/08294
2. 42–483–30585–0000
3. 103 000 000
4. Dilley Production Co
5. Rice No 2
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33482/08296
2. 42–087–30105–0000
3. 103 000 000
4. Dilley Production Co
5. Wm G Hawkins No 5
6. East Panhandle
7. Collingsworth TX
8. 9.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33483/08297
2. 42–087–30104–0000
3. 103 000 000
4. Dilley Production Co
5. Wm G Hawkins No 6
6. East Panhandle
7. Collingsworth TX
8. 9.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33484/08298
2. 42–087–30097–0000
3. 103 000 000
4. Dilley Production Co
5. Wm G Hawkins No 1
6. East Panhandle
7. Collingsworth TX
8. 9.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33485/08300
2. 42–483–30567–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 4
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33486/08301
2. 42–483–30574–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 5

6. Panhandle (Osborne Area)
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33487/08302
2. 42–483–30581–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 6
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33488/08303
2. 42–483–30580–0000
3. 103 000 000
4. Dilley Production Co
5. Mitchell No 7
6. Panhandle (Osborne Area) Field
7. Wheeler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Ashland Oil Inc

1. 80–33489/08312
2. 42–473–30302–0000
3. 103 000 000
4. Exxon Corp
5. Katy Gas Field Unit 1 W–49
6. Katy (First Wilcox) Field
7. Waller TX
8. 1825.0 million cubic feet
9. May 14, 1980
10. Amoco Gas Co Lone Star Gas Co Houston Pipeline Co United Texas Transmission Co

1. 80–33490/08373
2. 42–295–30511–0000
3. 103 000 000
4. Jack G Jones
5. No 1 Gillespie
6. Darren (Morrow Lower)
7. Lipscomb TX
8. 325.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33491/08395
2. 42–283–30638–0000
3. 102 000 000
4. Mormac Oil & Gas Co
5. Lena Gausemeier A No
6. Cooke (Wilcox 5350)
7. La Salle TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Transcontinental Gas Pipeline Corp

1. 80–33492/08403
2. 42–409–00000–0000
3. 108 000 000
4. Palmco Management Co
5. Baldwin Well No 5
6. White Point East (1630)
7. San Patricio TX
8. 8.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33493/08414
2. 42–507–31003–0000
3. 102 000 000
4. Palmco Management Co
5. Norment Foley #1
6. Leona/Elaine
7. Zavala TX
8. 118.0 million cubic feet
9. May 14, 1980
10. South Texas Gas Co

1. 80–33494/08528
2. 42–135–33075–0000
3. 103 000 000
4. Wayman W Buchanan
5. E F Cowden F No 3
6. Foster
7. Ector TX
8. 13.8 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33495/08539
2. 42–133–31553–0000
3. 103 000 000
4. Dallas Production Inc
5. Smith No 1–C
6. New Discovery
7. Eastland TX
8. 182.0 million cubic feet
9. May 14, 1980
10. Bengal Gas Transmission Co

1. 80–33496/08579
2. 42–165–31345–0000
3. 103 000 000
4. Samedan Oil Corp
5. M A Moore #16
6. Robertson (SA)
7. Gaines TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33497/08589
2. 42–161–30388–0000
3. 103 000 000
4. Samedan Oil Corp
5. Boyd Pickett Gas Unit #1
6. Teague (Cotton Valley)
7. Freestone TX
8. 730.0 million cubic feet
9. May 14, 1980
10. Lone Star Gas Co

1. 80–33498/08653
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Ware #1
6. Panhandle
7. Moore TX
8. 12.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33499/08684
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. Whittenburg R #1
6. Panhandle
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33500/08685
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. Whittenburg R #3
6. Panhandle
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33501/08687
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. Whittenburg R #5
6. Panhandle
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33502/08688
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. Whittenburg Y #1
6. Panhandle
7. Hutchinson TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33503/08696
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. McCarty #13
6. Panhandle
7. Hutchinson TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33504/08701
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. McCarty #9
6. Panhandle
7. Hutchinson TX
8. 13.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33505/08772
2. 42–179–00000–0000
3. 108 000 000
4. J W Snider
5. Johnson Estate 10–176
6. Panhandle-Gray
7. Gray TX
8. 4.9 million cubic feet
9. May 14, 1980
10. Pioneer Natural Gas Co

1. 80–33506/08790
2. 42–383–31318–0000
3. 103 000 000
4. Frank Cass
5. Hughes 14 No 2
6. Spraberry (Trend Area)
7. Reagan TX
8. 31600.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33507/08810
2. 42–165–31218–0000
3. 103 000 000
4. Samedan Oil Corp
5. M A Moore #12
6. Robertson (SA)
7. Gaines TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33508/08903
2. 42–287–30235–0000
3. 103 000 000
4. U S Resources Inc
5. John Ziehr #1
6. John Ziehr #1
7. Lee TX
8. 20.0 million cubic feet

9. May 14, 1980
10. PGP Gas Products Inc
1. 80–33509/08912
2. 42–287–30377–0000
3. 103 000 000
4. U S Resources Inc
5. Vicky #1
6. Giddings (Austin Chalk)
7. Lee TX
8. 180.0 million cubic feet
9. May 14, 1980
10. PGP Gas Products Inc
1. 80–33510/08916
2. 42–287–30351–0000
3. 103 000 000
4. U S Resources Inc
5. L Ward #1
6. Giddings (Austin Chalk)
7. Lee TX
8. 73.0 million cubic feet
9. May 14, 1980
10. PGP Gas Products Inc
1. 80–33511/08919
2. 42–287–30334–0000
3. 103 000 000
4. U S Resources Inc
5. W H Pieratt #1–A
6. Giddings (Austin Chalk)
7. Lee TX
8. 100.0 million cubic feet
9. May 14, 1980
10. PGP Gas Products Inc
1. 80–33512/08923
2. 42–461–31296–0000
3. 103 000 000
4. John L Cox
5. Morgan No 2
6. Spraberry (Trend Area)
7. Upton TX
8. 16.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33513/08938
2. 42–461–31235–0000
3. 103 000 000
4. John L Cox
5. Carleton No
6. Spraberry (Trend Area)
7. Upton TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33514/08969
2. 42–461–31290–0000
3. 103 000 000
4. John L Cox
5. Owens H No 2
6. Spraberry (Trend Area)
7. Upton TX
8. 16.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33515/08970
2. 42–461–31267–0000
3. 103 000 000
4. John L Cox
5. Owens H No 1
6. Spraberry (Trend Area)
7. Upton TX
8. 17.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33516/08971
2. 42–461–31268–0000
3. 103 000 000
4. John L Cox
5. Owens F No 2
6. Spraberry (Trend Area)
7. Upton TX
8. 26.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33517/08972
2. 42–461–31247–0000
3. 103 000 000
4. John L Cox
5. Owens G No 1
6. Spraberry (Trend Area)
7. Upton TX
8. 20.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33518/08973
2. 42–461–31316–0000
3. 103 000 000
4. John L Cox
5. Owens E No 4
6. Spraberry (Trend Area)
7. Upton TX
8. 17.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33519/08974
2. 42–461–31289–0000
3. 103 000 000
4. John L Cox
5. Owens E No 3
6. Spraberry (Trend Area)
7. Upton TX
8. 17.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33520/08975
2. 42–461–31333–0000
3. 103 000 000
4. John L Cox
5. Langford 13 No 1
6. Spraberry (Trend Area)
7. Upton TX
8. 22.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33521/09000
2. 42–461–31350–0000
3. 103 000 000
4. John L Cox
5. Owens L No 1
6. Spraberry (Trend Area)
7. Upton TX
8. 8.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33522/09019
2. 42–105–31113–0000
3. 103 000 000
4. Crain Oil Co
5. University 23 #1
6. Farmer (San Andres)
7. Crockett TX
8. 1.1 million cubic feet
9. May 14, 1980
10.
1. 80–33523/09020
2. 42–105–31670–0000
3. 103 000 000
4. Crain Oil Co
5. University 23 #2
6. Farmer (San Andres)
7. Crockett TX
8. 1.1 million cubic feet
9. May 14, 1980
10.
1. 80–33524/09028
2. 42–295–30548–0000
3. 103 000 000
4. ONG Exploration Inc
5. Mason No 1
6. Follett NW (Upper Morrow)
7. Lipscomb TX
8. .0 million cubic feet
9. May 14, 1980
10.
1. 80–33525/09044
2. 42–427–00000–0000
3. 108 000 000
4. Philip B Berry P/A No 2
5. Helene Lyons #1
6. Cameron Field
7. Starr TX
8. 7.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co
1. 80–33526/09073
2. 42–461–31272–0000
3. 103 000 000
4. Henry Petroleum Corp
5. Cox B #1
6. Spraberry (Trend Area)
7. Upton TX
8. 3.8 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co
1. 80–33527/09080
2. 42–239–31342–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Musselman G #1
6. McDaniel (3300)
7. Jackson TX
8. 80.3 million cubic feet
9. May 14, 1980
10. Delhi Gas Pipeline Corp
1. 80–33528/09169
2. 42–365–00000–0000
3. 108 000 000
4. Nemours Corp
5. Oliver Daniel #1
6. Carthage (Lower Pettit)
7. Panola TX
8. 8.0 million cubic feet
9. May 14, 1980
10. Arkansas Louisiana Gas Co
1. 80–33529/09195
2. 42–211–30867–0000
3. 103 000 000
4. Earl T Smith & Associates Co
5. Bowers #3
6. Washita Creek West (Morrow Upper)
7. Hemphill TX
8. 255.0 million cubic feet
9. May 14, 1980
10. El Past Natural Gas Co
1. 80–33530/09251
2. 42–435–00000–0000
3. 108 000 000
4. HNG Oil Co
5. Espy 40 #31
6. Sawyer (Canyon)
7. Sutton TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co
1. 80–33531/09260

2. 42–089–31001–0000
3. 102 000 000
4. Shell Oil Co
5. Sheridan Gas Unit No 80–U
6. Frank
7. Colorado TX
8. 500.0 million cubic feet
9. May 14, 1980
10. National Fuel Gas Supply Corp
Houston Pipeline Co

1. 80–33532/09292
2. 42–497–00000–0000
3. 103 000 000
4. League Mineral Corp
5. Stewart-Womack #1
6. Risch East (Atoka)
7. Wise TX
8. .0 million cubic feet
9. May 14, 1980
10. Texas Utilities Fuel Co

1. 80–33533/09318
2. 42–373–00000–0000
3. 103 000 000
4. Mitchell Energy Corp
5. J P Hickman #1
6. Hortense (Woodbine)
7. Polk TX
8. 300.0 million cubic feet
9. May 14, 1980
10. Houston Pipeline Co
Natural Gas Pipeline Co

1. 80–33534/09320
2. 42–507–00000–0000
3. 102 000 000
4. Mole Operating Co Inc
5. Mole Pryor-Box 3–C
6. Neta (Bracero) Field
7. Zavala County TX
8. .0 million cubic feet
9. May 14, 1980
10.

1. 80–33535/09330
2. 42–297–31673–0000
3. 103 000 000
4. Southland Minerals Co
5. W Meider #1
6. Coquat (Massive Series) Field
7. Live Oak TX
8. 68.0 million cubic feet
9. May 14, 1980
10. Transcontinental Gas Pipeline Co

1. 80–33536/09369
2. 42–475–31701–0000
3. 103 000 000
4. Southland Royalty Co
5. Janelle Edwards A–2
6. Grawar (Glorieta)
7. Ward TX
8. 24.0 million cubic feet
9. May 14, 1980
10. Warren Petroleum Corp

1. 80–33537/09683
2. 42–297–31718–0000
3. 102 000 000
4. Daniel Oil Co
5. Peters #1
6. Wildcat
7. Live Oak TX
8. 180.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33538/09710
2. 42–295–30586–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. Valentine Schoenhals et al No 1
6. Lipscomb
7. Lipscomb TX
8. 100.0 million cubic feet
9. May 14, 1980
10.

1. 80–33539/09733
2. 42–219–32631–0000
3. 103 000 000
4. Texas Pacific Oil Co Inc
5. Central Levelland Unit #229
6. Levelland
7. Hockley TX
8. 4.7 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33540/09735
2. 42–219–32633–0000
3. 103 000 000
4. Texas Pacific Oil Co Inc
5. Central Levelland Unit #232
6. Levelland
7. Hockley TX
8. 8.9 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33541/09736
2. 42–219–32634–0000
3. 103 000 000
4. Texas Pacific Oil Co Inc
5. Central Levelland Unit #233
6. Levelland
7. Hockley TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Amoco Production Co

1. 80–33542/13878
2. 42–233–03581–0000
3. 103 000 000
4. W R Edwards Jr
5. William No 2
6. Panhandle Hutchinson
7. Hutchinson TX
8. 9.4 million cubic feet
9. May 14, 1980
10. Panhandle Producing Co

1. 80–33543/09827
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Lewis #2
6. Panhandle
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33544/09839
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Andy #4
6. Panhandle
7. Gray TX
8. 2.4 million cubic feet
9. May 14, 1980
10. Pioneer Natural Gas Co

1. 80–33545/09584
2. 42–179–00000–0000
3. 108 000 000
4. Mobil Oil corp
5. J B Bowers #10
6. Panhandle
7. Gray TX
8. 1.4 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33546/09870
2. 42–179–00000–0000
3. 108 000 000
4. Tenneco Oil co
5. Worley #69
6. Panhandle West
7. Gray TX
8. 17.6 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33547/10127
2. 42–003–00000–0000
3. 108 000 000
4. Conoco Inc
5. West Fuhrman-Mascho Unit #69
6. Fuhrman-Mascho
7. Andrews TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33548/10246
2. 42–389–00000–0000
3. 108 000 000
4. Conoco Inc
5. G E Ramsey Jr 8 No 3
6. Geraldine-Ford
7. Reeves TX
8. 7.3 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33549/10278
2. 42–501–31595–0000
3. 103 000 000
4. A J Vogel Inc
5. Webb No 3
6. Brahaney
7. Yoakum TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Shell Oil Co

1. 80–33550/10281
2. 42–501–31596–0000
3. 103 000 000
4. A J Vogel Inc
5. Webb No 4
6. Brahaney
7. Yoakum TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Shell Oil co

1. 80–33551/10390
2. 42–179–00000–0000
3. 108 000 000
4. Rockwall Petroleum Co
5. Roberts #4
6. East Panhandle
7. Gray TX
8. 14.6 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33552/10430
2. 42–079–00000–0000
3. 108 000 000
4. United Co
5. Seaboard Wright #16
6. Levelland (SA)
7. Cochran TX
8. 17.2 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33553/10433
2. 42–079–00000–0000
3. 108 000 000

4. United Co
5. Hornburg-Masten #2
6. Levelland (SA)
7. Cochran
8. 1.7 million cubic feet
9. May 14, 1980
10. Tuco Inc

1. 80–33554/109478
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. Jackson #8
6. Panhandle
7. Gray TX
8. .7 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33555/10479
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. Jackson #11
6. Panhandle
7. Gray TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33556/10480
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. Jackson #12
6. Panhandle
7. Gray TX
8. 3.3 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33557/10488
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. J P Osborne #6
6. Panhandle
7. Gray TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33558/10495
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. J P Osborne #8
6. Panhandle
7. Gray TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33559/10496
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. J. P Osborne #9
6. Panhandle
7. Gray TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33560/10497
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. J P Osborne #10
6. Panhandle
7. Gray TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33561/10499
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. Jackson #4
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33562/10500
2. 42–179–00000–0000
3. 108 000 000
4. Dunigan Operating Co Inc
5. Jackson #5
6. Panhandle
7. Gray TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33563/10586
2. 42–475/30681–0000
3. 108 000 000
4. Hissom Drilling Co
5. Caroline H Gas Unit #1
6. Quito (Atoka)
7. Ward TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Pioneer Natural Gas Co

1. 80–33564/10535
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann co
5. McKinney #15
6. Panhandle
7. Gray TX
8. .7 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33565/10602
2. 42–383/31277–0000
3. 103 000 000
4. Knox Industries Inc
5. Watkins No 1
6. Spraberry Trend Area
7. Reagon TX
8. 41.0 million cubic feet
9. May 14, 1980
10.

1. 80–33566/10603
2. 42–383–31276–00000–0000
3. 103 000 000
4. Knox Industries Inc
5. Slaughter No 1
6. Spraberry Trend Area
7. Reagon TX
8. 12.0 million cubic feet
9. May 14, 1980
10.

1. 80–33567/10606
2. 42–179–00000–0000
3. 108 000 000
4. Lefors Petroleum Co Inc
5. East Bull #3
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33568/10607
2. 42–179–00000–0000
3. 108 000 000
4. Lefors Petroleum Co Inc
5. East Bull #4
6. Panhandle
7. Gray TX
8. .2 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33569/10608
2. 42–179–00000–0000
3. 108 000 000
4. Lefors Petroleum Co Inc
5. East Bull #5
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 14, 1980
10. Coltexo Corp

1. 80–33570/10728
2. 42–483–00000–0000
3. 108 000 000
4. Barker Production Co
5. Morgan #2
6. Panhandle Wheeler County
7. Wheeler TX
8. 15.8 million cubic feet
9. May 14, 1980
10. Ashland Exploration Inc

1. 80–33571/10729
2. 42–483–00000–0000
3. 108 000 000
4. Barker Production Co
5. Morgan #1
6. Panhandle Wheeler
7. Wheeler TX
8. 15.8 million cubic feet
9. May 14, 1980
10. Ashland Exploration Inc

1. 80–33572/10743
2. 42–483–00000–0000
3. 108 000 000
4. Bronco Oil co
5. Sitter-Warren #3
6. Panhandle Wheeler
7. Wheeler TX
8. 8.4 million cubic feet
9. May 14, 1980
10. Warren Petroleum Co

1. 80–33573/10793
2. 42–469–31375–00000–0000
3. 103 000 000
4. Gulf Minerals Operating Co
5. M Kolodzey
6. Arnold (Yequa 5350)
7. Victoria TX
8. 1.4 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33574/10820
2. 42–287–30300–0000
3. 102 000 000
4. Grace Petroleum Corp
5. Varibus Corporation #1
6. Bear Grass N (Cotton Valley)
7. Leon TX
8. 912.0 million cubic feet
9. May 14, 1980
10. Delhi Gas Pipeline Corp

1. 80–33575/10848
2. 42–105–00000–0000
3. 108 000 000
4. Beacon Energy Corp
5. Clay Adams 64177
6. Canyon Sand
7. Crockett TX

8. 9.0 million cubic feet
9. May 14, 1980
10. Detroit-Texas Gas Gathering

1. 80–33576/10850
2. 42–105–00000–0000
3. 108 000 000
4. Beacon Energy Corp
5. Clay Adams 2115
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Detroit-Texas Gas Gathering Co

1. 80–33577/10870
2. 42–211–31007–0000
3. 103 000 000
4. Moody Energy Co
5. Risley #1–18
6. Hemphill (Granite Wash)
7. Hemphill TX
8. .0 million cubic feet
9. May 14, 1980
10.

1. 80–33578/10905
2. 42–431–00000–0000
3. 103 000 000
4. HMH Operators
5. Chevron #1
6. Conger Penn
7. Sterling TX
8. 100.0 million cubic feet
9. May 14, 1980
10. Lo Vaca Gathering Co

1. 80–33579/10908
2. 42–365–30769–0000
3. 102 000 000
4. Pennzoil Producing Co
5. Moore Unit No 2
6. Carthage/Cotton Valley
7. Panola TX
8. 730.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33580/10955
2. 42–105–32222–0000
3. 103 000 000
4. Suburban Propane Gas Corp
5. Scheuber A No 2
6. Davidson Ranch (Penn 7890)
7. Crockett TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33581/10992
2. 42–079–31030–0000
3. 103 000 000
4. Monsanto Co
5. Starnes #15
6. Levelland
7. Cochran TX
8. 7.9 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33582/10994
2. 42–079–31044–0000
3. 103 000 000
4. Monsanto Co
5. Starnes #16
6. Levelland
7. Cochran TX
8. 8.2 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33583/12020
2. 42–393–30622–0000
3. 103 000 000
4. Tenneco Oil Co
5. McMordie 1–89
6. St Clair (Granite Wash)
7. Roberts TX
8. 180.0 million cubic feet
9. May 14, 1980
10. Michigan-Wisconsin Pipeline Co

1. 80–33584/12141
2. 42–105–00000–0000
3. 103 000 000
4. C F Lawrence & Assoc Inc
5. Vaughn 83 #4
6. Holt Ranch (San Andres)
7. Crockett TX
8. 25000.0 million cubic feet
9. May 14, 1980
10. Apache Gas Corp

1. 80–33585/12144
2. 42–239–31394–0000
3. 103 000 000
4. R H Engelke
5. John M Bennett Jr et al B No 3
6. La Salle
7. Jackson TX
8. 249.3 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Corp

1. 80–33586/12146
2. 42–261–30444–0000
3. 103 000 000
4. Exxon Corp
5. Sarita Oil and Gas Unit 145–D
6. Sarita (1–8)
7. Kenedy TX
8. 182.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33587/12158
2. 42–497–00000–0000
3. 103 000 000
4. Mote Resources Inc
5. Daniel Rabinowitz
6. Boonsville (Bend Congl Gas)
7. Wise TX
8. 273.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipe Line Co of America

1. 80–33588/12192
2. 42–371–32624–0000
3. 103 000 000
4. Three-B Oil Co
5. Brandor No 1
6. Payton
7. Pecos TX
8. 7.2 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33589/12220
2. 42–387–30473–0000
3. 103 000 000
4. Gulf Oil Corp
5. Cook-State A Gas Unit No 1
6. Worsham (Cherry Canyon)
7. Reeves TX
8. 225.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33590/12221
2. 42–239–00000–0000
3. 103 000 000
4. Holly Energy Inc
5. McDowell #1–C
6. Westhoff Ranch (6610)
7. Jackson TX
8. 100.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33591/12255
2. 42–131–32885–0000
3. 103 000 000
4. W Carlton Weaver
5. D Salinas No 2
6. Independence South (2500)
7. Duval TX
8. 50.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33592/12273
2. 42–203–30647–0000
3. 103 000 000
4. Enserch Exploration Inc
5. Della Hughes No 3
6. Whelan (Travis Peak)
7. Harrison TX
8. 730.0 million cubic feet
9. May 14, 1980
10. Texas Eastern Transmission

1. 80–33593/12274
2. 42–321–30893–0000
3. 103 000 000
4. Enserch Exploration Inc
5. Matagorda Bay S
6. Matagorda Bay
7. Matagorda TX
8. 730.0 million cubic feet
9. May 14, 1980
10. Lone Star Gas Co

1. 80–33594/12275
2. 42–003–31141–0000
3. 103 000 000
4. Exxon Corp
5. Fullerton Clearfork Unit #1837
6. Fullerton
7. Andrews TX
8. 35.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33595/12276
2. 42–003–31785–0000
3. 103 000 000
4. Exxon Corp
5. Fullerton Clearfork Unit #2235
6. Fullerton
7. Andrews TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33596/12277
2. 42–003–31791–0000
3. 103 000 000
4. Exxon Corp
5. Fullerton Clearfork Unit #2343
6. Fullerton
7. Andrews TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33597/12278
2. 42–003–31816–0000
3. 103 000 000
4. Exxon Corp
5. Fullerton Clearfork Unit Well #4421
6. Fullerton
7. Andrews TX
8. 173.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33598/12280

2. 42–165–31541–0000
3. 103 000 000
4. Exxon Corp
5. Robertson (Clfk) Unit Well #6202
6. Robertson N (Clearfork 7100)
7. Gaines TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33599/12281
2. 42–165–31538–0000
3. 103 000 000
4. Exxon Corp
5. Robertson (Clfk) Unit Well #3502
6. Robertson N (Clearfork 7100)
7. Gaines TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33600/12286
2. 42–383–31264–0000
3. 103 000 000
4. Houston Oil & Minerals Corp
5. Merchant Estate 17 No 7
6. Spraberry (Trend Area)
7. Reagan TX
8. 30.0 million cubic feet
9. May 14, 1980
10. Union Texas Petroleum

1. 80–33601/12348
2. 42–179–00000–0000
3. 108 000 000
4. O F Warren
5. E E Reynolds #5
6. Panhandle Gray
7. Gray TX
8. .2 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33602/12373
2. 42–227–31863–0000
3. 103 000 000
4. Exxon Corp
5. Douthit Unit #709
6. Howard Glasscock
7. Howard TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33603/12374
2. 42–475–31838–0000
3. 103 000 000
4. Exxon Corp
5. W E Kreps Estate #3
6. Howe (Yates)
7. Ward TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Intratex Gas Co

1. 80–33604/12375
2. 42–227–31865–0000
3. 103 000 000
4. Exxon Corp
5. Douthit Unit #136
6. Howard Glasscock
7. Howard TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33605/12376
2. 42–227–31862–0000
3. 103 000 000
4. Exxon Corp
5. Douthit Unit #523
6. Howard Glasscock
7. Howard TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33606/12377
2. 42–103–32032–0000
3. 103 000 000
4. Exxon Corp
5. J B Tubb A/C 1 #186U
6. Sand Hills (McKnight)
7. Crane TX
8. 98.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33607/12411
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold #9
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33608/12413
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold #4
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33609/12418
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold #11
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33610/12419
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold #12
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33611/12420
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold #14
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33612/12440
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah #14
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33613/12441
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah #15
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33614/12442
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah #16
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33615/12468
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson et al #2
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33616/12475
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson et al #11
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33617/12542
2. 42–239–31386–0000
3. 103 000 000
4. Howell Drilling Inc
5. Madie K Hillyer #3
6. Gabrysch/6300
7. Jackson TX
8. .0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33618/12560
2. 42–003–31848–0000
3. 103 000 000
4. Exxon Corp
5. Means (San Andres) Unit #2768
6. Means
7. Andrews TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33619/12561
2. 42–003–31844–0000
3. 103 000 000
4. Exxon Corp
5. Means (San Andres) Unit #1672
6. Means
7. Andrews TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33620/12562
2. 42–227–31874–0000
3. 103 000 000
4. Exxon Corp
5. Douthit Unit #308
6. Howard Glasscock

7. Howard TX
8. .0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33621/12563
2. 42–165–31583–0000
3. 103 000 000
4. Exxon Corp
5. Exxon Fee Eubanks D #5
6. Robertson N (Clearfork 7100)
7. Gaines TX
8. 8.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33622/12565
2. 42–165–31566–0000
3. 103 000 000
4. Exxon Corp
5. Robertson (Clearfork) Unit #8802
6. Robertson N (Clearfork 7100)
7. Gaines TX
8. 94.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33623/12572
2. 42–497–31153–0000
3. 103 000 000
4. Mitchell Energy Corp
5. Joe Skinner #1
6. Boonsville (Bend Congl Gas)
7. Wise TX
8. 30.0 million cubic feet
9. May 14, 1980
10.

1. 80–33624/12579
2. 42–273–31170–0000
3. 103 000 000
4. Sun Oil Co
5. E G Canales No 20
6. Tijerina-Canales-Blucher
7. Kleberg TX
8. 543.0 million cubic feet
9. May 14, 1980
10.

1. 80–33625/12580
2. 42–273–31156–0000
3. 103 000 000
4. Sun Oil Co
5. A T Canales No 51
6. Tijerina-Canales-Blucher
7. Kleberg TX
8. 845.0 million cubic feet
9. May 14, 1980
10.

1. 80–33626/12581
2. 42–427–31265–0000
3. 103 000 000
4. Sun Oil Co
5. Rodriquez-Pena Unit 2 No 1–L
6. Kelsey South
7. Starr TX
8. 143.0 million cubic feet
9. May 14, 1980
10.

1. 80–33627/12582
2. 42–273–31211–0000
3. 103 000 000
4. Sun Oil Co
5. A T Canales No 53
6. Tijerina-Canales-Blucher
7. Kleberg TX
8. 2,290.0 million cubic feet
9. May 14, 1980
10.

1. 80–33628/12598
2. 42–355–31328–0000
3. 103 000 000
4. Canus Petroleum Inc
5. State Tract 700 #1
6. Viola North (4000)
7. Nueces TX
8. 182.5 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33629/12644
2. 42–065–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Vida Lewis B–1
6. Panhandle Carson
7. Carson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33630/12645
2. 42–065–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Vida Lewis B–2
6. Panhandle Carson
7. Carson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33631/12646
2. 42–065–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Vida Lewis B–3
6. Panhandle Carson
7. Carson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33632/12647
2. 42–065–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Vida Lewis B–5
6. Panhandle Carson
7. Carson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33633/12648
2. 42–065–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Vida Lewis B–7
6. Panhandle Carson
7. Carson TX
8. 2.9 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33634/12656
2. 42–355–31372–0000
3. 103 000 000
4. Tenneco Oil Co
5. East Side Block Unit #12
6. Agua Dulce (7550)
7. Nueces TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33635/12657
2. 42–355–31384–0000
3. 103 000 000
4. Tenneco Oil Co
5. East Side Block Unit #13–L
6. Agua Dulce (8200)
7. Nueces TX
8. 365.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33636/12658
2. 42–355–31384–0000
3. 103 000 000
4. Tenneco Oil Co
5. East Side Block Unit #13–U
6. Agua Dulce (7550)
7. Nueces TX
8. 500.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33637/12857
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Reed #1–16
6. Ackerly (Dean Sand)
7. Martin TX
8. 10.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33638/12858
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Jeffcoat A #2–23
6. Ackerly (Dean Sand)
7. Martin TX
8. 20.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33639/12859
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Jeffcoat A #1–23
6. Ackerly (Dean Sand)
7. Martin TX
8. 20.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33640/12860
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Hale #2–29
6. Ackerly (Dean Sand)
7. Martin TX
8. 50.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33641/12862
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Bond A #2–23
6. Ackerly (Dean Sand)
7. Martin TX
8. 40.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33642/12863
2. 42–317–00000–0000
3. 103 000 000
4. Maguire Oil Co
5. Bond A #1–23
6. Ackerly (Dean Sand)
7. Martin TX
8. 40.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33643/12865

2. 42–443–30211–0000
3. 103 000 000
4. Mobil Oil Corp
5. Banner Estate #6–L
6. Brown-Bassett (Ellen)
7. Terrell TX
8. 3650.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33644/12874
2. 42–497–00000–0000
3. 103 000 000
4. Mote Resources Inc
5. Owen-Shulkey No 1
6. Boonsville (Bend Congl Gas)
7. Wise TX
8. 255.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipe Line Co of America

1. 80–33645/12929
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 19–03
6. Panhandle Gray
7. Gray TX
8. 3.2 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33646/12931
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 20–01
6. Panhandle Gray
7. Gray TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33647/12932
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 20–03
6. Panhandle Gray
7. Gray TX
8. .5 million cubic feet
9. May 14, 1980
10. Cities Service Co

1. 80–33648/12933
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 2
6. Panhandle Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33649/12934
2. 42–233–00000–0000
3. 10 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 3
6. Panhandle Hutchinson
7. Hutchinson TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33650/12935
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No. 6
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33651/12936
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 7
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33652/12938
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 9
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33653/12939
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 10
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33654/12942
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 13
6. Panhandle Hutchinson
7. Hutchinson TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33655/12943
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 14
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33656/12944
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 68
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33657/12945
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 69
6. Panhandle Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33658/12946
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 70
6. Panhandle Hutchinson
7. Hutchinson TX
8. .7 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33659/12949
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 99
6. Panhandle Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33660/12950
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 101
6. Panhandle Hutchinson
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33661/12951
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 102
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33662/12953
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Harvey Unit No 8–36
6. Panhandle Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33663/12954
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Harvey Unit 8–39
6. Panhandle Hutchinson
7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33664/12955
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Harvey Unit No 8–43
6. Panhandle Hutchinson
7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33665/12956
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Harvey Unit No 9–01
6. Panhandle Hutchinson

7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33666/12959
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Leopold A No 8
6. Panhandle Gray
7. Gray TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33667/12960
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Leopold C No 1
6. Panhandle Gray
7. Gray TX
8. 3.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33668/12961
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Leopold C No 3
6. Panhandle Gray
7. Gray TX
8. 2.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33669/12962
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Leopold C No 4
6. Panhandle Gray
7. Gray TX
8. 1.4 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33670/12963
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Leopold C No 5
6. Panhandle Gray
7. Gray TX
8. 1.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33671/12964
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Jordan D No 30
6. Panhandle Carson
7. Carson TX
8. .4 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33672/12965
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Jordan D No 31
6. Panhandle Carson
7. Carson TX
8. .4 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33673/12966
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Jordan D No 32
6. Panhandle Carson
7. Carson TX
8. .4 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33674/12968
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 17
6. Panhandle Hutchinson
7. Hutchinson TX
8. .5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33675/12969
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 18
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33676/12970
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 19
6. Panhandle Hutchinson
7. Hutchinson TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33677/12971
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 20
6. Panhandle Hutchinson
7. Hutchinson TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33678/12977
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 28
6. Panhandle Hutchinson
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33679/12978
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 29
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33680/12979
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 30
6. Panhandle Hutchinson
7. Hutchinson TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33681/12980
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 34
6. Panhandle Hutchinson
7. Hutchinson TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33682/12981
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 35
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33683/12992
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 36
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33684/12983
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 37
6. Panhandle Hutchinson
7. Hutchinson TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33685/12985
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Whittenburg No 1
6. Panhandle Hutchinson
7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33686/12987
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Whittenburg No 4
6. Panhandle Hutchinson
7. Hutchinson TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33687/12989
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Whittenburg No 6
6. Panhandle Hutchinson
7. Hutchinson TX
8. 4.5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33688/12990

2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Whittenburg No 7
6. Panhandle Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33689/12991
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. SIN Pope No 1
6. Panhandle Gray
7. Gray TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33690/12993
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 16
6. Panhandle Hutchinson
7. Hutchinson TX
8. 2.6 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33691/12994
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 17
6. Panhandle Hutchinson
7. Hutchinson TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33692/12995
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 18
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33693/12996
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 19
6. Panhandle Hutchinson
7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33694/12997
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner Kent B No 20
6. Panhandle Hutchinson
7. Hutchinson TX
8. 1.2 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33695/12998
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 21
6. Panhandle Hutchinson
7. Hutchinson TX
8. 3.5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33696/12999
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 22
6. Panhandle Hutchinson
7. Hutchinson TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33697/13000
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No 24
6. Panhandle Hutchinson
7. Hutchinson TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33698/13004
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 5A–3
6. Panhandle Gray
7. Gray TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33699/13006
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 5B–9
6. Panhandle Gray
7. Gray TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33700/13008
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 5C–3
6. Panhandle Gray
7. Gray TX
8. 4.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33701/13009
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 5C–5
6. Panhandle Gray
7. Gray TX
8. 1.7 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33702/13012
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 11–8
6. Panhandle Gray
7. Gray TX
8. 1.4 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33703/13014
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 11–10
6. Panhandle Gray
7. Gray TX
8. 4.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33704/13018
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 12–2
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33705/13019
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 12–4
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33706/13020
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 12–5
6. Panhandle Gray
7. Gray TX
8. 6.5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33707/13021
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 13–2
6. Panhandle Gray
7. Gray TX
8. 3.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33708/13022
2. 42–179–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Phil-Pampa Unit No 13–3
6. Panhandle Gray
7. Gray TX
8. 6.5 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33709/13186
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Haile W B No 3
6. Panhandle Hutchinson
7. Hutchinson TX
8. .3 million cubic feet
9. May 14, 1980
10. Getty Oil Company

1. 80–33710/13192
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Harvey Unit 6–11
6. Panhandle Hutchinson

7. Hutchinson TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Getty Oil Company

1. 80–33711/13193
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cockrell Ranch No 69
6. Panhandle Hutchinson
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33712/13218
2. 42–329–30825–0000
3. 103 000 000
4. Parker & Parsley Inc
5. Golladay No 1
6. Spraberry (Trend Area)
7. Midland TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum

1. 80–33713/13219
2. 42–329–30826–0000
3. 103 000 000
4. Parker & Parsley Inc
5. Golladay A No 1
6. Spraberry (Trend Area)
7. Midland TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33714/13220
2. 42–317–32050–0000
3. 103 000 000
4. Parker & Parsley Inc
5. Powell A No 1
6. Spraberry (Trend Area)
7. Martin TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Adobe Oil & Gas Corp

1. 80–33715/13221
2. 42–317–30550–0000
3. 103 000 000
4. Parker & Parsley Inc
5. Stewart No 1
6. Spraberry (Trend Area)
7. Martin TX
8. 15.0 million cubic feet
9. May 14, 1980
10. Adobe Oil & Gas Corp

1. 80–33716/13227
2. 42–215–30906–0000
3. 103 000 000
4. Exxon Corp
5. Hidalgo-Willacy Oil Co 2
6. Cerda (H–96)
7. Hidalgo TX
8. 730.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33717/13228
2. 42–261–30464–0000
3. 103 000 000
4. Exxon Corp
5. C M Armstrong 49–D
6. Candelaria (G–77)
7. Kenedy TX
8. 247.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33718/13234
2. 42–007–30611–0000
3. 103 000 000
4. Integral Energy Corp
5. State Tract 84 #1
6. Goose Island (C SD LO)
7. Aransas TX
8. 36.0 million cubic feet
9. May 14, 1980
10.

1. 80–33719/13267
2. 42–219–32576–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 69
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33720/13268
2. 42–219–32561–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit #52
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33721/13269
2. 42–219–32584–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 63
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33722/13270
2. 42–219–32603–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit #65
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33723/13271
2. 42–219–32589–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 71
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33724/13272
2. 42–219–32577–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 74
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33725/13273
2. 42–219–32593–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 76
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33726/13274
2. 42–219–32591–0000
3. 103 000 000
4. Amoco Production Co
5. East RKM Unit No 78
6. Slaughter
7. Hockley TX
8. 5.5 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33727/13275
2. 42–365–30794–0000
3. 103 000 000
4. Amoco Production Co
5. Carthage Gas Unit 16 No 2
6. Carthage (Cotton Valley)
7. Panola TX
8. 436.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33728/13276
2. 42–365–30793–0000
3. 103 000 000
4. Amoco Production Co
5. Carthage Gas Unit #17 No 2
6. Carthage (Cotton Valley)
7. Panola TX
8. 436.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33729/13280
2. 42–365–30795–0000
3. 103 000 000
4. Amoco Production Co
5. Rogers Gas Unit No 2
6. Carthage (Cotton Valley)
7. Panola TX
8. 436.0 million cubic feet
9. May 14, 1980
10. United Gas Pipe Line Co

1. 80–33730/13282
2. 42–003–31744–0000
3. 103 000 000
4. Amoco Production Co
5. University Bt No 6
6. McFarland (Wolfcamp)
7. Andrews TX
8. 7.5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co Northern Natural Gas Co

1. 80–33731/13288
2. 42–369–00000–0000
3. 103 000 000
4. C F Lawrence & Assoc Inc
5. Shearer C #1
6. Brooklaw (Tubb)
7. Pecos TX
8. 500.0 million cubic feet
9. May 14, 1980
10. Larco Gas Corp

1. 80–33732/13293
2. 42–495–30964–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Ten Bears #1
6. Cheyenne (Capitan)
7. Winkler TX
8. 9.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33733/13294
2. 42–495–30981–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Fox Tail A #4
6. Cheyenne (Capitan)
7. Winkler TX
8. 3.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33734/13296
2. 42–495–30919–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Fox Tail #2
6. Cheyenne (Capitan)
7. Winkler TX
8. 22.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33735/13297
2. 42–495–30906–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Fox Tail #1
6. Cheyenne (Capitan)
7. Winkler TX
8. 2.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33736/13298
2. 42–495–30977–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Comanche Capitan #3
6. Cheyenne (Capitan)
7. Winkler TX
8. 1.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33737/13299
2. 42–495–30937–0000
3. 103 000 000
4. Gifford Mitchell & Wisenbaker
5. Comanche Capitan #2
6. Cheyenne (Capitan)
7. Winkler TX
8. 6.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33738/13305
2. 42–365–30920–0000
3. 103 000 000
4. Gulf Oil Corp
5. Carthage Unit 112 No 3
6. Carthage (Cotton Valley)
7. Panola TX
8. 400.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33739/13374
2. 42–495–31018–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #98
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33740/13375
2. 42–495–31031–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #99
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33741/13376
2. 42–495–31006–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #100
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33742/13377
2. 42–495–31000–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #92
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33743/13378
2. 42–495–31010–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #94
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33744/13379
2. 42–495–31009–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #95
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33745/13380
2. 42–495–31008–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #96
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33746/13381
2. 42–495–31019–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #97
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33747/13382
2. 42–495–31020–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #101
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33748/13383
2. 42–495–31045–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #102
6. Keystone
7. Winkler TX
8. 115.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co El Paso Natural Gas Co

1. 80–33749/13388
2. 42–475–31787–0000
3. 103 000 000
4. Gulf Oil Corp
5. State Wz No 4
6. Caprito (Delaware Middle)
7. Ward TX
8. 38.8 million cubic feet
9. May 14, 1980
10. Lo- Vaca Gathering Co

1. 80–33750/13408
2. 42–233–30610–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Ellis Cockrell #30
6. Panhandle Hutchinson
7. Hutchinson TX
8. 11.0 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33751/13410
2. 42–227–00000–0000
3. 103 000 000
4. Campana Petroleum Co
5. Read Lease No 1
6. Coahoma North (Mississippian)
7. Howard TX
8. 43.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33752/13428
2. 42–295–30636–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. Martha Ginter No 1
6. Lipscomb SW
7. Lipscomb TX
8. 150.0 million cubic feet
9. May 14, 1980
10.

1. 80–33753/13429
2. 42–293–00000–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. C C Duke No 4
6. Bradford
7. Lipscomb TX
8. 100.0 million cubic feet
9. May 14, 1980
10.

1. 80–33754/13439
2. 42–287–30388–0000
3. 103 000 000
4. Superior Oil Co
5. Alwin G Schulze B #1

6. Giddings (Austin Chalk)
7. Lee TX
8. .0 million cubic feet
9. May 14, 1980
10.

1. 80–33755/13455
2. 42–295–30564–0000
3. 103 000 000
4. Cotton Petroleum Corp
5. Bensch No 1
6. Bradford (Cleveland)
7. Lipscomb TX
8. 547.5 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33756/13457
2. 42–399–31325–0000
3. 103 000 000
4. Crampton & Dennis
5. Bailey No 4
6. Cockatoo
7. Runnels TX
8. .0 million cubic feet
9. May 14, 1980
10. Union Texas Petroleum

1. 80–33757/13462
2. 42–235–31362–0000
3. 103 000 000
4. Meadco Properties
5. Burney #1
6. Ela Sugg (Wolfcamp)
7. Irion TX
8. 100.0 million cubic feet
9. May 14, 1980
10.

1. 80–33758/13463
2. 42–235–31356–0000
3. 103 000 000
4. Meadco Properties
5. Busby #1
6. Ela Sugg (Wolfcamp)
7. Irion TX
8. 100.0 million cubic feet
9. May 14, 1980
10.

1. 80–33759/13466
2. 42–235–31346–0000
3. 103 000 000
4. Meadco Properties
5. Sugg #1
6. Ela Sugg (Wolfcamp)
7. Irion TX
8. 100.0 million cubic feet
9. May 14, 1980
10.

1. 80–33760/13473
2. 42–161–30440–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Reed E #1
6. Bear Grass (CVS)
7. Freestone TX
8. 200.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33761/13477
2. 42–161–30466–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Williford #1
6. Reed N (Cotton Valley Lime)
7. Freestone TX
8. 1,000.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33762/13485
2. 42–393–30658–0000
3. 103 000 000
4. Gulf Oil Corp
5. Chambers F M #3–65
6. N W Mendota/Lower Douglas
7. Roberts TX
8. 5.0 million cubic feet
9. May 14, 1980
10. Michigan Wisconsin Pipe Line Co

1. 80–33763/13487
2. 42–211–31063–0000
3. 103 000 000
4. Gulf Oil Corp
5. Isaacs #3–211
6. Canadian SW—Granite Wash
7. Hemphill TX
8. 46.0 million cubic feet
9. May 14, 1980
10. Pioneer Natural Gas Co

1. 80–33764/13492
2. 42–065–00000–0000
3. 108 000 000
4. L Jack Gross Production
5. Burnett J–Z
6. Panhandle (Carson)
7. Carson TX
8. 23.5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33765/13493
2. 42–065–00000–0000
3. 108 000 000
4. L Jack Gross Production
5. Burnett J–3
6. Panhandle (Carson)
7. Carson TX
8. 23.5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33766/13499
2. 42–431–30771–0000
3. 103 000 000
4. Marathon Oil Co
5. I W Terry #1–7
6. Conger-Penn
7. Sterling TX
8. 73.0 million cubic feet
9. May 14, 1980
10.

1. 80–33767/13545
2. 42–065–00000–0000
3. 103 000 000
4. Pennowa Oil & Gas Co
5. Ware No 17
6. Panhandle Carson
7. Carson TX
8. 14.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33768/13546
2. 42–065–0000–0000
3. 103 000 000
4. Pennowa Oil & Gas Co
5. Ware No 16
6. Panhandle Carson County
7. Carson TX
8. 14.8 million cubic feet
9. May 14, 1980
10. Getty Oil Co

1. 80–33769/13548
2. 42–383–00000–0000
3. 103 000 000
4. BTA Oil Producers
5. 7813 Lake A Well #1
6. Spraberry (Trend Area)
7. Reagan TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33770/13549
2. 42–383–00000–0000
3. 103 000 000
4. BTA Oil Producers
5. Lake B #2
6. Spraberry (Trend Area)
7. Reagan TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33771/13550
2. 42–383–00000–0000
3. 103 000 000
4. BTA Oil Producers
5. Lake C #3
6. Spraberry (Trend Area)
7. Reagan TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33772/13551
2. 42–383–00000–0000
3. 103 000 000
4. BTA Oil Producers
5. Lake D #4
6. Spraberry (Trend Area)
7. Reagen TX
8. 55.0 million cubic feet
9. May 14, 1980
10. Northern Natural Gas Co

1. 80–33773/13552
2. 42–479–32261–0000
3. 103 000 000
4. Conoco Inc
5. William Hubberd D No 15
6. Laredo (Lobo)
7. Webb TX
8. 995.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33774/13553
2. 42–479–32291–0000
3. 103 000 000
4. Conoco Inc
5. H B Zachry F No 1
6. Laredo (Lobo)
7. Webb TX
8. 27.0 million cubic feet
9. May 14, 1980
10. Delhi Gas Pipeline Corp

1. 80–33775/13554
2. 42–323–31350–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 3763
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 1.8 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33776/13555
2. 42–323–31357–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 3860
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 8.4 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33777/13556
2. 42–323–31358–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 3861
6. Sacatopsa (San Miguel #1 Sand)
7. Maverick TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33778/13557
2. 42–323–31359–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 3862
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 3.7 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33779/13558
2. 42–323–31368–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 7028
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 4.0 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33780/13601
2. 42–039–31261–0000
3. 103 000 000
4. Amoco Production Co
5. B L Turner No 26
6. Hastings East
7. Brazoria TX
8. 28.0 million cubic feet
9. May 14, 1980
10. Amoco Gas Co, Texas Eastern Transmission Co

1. 80–33781/13603
2. 42–215–30894–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. T W West #27–L
6. Tabasco
7. Hidalgo TX
8. 300.0 million cubic feet
9. May 14, 1980
10. Tennessee Gas Pipeline Co

1. 80–33782/13605
2. 42–003–31858–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Emma Cowden #61
6. Emma
7. Andrews TX
8. 3.7 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33783/13617
2. 42–211–31040–0000
3. 103 000 000
4. Mobil Oil Corp
5. M Hodgson Unit No 1
6. Feldman (L Morrow)
7. Hemphill TX
8. 912.0 million cubic feet
9. May 14, 1980
10. Transwestern Pipeline Co

1. 80–33784/13638
2. 42–105–32208–0000
3. 103 000 000
4. Three-B Oil Co
5. Shannon Estate No 3
6. Noelke Southeast (Queen)
7. Crockett TX
8. 54.7 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33785/13643
2. 42–367–31105–0000
3. 103 000 000
4. Mitchell Energy Corp
5. A A Farquahar #1
6. Boonsville (Bend Congl)
7. Parker TX
8. 85.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co of America

1. 80–33786/13656
2. 42–161–00000–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. Carter A No 1
6. Simsboro North
7. Freestone TX
8. 45.0 million cubic feet
9. May 14, 1980
10.

1. 80–33787/13658
2. 42–161–00000–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. Baum Estate No 1
6. Simsboro N
7. Freestone TX
8. 90.0 million cubic feet
9. May 14, 1980
10.

1. 80–33788/13661
2. 42–399–31359–0000
3. 103 000 000
4. Frank J King
5. Lynn Billips No 1
6. Sykes West (Gardner)
7. Runnels TX
8. 275.0 million cubic feet
9. May 14, 1980
10. Union Texas Petroleum Co, El Paso Natural Gas Co

1. 80–33789/13665
2. 42–443–30211–0000
3. 103 000 000
4. Mobil Oil Corp
5. Banner Estate No 6–U
6. Brown-Bassett (Strawn)
7. Terrell TX
8. 72.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33790/13675
2. 42–203–30624–0000
3. 103 000 000
4. Amoco Production Co
5. Juble D Griffis #1
6. Woodlawn (Cotton Valley)
7. Harrison TX
8. 550.0 million cubic feet
9. May 14, 1980
10. East Texas Industrial Gas Supply

1. 80–33791/13684
2. 42–103–32045–0000
3. 103 000 000
4. Exxon Corp
5. J B Tubb A/C 2 #191U
6. Sand Hills (McKnight)
7. Crane TX
8. .0 million cubic feet
9. May 14, 1980
10. K–3244 El Paso Natural Gas Co

1. 80–33792/13685
2. 42–103–32044–0000
3. 103 000 000
4. Exxon Corp
5. J B Tubb A/C–1 #190L
6. Sand Hills (Tubb)
7. Crane TX
8. 35.0 million cubic feet
9. May 14, 1980
10. K–3244 El Paso Natural Gas Co

1. 80–33793/13686
2. 42–103–32037–0000
3. 103 000 000
4. Exxon Corp
5. Judkins Gas Unit No 3 #189U
6. Sand Hills (Judkins)
7. Crane TX
8. 115.0 million cubic feet
9. May 14, 1980
10. K–1941 El Paso Natural Gas Co, Odessa Natural Corp

1. 80–33794/13687
2. 42–103–32035–0000
3. 103 000 000
4. Exxon Corp
5. J B Tubb A/C–1 #185L
6. Sand Hills (Tubb)
7. Crane TX
8. 4.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33795/13703
2. 42–495–31037–0000
3. 103 000 000
4. Carter Foundation Prodn Co
5. Pure-Walton #32
6. Keystone (Colby)
7. Winkler TX
8. 132.0 million cubic feet
9. May 14, 1980
10. Sid Richardson Carb & Gaso

1. 80–33796/13704
2. 42–495–31036–0000
3. 103 000 000
4. Carter Foundation Prodn Co
5. Pure-Walton #31
6. Keystone (Colby)
7. Winkler TX
8. 269.0 million cubic feet
9. May 14, 1980
10. Sid Richardson Carb & Gaso

1. 80–33797/13720
2. 42–497–30593–0000
3. 103 000 000
4. Mitchell Energy Corp
5. Roy M Wilkes #1
6. Boonsville (Bend Congl Gas)
7. Wise TX
8. 31.0 million cubic feet
9. May 14, 1980
10.

1. 80–33798/13721
2. 42–497–31236–0000
3. 103 000 000
4. Mitchell Energy Corp
5. B W Goodger #1
6. Boonsville (Bend Congl)
7. Wise TX
8. 36.0 million cubic feet
9. May 14, 1980
10.

1. 80–33799/13722

2. 42–367–30926–0000
3. 103 000 000
4. Mitchell Energy Corp
5. A R Tate #1
6. Toto (Bend Congl Lower)
7. Parker TX
8. 30.0 million cubic feet
9. May 14, 1980
10.

1. 80–33800/13743
2. 42–391–31314–0000
3. 103 000 000
4. American Petrofina Co of Texas
5. W J Fox (Tract 1) No 6
6. Greta (6230)
7. Refugio TX
8. 54.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33801/13754
2. 42–003–31845–0000
3. 103 000 000
4. Exxon Corp
5. Means (San Andres) Unit #2322
6. Means
7. Andrews TX
8. 9.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33802/13755
2. 42–003–31847–0000
3. 103 000 000
4. Exxon Corp
5. Means (San Andres) Unit #2474
6. Means
7. Andrews TX
8. 6.0 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33803/13790
2. 42–131–32906–0000
3. 103 000 000
4. Arco Oil & Gas Co
5. Hagist Gas Unit 3 No 2–UT
6. Hagist Ranch (Wilcox Basal House)
7. Duval TX
8. 450.0 million cubic feet
9. May 14, 1980
10. Natural Gas Pipeline Co

1. 80–33804/13795
2. 42–323–31356–0000
3. 103 000 000
4. Conoco Inc
5. N J Chittim No 3865
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 9.4 million cubic feet
9. May 14, 1980
10. Lovaca Gathering Co

1. 80–33805/13797
2. 42–105–32254–0000
3. 103 000 000
4. Great Western Drilling Co
5. Sutton 3–2
6. Ingham (Devonian)
7. Crockett TX
8. 370.0 million cubic feet
9. May 14, 1980
10. El Paso Natural Gas Co

1. 80–33806/14805
2. 42–123–30990–0000
3. 103 000 000
4. Howell Drilling Inc
5. Barre-Koenig Gas Unit No 1
6. Anna Barre N
7. De Witt TX
8. 1000.0 million cubic feet
9. May 14, 1980
10. Texas Eastern Transmission Corp

1. 80–33807/15731
2. 42–165–31641–0000
3. 103 000 000
4. Santa Fe Energy Co
5. Folk A #6
6. Hanford (San Andres)
7. Gaines County TX
8. .5 million cubic feet
9. May 14, 1980
10. Phillips Petroleum Co

1. 80–33808/16917
2. 42–025–31106–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Goree B #1
6. Cannan (10350 Wilcox)
7. Bee TX
8. 275.0 million cubic feet
9. May 14, 1980
10. United Gas Pipeline Co

1. 80–33809/17284
2. 42–239–31285–0000
3. 102 000 000
4. Enterprise Resources Inc
5. Rose Gas Unit #1
6. Edna S (5500)
7. Jackson TX
8. .0 million cubic feet
9. May 14, 1980
10. South Jersey Exploration Co, Piedmont Exploration Co Inc, Dover Exploration Co, Tar Heel Energy Corp

1. 80–33810/019721
2. 42–507–31231–0000
3. 102 000 000
4. John M Clark
5. Jones Unit No 1
6. Gable (Escondido A)
7. Zavala TX
8. 50.0 million cubic feet
9. May 14, 1980
10.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission by June 16, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–16485 Filed 5–29–80; 8:45 am]

BILLING CODE 6450–85–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–188; FRL 1503–5]

Domain, Inc.; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Domain, Inc. has submitted a pesticide petition proposing to amend 40 CFR 180 by establishing an exemption from the requirement of a tolerance for residues of sodium diacetate on alfalfa, barley grain, Bermuda grass, blue grass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, sorghum grain, soybean hay, sudan grass, rye grass, timothy vetch, and wheat grain under the Federal Food, Drug, and Cosmetic Act.

COMMENTS: Comments submitted should bear a notation indicating the petition number "OF 2355". Written comments filed in connection with this notice will be available for public inspection in the Product Manager's office 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

DATE: Comments may be made at any time while the petition is pending before the Agency.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, RM. E–305, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202/755–2562.

SUPPLEMENTARY INFORMATION: Domain, Inc., P.O. Box 248, New Richmond, WI 54017, has submitted a pesticide petition (OF 2355) proposing that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for the residues of sodium diacetate in or on alfalfa, barley grain, Bermuda grass, blue grass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, sorghum grain, soybean hay, sudan grass, rye grass, timothy vetch, and wheat grain. This action is being taken under section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 135)).

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Program.

[FR Doc. 80–16400 Filed 5–29–80; 8:45 am]

BILLING CODE 6560–01–M

[OPP-50476; FRL 150-3]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants under the Federal Insecticide, Fungicide, and Rodenticide Act. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 1471–EUP–63. Elanco Products Company, Indianapolis, IN 46206. This experimental use permit allows the use of 1,343 gallons of the active ingredient *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitor-4-(trifluoromethyl)benzenamine on seed and pod vegetables and peanuts to evaluate the control of weeds. A total of 2,579 acres are involved. This Program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Utah, and Connecticut. This permit is effective from April 18, 1980 to April 16, 1981. Temporary tolerances for the residues of the active ingredient in or on seed and pod vegetables, forage legumes, peanuts, and peanut hulls have been established. (PM–23, James M. Stone, Room: E–351, Telephone: 202–755–1397)

No. 1471–EUP–72. Elanco Products Company, Indianapolis, IN 46285. This experimental use permit allows the use of 125 grams of the active ingredient N-methyl-2,4-dinitro-*N*-(2,4,6-tribromophenyl)-6-(tribromophenyl)-6-(trifluoromethyl)benzenamine in and around buildings and structures to evaluate control of rats and mice. An unspecified number of structures are involved. This program is authorized only in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, and Washington. This program is effective from April 3, 1980 to April 3, 1981. (PM–16, William H. Miller, Room: E–343, Telephone: 202–426–9458)

No. 2724–EUP–24. Zoecon Industries, Dallas, TX 75234. This experimental use permit allows the use of 0.4 pounds of the insecticide permethrin in homes to evaluate control of cockroaches. A total of 180 homes are involved. The program is authorized only in the States of Arizona and Louisiana. The experimental use permit is effective from April 25, 1981. (PM–17, Franklin D. R. Gee, Room: E–341, Telephone: 202–426–9741)

No. 2724–EUP–23. Zoecon Industries, Dallas, TX 75234. This experimental use permit allows the use of 0.4 pounds of the insecticide permethrin in homes to evaluate control of cockroaches. A total of 180 homes are involved. The program is authorized only in the States of Arizona and Louisiana. The experimental use permit is effective from April 25, 1980 to April 25, 1981. (PM–17, Franklin D. R. Gee, Room: E–341, Telephone: 202–426–9741)

No. 27586–EUP–26. Forestry Sciences Laboratory, Corvallis, OR 97331. This experimental use permit allows the use of 2.3×19^{10} pounds of the insecticide biorathional-viral inclusion bodies on forests to evaluate control of spruce budworm. A total of 100 acres are involved. The program is authorized only in the State of Arizona. The experimental use permit is effective from April 21, 1980 to April 21, 1981. This permit is being issued under the condition that none of the treated areas will enter the food chain. (PM–17, Franklin D. R. Gee, Room: E–341, Telephone: 202–426–9741)

No. 201–EUP–67. Shell Chemical Company, Washington, D.C. 20036. This experimental use permit allows the use of 80 pounds of the active ingredient cyano (3-phenoxyphenyl) methyl-4-chloro-a-(methylethyl)benzenacetate on pecans and almonds to evaluate control of phytophagous insects. A total of 75 acres are involved. This program is authorized only in the States of Alabama, California, Georgia, Louisiana, Mississippi, South Carolina, and Texas. This permit is being issued on the condition that all treated crops are destroyed or used for research purposes only. The experimental use is effective from April 21, 1980 to April 21, 1981. (PM–17, Franklin D. R. Gee, Room: E–341, Telephone: 202–426–9741)

Persons wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, DC 20460. Inquiries regarding these permits should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 819 as amended (7 U.S.C. 136))

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-16401 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

[OPP-50481; FRL 1502-8]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use.

No. 264–EUP–2. Union Carbide Corporation, Jacksonville, FL 32216. This experimental use permit allows the use of 120 pounds of the insecticide/nematicide aldicarb on potatoes to evaluate control of the Colorado potato beetle and golden nematode. A total of 50 acres are involved. The program is authorized only in the State of New York. This permit is being issued with the limitation that residues in all treated crops do not exceed the established tolerance prior to allowing treated crops into commercial channels of trade. If the established tolerance is exceeded the crop must be destroyed or used for research purposes only. A permanent tolerance for residues of the active ingredient has been established (40 CFR 180.269) (PM 12, Charles T. Mitchell, Room: E–303, Telephone: 202–426–2635).

No. 41326–EUP–1. Texas A & I University Citrus Center, Weslaco, TX 78596. This experimental use permit allows the use of 7,493 pounds of the insecticide/nematicide aldicarb on grapefruit to evaluate control of the citrus nematode. A total of 1,000 acres are involved. The experimental use program is authorized only in the States of California, Florida, and Texas. The experimental use permit is effective from April 15, 1980 to April 15, 1981. A temporary tolerance for the residues of aldicarb and its metabolites has been established. (PM 12, Charles T. Mitchell, Room: E–303, Telephone: 202–426–2635).

Interested persons wishing to review the experimental use permit are referred to the Designated Product Manager (PM), Registration (TS–767), Office of Pesticide Programs, EPA, 401 M Street,

SW, Washington, DC 20460. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made conveniently available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 189 as amended (7 U.S.C. 136)).

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-16402 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

[PF-187; FRL 1502-7]

Monsanto Co.; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by Monsanto Company proposing to increase tolerances for the herbicide alachlor (2-chloro-2,6'-diethyl-N-(methoxymethyl) acetanilide) and its metabolites in or on the raw agricultural commodities corn fodder and forage from 0.2 ppm to 0.5 ppm.

ADDRESS: Written comments and inquiries should be directed to: Robert J. Taylor, Product Manager (PM) 25, Room E-301, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington D.C. 20460, 202/755-2196.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document "[PF-187]" and the petition number.

All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: Monsanto Company, 1101 17th Street N.W., Washington, D.C. 20036, has submitted a pesticide petition (PP OF 2348) to EPA proposing that 40 CFR 180. 249 be amended by increasing tolerances for the residues of the herbicide alachlor (2-chloro-2,6'-diethyl-diethyl-N-(methyoxymethyl) acetanilide in or on the raw agricultural commodities corn fodder and forage from 0.2 ppm to 0.5 ppm. The proposed analytical method for determining residues is gas chromatography with a nitrogen sensitive detector.

(Sec. 408 (d)(1), 68 Stat. 512, (7 U.S.C. 1351))

Dated: May 22, 1980.

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

[FR Doc. 80-16403 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1502-3]

Grants for Construction of Treatment Works; Innovative and Alternative Technology Assessment Manual; Availability

This notice is published to advise the public of the availability of the Innovative and Alternative Technology Assessment Manual. The Manual has been prepared by the Environmental Protection Agency to assist in the administration of the Construction Grants Program for municipal wastewater treatment facilities.

Single copies can be obtained by ordering the Manual, publication number MCD-53, from the following: General Services Administration (8BRC), Centralized Mailing Lists Services, Bldg. 41, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Lam K. Lim, Municipal Technology Branch (WH-547), Municipal Construction Division, US Environmental Protection Agency, Washington, D.C. 20460, 202/426-8976.

SUPPLEMENTARY INFORMATION: Under the innovative and alternative technology provisions of the 1977 Clean Water Act, EPA is authorized to provide special incentives to those projects incorporating innovative or alternative techniques and processes. Briefly, these incentives include: (1) increase in construction grants funding from 75 to 85 percent; (2) 15 percent cost preference in the cost-effectiveness analysis; (3) potentially higher priority for project funding; and (4) 100 percent funding for modifying or replacing malfunctioning projects.

As part of the implementation of the innovative and alternative technology provisions, regulations and guidelines including criteria for evaluating projects proposed for funding as innovative and alternative technology have already been promulgated in the **Federal Register** (40 CFR 35, Subpart E; 43 FR 44022). The Manual supplements these regulations and guidelines.

The Manual contains four chapters and six supporting appendices including a users guide, innovative and alternative technology decision methodology and screening procedures, as well as innovative/alternative technology concepts and applications. A series of fact sheets provide technical, cost and energy data on over 100 unit treatment processes and techniques.

On March 20, 1979, the availability of the draft manual was announced and the public was encouraged to submit comments on the draft version. On June 25, 1979 a public meeting was held in Washington, D.C. to discuss comments on the draft manual. Comments which were received were reviewed and considered in finalizing the manual. As a result of the public comments, the final manual now includes specific guidance clarifying and elaborating upon innovative technology decision methodology by regional discretion. Also, a number of fact sheets were modified to reflect more accurate cost and energy information.

The manual will be used by the Environmental Protection Agency Regional Offices and the appropriate state agencies as a guide in evaluating grant applications involving innovative and alternative technology. The document will also be used by the municipalities and consulting engineers as guidance in the preparation of facility plans incorporating innovative and alternative technology processes.

Dated: May 7, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-16404 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1503-6; OPP-66069]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: List of firms who have requested voluntary cancellation of registration of their pesticide products as provided for in Section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Lela Sykes, Process Coordination Branch (TS-767), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, 202-426-8540.

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of

their intent to voluntarily cancel registration of their pesticide products.

Registration number	Product name	Registrant	Date registered
1021-1326	MKG Red Squill Mouse Tracking Powder	McLaughlin-Gormley King Co	June 25, 1975.
9661-1	College Hill Insect Spray	College Hill Exterminating & Sanitation Inc., 164 Weldewood Rd., Kings Point, LI, NY 11024.	September 13, 1967.

The Agency has agreed that such cancellation shall be effective June 30, 1980 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP–66069]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the office of Process Coordination Branch at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136))

Dated: May 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-16498 Filed 5-29-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL HOME LOAN BANK BOARD

Continental Savings & Loan Association, Gloucester City, N.J.

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended (12 U.S.C. 1729(c)(2)), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation, as sole receiver for Continental Savings and Loan Association, Gloucester City, New Jersey, effective upon compliance with the provisions of Federal Home Loan Bank Board Resolution No. 80–301, dated May 19, 1980. The appointment was effected on May 20, 1980.

Dated: May 21, 1980.

J. J. Finn,

Secretary.

[FR Doc. 80-16487 Filed 5-29-80; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License No. 2173

Reed Ocean Freight Forwarding, Catherine C. Reed, d.b.a.; Order of Revocation

On April 15, 1980, Reed Ocean Freight Forwarding, Catherine C. Reed, d/b/a, 3724 Bancroft Street, San Diego, California 92104, voluntarily surrendered her Independent Ocean Freight Forwarder License No. 2173 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 2173 issued to Reed Ocean Freight Forwarding, Catherine C. Reed, d/b/a, be and is hereby revoked effective April 15, 1980, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Reed Ocean Freight Forwarding, Catherine C. Reed, d/b/a.

Robert G. Drew,

Director of Certification and Licensing.

[FR Doc. 80-16389 Filed 5-29-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Virginia National Bankshares, Inc.; Acquisition of Bank

Virginia National Bankshares, Norfolk, Virginia, has applied for the Board's approval under section 3 (a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of The First National Bank of Troutville, Troutville, Virginia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 23, 1980. Any comment on application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 22, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-16397 Filed 5-29-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 122]

Florida Power Corp., Florida Public Service Commission; Proposed Intervention in Electric Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Florida Public Service Commission concerning the application of the Florida Power Corporation for an increase in electric rates. GSA represents the interest of the executive

agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, N.W., Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), telephone 202–566–0750, by June 30, 1980, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding. (Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4)).

Dated: May 20, 1980

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80–16444 Filed 5–29–80; 8:45 am]

BILLING CODE 6820–AM–M

Performance Review Board; Names of Members

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the GSA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Director, Executive Resources Division, General Services Administration, Office of Human Resources and Organization, Executive Resources Division, Office of Personnel, 18th and F Streets, N.W., Washington, D.C. 20405 (202) 566–1207.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Allen W. Beres, Commissioner, Transportation and Public Utilities Service
2. Richard D. Casad, Regional Administrator, Region 10
3. Raymond E. Fontaine, Assistant Administrator for Plans, Programs and Financial Manager
4. Earl E. Jones, Assistant Commissioner for Real Property
5. Dennis J. Keilman, Deputy Regional Administrator, Region 5
6. Allie B. Latimer, General Counsel
7. Norman L. Linton, Director of Personnel
8. William M. Paz, Assistant Administrator for Human Resources and Organization
9. Gerald J. Turetsky, Regional Administrator, Region 2.

An additional key Executive Performance Review Board with the responsibility for reviewing the ratings of the members of the Performance Review Board and those senior executives reporting directly to the Administrator or Deputy Administrator will consist of:

1. Ray Kline, Deputy Administrator, General Services Administration
2. William Paz, Assistant Administrator for Human Resources and Organization
3. Jerry Fox, Executive Assistant to the Deputy Administrator
4. Saul Katz, Special Counsel to the Administrator for Ethics.

Dated: May 21, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80–16383 Filed 5–29–80; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research Scientist Development Review Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of June 1980.

Research Scientist Development Review Committee

June 18–20; 9:00 a.m., Coolfont, Berkeley Springs, West Virginia 25411.
Open—June 18, 9:00 to 9:30 a.m.
Closed—Otherwise.
Contact: Miriam Stein, Room 9–97, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4844.

Purpose. The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals engaged full-time in research and related activities relevant to mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda. From 9:00 to 9:30 a.m. on June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. Summaries of the meeting and rosters of the Committee Members will be furnished upon request by the Committee Management Officer, Office of the Associate Director for Extramural Programs, NIMH, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–4333.

Dated: May 23, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80–16396 Filed 5–29–80; 8:45 am]

BILLING CODE 4110–88–M

Food and Drug Administration

[Docket No. 80F–0160]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate as an antioxidant and thermal stabilizer for polycarbonate resins used in articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0B3504) has been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1580) be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate as an antioxidant and thermal stabilizer

for polycarbonate resins used in articles intended for food-contact use.

The Food and Drug Administration (FDA) has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required.

FDA's finding of no significant impact and the evidence supporting that document may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 20, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80–16200 Filed 5–29–80; 8:45 am]

BILLING CODE 4110–03–M–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 80D–0069]

Radioactive Drugs; Proposed Revocation of Interim Enforcement Policy and Notice of Availability of Proposed Guideline for Nuclear Pharmacies Describing Activities That Require Registration as a Drug Establishment

Correction

In F.R. Doc. 80–10796 appearing at page 24920 in the issue for Friday, April 11, 1980, third column, fifth line from the bottom, "Albert Lanvender" should read "Albert Lavender".

BILLING CODE 1505–01

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. D–80–601]

Regional Administrators, Area Managers; Amendment to Redelegation of Authority With Respect to the Community Development Block Grant Program—Reallocation Procedures

AGENCY: Department of Housing and Urban Development.

ACTION: Amendment to redelegation of authority.

SUMMARY: This amendment to the Redelegation of Authority is issued to allow Area Managers to reallocate funds within the same State, so specified in 24 CFR 570.107.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Office of Block Grant Assistant, Small Cities Division, Community Planning and Development, U.S. Department of Housing and Urban Development, Room 7282, (202) 755–6322. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Assistant Secretary is redelegating authority to the Area Managers to reallocate funds within the same State. This action amends the Redelegation of Authority which was issued on July 27, 1978 by Assistant Secretary Robert C. Embry, Jr.

Pursuant to the issuance of 24 CFR 570.107 (Reallocation), the Assistant Secretary is amending the Redelegation of Authority published in the **Federal Register** August 2, 1978 (43 FR 34102). Section B.5. prohibited Area Managers from reallocating funds within the same State. This amendment eliminates that restriction so that Area Managers can reallocate funds as prescribed in the new reallocation procedures.

Accordingly, the Assistant Secretary for Community Planning and Development redelegated authority, originally published at 43 FR 34102, as follows:

Sec. B. Authority Excepted. There is excepted from the authority redelegated under Section A the power to:

* * * * *

5. Reallocate funds to other States pursuant to sections 106(e) and 106(f)(2). (42 U.S.C. 5306.)

(Title I: Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95–128); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).) (Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978.)

Issued at Washington, D.C., May 21, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 16390 Filed 5–29–80; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–80–1007]

Low-Income Public Housing—Certification of Housing Managers; List of Approved Certifying Organizations

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice is hereby given that the following organization has been accredited by HUD as an Approved Certifying Organization for the purpose of providing certification of Housing Managers and Assistant Housing Managers of low-income public housing in accordance with 24 CFR Part 867: National Association of Home Builders, Fifteenth and M Streets, NW., Washington, D.C. 20005.

Other Approved Certifying Organizations, which were previously accredited by HUD and listed in a **Federal Register** Notice, are:

Institute of Real Estate Management, 430 North Michigan Avenue, Chicago, Illinois 60611.

National Association of Housing and Redevelopment Officials, 2600 Virginia Avenue, NW., Washington, D.C. 20037.

National Center for Housing Management, 1133 Fifteenth Street, NW., Washington, D.C. 20005.

Further information about each of these organizations' certification requirements, procedures and fees may be obtained by writing *directly* to the organization. Requirements, procedures and fees vary among the four organizations, so that a full comparison will require information from all four. These inquiries should not be addressed to HUD.

Public Housing Agencies (PHAs) and individuals who expect to be subject to the certification requirements of 24 CFR Part 867 are reminded that the effective date of those requirements is January 1, 1981. Any such individual who has not yet obtained certification should immediately contact one or more of the Approved Certifying Organizations with the aim of satisfying the certification requirements by January 1, 1981. Individuals who may need training to be able to pass an Approved Certifying Organization's examination face an especially urgent situation; they should ascertain what relevant training opportunities are available through the Approved Certifying Organizations or other sources.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 6(c)(4), United States Housing Act of 1937, as amended (42 U.S.C. 1437d))

Issued at Washington, D.C., May 23, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 16391 Filed 5-29-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Findings for Federal Acknowledgment of the Jamestown Clallam Tribe of Indians as an Indian Tribe

May 16, 1980.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.9(f) notice is hereby given that the Assistant Secretary proposes to acknowledge that the Jamestown Clallam Tribe of Indians, c/o Ron Allen, Route 5, Box 687, Port Angeles, Washington 98392, exists as an Indian tribe. This notice is based on a determination that the group satisfies the criteria set forth in 25 CFR 54.7.

Under § 54.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision is available to the petitioner and other parties upon written request.

Section 54.9(f) of the regulations provides that any individual or organization wishing to challenge the proposed findings may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted on or before September 29, 1980. Comments and requests for a copy of the report should be addressed to: Assistant Secretary—Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20242, Attention: Federal Acknowledgement Project.

Within 60 days after the expiration of the response period, the Assistant Secretary will publish his determination regarding the petitioner's status in the **Federal Register** as provided in § 54.9(h).

Ralph Reeser,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-16375 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-02-M

Pueblo of Laguna, New Mexico; Proclaiming Certain Lands as Part of the Reservation

May 14, 1980.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On May 14, 1980, pursuant to authority contained in Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the following described land, known locally as Major Ranch, located in Sandoval County, New Mexico, are hereby added to and made a part of the Reservation of the Pueblo of Laguna.

The easterly portion of the tract of land commonly known as the Antonio Baca Grant or the Nuestra Senora De La Luz De Las Lagunitas Grant, containing 27,196.496 acres, and being described as follows:

Beginning at the Southeast Corner of the Grant Thence North—5.00 chains,
North 45°55′ West—75.00 chains,
North 44°45′ West—17.00 chains,
North 49°30′ West—8.00 chains,
North 12°30′ West—21.00 chains,
North 15°15′ West—22.00 chains,
North 37°15′ West—66.00 chains,
North 41°22′ West—48.00 chains,
North 64°30′ West—35.00 chains,
North 11°15′ West—61.00 chains,
North 0°59′ West—22.28 chains,
North 31°22′ West—20.06 chains,
North 77°13′ West—24.99 chains,
North 17°04′ West—46.38 chains,
North 6°20′ West—10.63 chains,
North 58°51′ West—27.04 chains,
North 56°38′ West—50.02 chains,
North 58°45′ West—24.63 chains,
North 25°00′ West—30.46 chains,
North 39°08′ West—39.09 chains,
North 8°00′ West—8.98 chains,
to the Northeast Corner of the Grant; thence West—238.12 chains to the Northeast corner of the 20,000 acre tract heretofore sold to Lee S. Evans and to the Northwest corner of this tract being conveyed being a point 1.88 chains East of the 3 mile corner on North boundary of the Grant;

Thence South 711.07 chains to the Southeast corner of said 20,000 acre tract,

Thence on South boundary of the Grant,
South 12°15′ East—15.29 chains,
South 84°00′ East—17.91 chains,
South 16°15′ East—19.16 chains,
North 74°10′ East—34.05 chains,
South 45°00′ East—12.13 chains,
North 17°40′ East—11.66 chains,
North 57°15′ East—17.26 chains,
South 50°00′ East—24.16 chains,
North 34°20′ East—34.56 chains,
South 32°15′ East—15.02 chains,
South 61°50′ East—19.27 chains,
North 43°15′ East—14.12 chains,
North 23°45′ East—18.50 chains,
North 63°40′ East—18.59 chains,
North 38°30′ East—34.87 chains,
North 19°40′ East—18.30 chains,
North 87°30′ East—11.49 chains,
North 13°00′ East—13.19 chains,
South 68°00′ East—25.76 chains,
North 69°45′ East—4.31 chains,
North 64°00′ East—321.25 chains,
to the Southeast corner of the Grant and place of beginning, containing 27,196.496 acres, more or less.

Subject to an undivided 1/32 mineral royalty now held by the First New Mexico Bankshares Corporation, being the same royalty as reserved in that certain warranty deed from the Albuquerque National Trust and Savings Bank to Jerome O. Eddy, dated July 12, 1945, and recorded in Book DR5, Pages 626–627, Sandoval County records.

Subject to easements of record and as they exist on the premises and restrictions and reservations of record.

Sidney L. Mills,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-16377 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona; Announcement of Proposed Wilderness Intensive Inventory Results

In accordance with the guidelines in the September 27, 1978 BLM Wilderness Inventory Handbook and Organic Act Directive No. 78–61, Change 3, I hereby announce the proposed wilderness intensive inventory decision under the authority of Sec. 603 of the Federal Land Policy and Management Act of 1976.

During the intensive inventory those lands found to possess such characteristics are being proposed for further consideration for wilderness as Wilderness Study Areas (WSA's). These are not proposals for wilderness designation. Such designation proposals will be developed as part of the study process of WSA's at some future time.

A total of 4,405,322 acres of public lands were included in the scope of this inventory with the following preliminary results:

District	Acres (units) intensively inventoried	Acres proposed as WSA's	Acres proposed to be dropped
Ariz. Strip	1,576,672 (110)	443,711 (24)	1,132,961
Phoenix	1,838,011 (77)	880,349 (35)	957,662
Safford	311,334 (34)	191,731 (19)	119,603
Yuma	679,305 (37)	332,380 (18)	346,925
Total State	4,405,322 (258)	1,848,171 (96)	2,557,151

Publication of this notice in the **Federal Register** begins a 90-day public review and comment period on the 258 intensive inventory units. The public comment period will end on August 28, 1980.

The public is invited to comment on the wilderness intensive inventory proposed decision and to submit additional information in order to assist the BLM in the assessment of wilderness characteristics on these public lands. Copies of the report and map are available from Bureau of Land Management, Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073, Phone (602) 261–3831 or from any other BLM office in Arizona.

During the formal public comment period, the following open houses are scheduled.

Open Houses

All open houses are from 9:00 a.m. to 8:00 p.m., local time.

Date, city and location

Tuesday, June 17, 1980, Ajo, Recreation Hall, The Plaza.
Tuesday, June 17, Safford, BLM District Office, 425 East 4th Street.
Tuesday, June 17, St. George, Utah, Four Seasons Motel, 747 E. St. George Boulevard.
Thursday, June 19, Wickenburg, Wickenburg Community Center, Auditorium Room, 160 North Valentine.
Friday, June 20, Page, Page City Townhouse, 605 South Navajo.
Tuesday, June 24, Lake Havasu City, Rodeway Inn, Room A–109, 245 Crystal Avenue.
Wednesday, June 25, Kingman, Mohave County Fairgrounds.
Tuesday, July 1, Flagstaff, Holiday Inn, 100 West Highway 66.
Tuesday, July 8, Yuma, Yuma City & Convention Center, East Wing, 1440 Desert Hill Drive.
Wednesday, July 9, Phoenix, Granada Royale Hometel, Madrid West Room, 2333 East Thomas Road.
Thursday, July 10, Tucson, Holiday Inn, Banquet Room, 22nd and I–10.

All public comments should specifically address the presence or absence of wilderness characteristics within inventory units. All comments received during the comment period will be recorded, reviewed, and considered in developing the final decision which will be announced in mid-November, 1980.

Clair M. Whitlock,

State Director.

[FR Doc. 80–16379 Filed 5–29–80; 8:45 am]

BILLING CODE 4310–84–M

Outer Continental Shelf; Changes in Schedule of Public Hearings Regarding Proposed OCS Oil and Gas Lease Sale No. 53 Offshore Northern and Central California

By **Federal Register** Notice of May 9, 1980, it was announced that public hearings will be held at six locations in June 1980 regarding a proposed oil and gas lease sale offshore northern and central California (OCS Sale #53). The purpose of this notice is to announce two changes in the schedule of these hearings.

It has been necessary to change the location of the Santa Cruz hearing to the Santa Cruz High School Auditorium, 415 Walnut Avenue, Santa Cruz, California. The hearing will be held on June 25 beginning at 8 a.m. and adjourning at 8 p.m. as originally scheduled.

It has also been necessary to extend the public hearing to be held in San Francisco. The hearing in San Francisco will be held as scheduled on Monday, June 23 at Fort Mason, Building "A", from 8 a.m. to 8 p.m. as originally scheduled. However, the hearing will be continued on Tuesday, June 24 from 8 a.m. to 1 p.m. at the same location.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

May 27, 1980.

[FR Doc. 80–16384 Filed 5–29–80; 8:45 am]

BILLING CODE 4310–84–M

[A–12358]

Arizona: Proposed Transfer of Jurisdiction of Reserved Lands

The Geological Survey, U.S. Department of the Interior, has filed application, Serial Number A–12358, for transfer of jurisdiction of the Tucson Magnetic Observatory Site from the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, to the Geological Survey. Lands affected by the proposed transfer are described as follows:

T. 14 S., R. 15 E., GSR Mer., Arizona
Sec. 5, lots 3, 4, S½NW¼
Containing 172.80 acres in Pima County.

The land was reserved by Executive Order 1082 of June 3, 1909, for use of the U.S. Coast and Geodetic Survey (now NOAA) as a site for a magnetic observatory. It is proposed that the Geological Survey assume the functions and responsibilities formerly performed by NOAA for seismic and magnetic observation and data collection.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed transfer. All interested persons who desire to be heard on the proposed transfer must submit a written request for a hearing to the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073, within the 30-day period allowed. Notice of the public hearing will be published in the **Federal Register** giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be transferred as requested by the applicant agency. The determination of the Secretary on the application will be published in the **Federal Register**. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

Executive Order 1082 segregated the lands from operation of the public land laws, including the mining laws and the mineral leasing laws. Upon approval of the proposed transfer, the lands will be opened to operation of the mineral leasing laws only, at a time to be specified in the public land order effecting the transfer.

All communications (except for public hearing requests) in connection with the proposed transfer should be addressed to the STate Director, Bureau of Land Management, Department of the

Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-16376 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

Alaska Native Claims Selections; Modifications

In the matter of F-19155-29, F-19155-30, F-19155-31, F-19155-32, F-19155-33, F-19155-34, F-19155-36, F-19155-40, F-19155-41, F-19155-43, F-19155-44, F-19155-45, F-21901-08, F-21901-09, F-21901-10, F-21901-11, F-21901-12, F-21901-13, F-21901-14, F-21901-15, F-21901-16, F-21901-17, F-21902-91, F-21902-92, F-21902-93, F-21902-94, F-21902-95, F-21902-96, F-21902-97, F-21902-98, F-21902-99, F-21903-00, F-21903-39, F-21903-40, F-21903-49, F-21903-50, F-21904-52, F-21904-53, F-21905-09, F-21905-15.

By decision dated April 28, 1980, certain lands in the vicinity of Kandik Basin were determined proper for regional selection and approved for interim conveyance to Doyon, Limited under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (1976)) (ANCSA).

The decision of April 28, 1980, is hereby vacated as to the following described lands:

Fairbanks Meridian, Alaska (Unsurveyed)

F-19155-44

T. 8 N., R. 28 E.
Secs. 8, 9, 16 and 17, all;
Secs. 20, 21, 28 and 29, all;
Secs. 32 and 33, all.

Containing approximately 6,400 acres.

Therefore, following are modifications to the decision of April 28, 1980:

Page 1

The paragraph beginning with "In view of" now reads in part:

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 456,678 acres, are considered * * *

This paragraph is hereby modified to read in part:

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 450,278 acres, are considered * * *

Page 3

T. 8 N., R. 28 E., Fairbanks Meridian, Alaska (Unsurveyed)

The description for this township now reads:

Secs. 5 to 11, inclusive, all;
Secs. 14 to 36, inclusive, all.

Containing approximately 18,937 acres.

The description is hereby modified to read:

Secs. 5, 6, 7, and 10, all;
Secs. 11, 14, 15 and 18, all;
Sec. 19, all;
Secs. 22 to 27, inclusive, all;
Secs. 30 and 31, all;
Secs. 34, 35 and 36, all.

Containing approximately 12,537 acres.

Page 9

The total acreage now reads:

Aggregating approximately 456,678 acres.

The acreage is hereby modified to read:

Aggregating approximately 450,278 acres.

Page 11

1. The paragraph beginning with "When the above described lands" now reads:

When the above described lands are surveyed and patented, there will be no further lands to be conveyed and the case files will be closed of record, except for lands within Native allotment F-14487 Parcel A topfiled by regional selection application F-21902-91.

This paragraph is hereby modified to read:

When the above described lands are surveyed and patented, there will be no further lands to be conveyed and the case files will be closed of record, except for lands within regional selection application F-19155-44 and Native allotment F-14487 Parcel A topfiled by regional selection application F-21902-91.

2. The paragraph beginning with "To date approximately" now reads:

To date approximately 2,330,971 acres of land, selected pursuant to Sec. 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

This paragraph is hereby modified to read:

To date approximately 2,324,571 acres of land, selected pursuant to Sec. 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

Except as modified by this decision the decision of April 28, 1980, stands as written.

Notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Ricky M. Elliott,

Chief, Branch of Adjudication.

[FR Doc. 80-16439 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[F-14858-A and F-14858-B]

Alaska Native Claims Selections

This decision rejects a State selection application and approves lands for conveyance to Gana-a 'Yoo for the village of Galena.

Notaaghleedin, Limited, for the Native village of Galena, filed selection applications F-14858-A, as amended, on October 16, 1974, and F-14858-B, as amended, on November 29, 1974, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Galena.

Notaaghleedin, Limited, in its application, excluded Galena Creek. Because this water body has been determined to be nonnavigable, it is considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of ANCSA.

Section 12(a) and 43 CFR 2651.4(b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located, and that additional lands selected shall be compact and in whole sections. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries.

For these reasons, the water body which was improperly excluded in the application of Notaaghleedin, Limited, is considered selected.

On April 6, 1978, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by Public Law 94-204, Sec. 30 (89 Stat. 1148), the Native villages of Galena (Notaaghleedin, Limited), Kaltag (Takathlee-tondin, Incorporated), Nulato (Nik'aghun, Limited) and Koyukuk (Mineelghaadza', Limited) formed a new corporation which consolidated individual village interests into one single constituent corporation, Gana-a 'Yoo, Limited.

On December 29, 1976, the State of Alaska filed general purposes selection application F-23219, as amended, for all unpatented lands in T. 8 S., R. 9 E., Kateel River Meridian, pursuant to Sec.

6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b)).

Section 6(b) of the Alaska Statehood Act states that general purposes selections shall be made from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection.

At the time of filing of the State's selection application, the following lands were withdrawn by Sec. 11 of ANCSA, and properly selected pursuant to Sec. 12 of ANCSA by Notaaghleedin, Limited, for the Native village of Galena.

Therefore, in view of the above, State selection application F–23219 is hereby rejected as to the following described lands:

U.S. Survey No. 2627, Alaska:
That unpatented portion lying within protracted T. 8 S., R. 9 E., Kateel River Meridian.

Containing approximately 580 acres.

Kateel River Meridian, Alaska (Unsurveyed)

T. 8 S., R. 9 E.
Secs. 1 and 2, all;
Secs. 12, 13 and 24, all;
Secs. 25 and 36, excluding U.S. Survey 2627.

Containing approximately 3,650 acres.

The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands. Further action on the subject State selection application as to those lands not rejected herein will be taken at a later date.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12 (a) of ANCSA, aggregating approximately 105,452 acres, is considered proper for acquisition by Gana-a 'Yoo, Limited, and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 2627, Alaska, Galena Air Navigation Site situated on the right bank of Yukon River at the village of Galena, *including* revocation/restoration application F–452, and *excluding:* Alaska Native Claims Settlement Act Sec. 3(e) applications F–48315 and F–48312; quitclaim deed dated January 15, 1966 (F–035158); Native allotments F–12953 and F–14992 Parcel A; and U.S. Survey 4179.

Containing approximately 3,241 acres.

Kateel River Meridian, Alaska (Unsurveyed)

T. 8 S., R. 9 E.
Secs. 1 and 2, all;
Secs. 12, 13 and 14, all;
Secs. 25 and 36, excluding U.S. Survey 2627.

Containing approximately 3,650 acres.

T. 9 S., R. 9 E.
Sec. 1, excluding U.S. Survey 2627 and Yukon River;
Sec. 2, excluding Yukon River;
Sec. 11, all;
Sec. 12, excluding Yukon River;
Sec. 13 and 24, excluding Kala Slough.

Containing approximately 2,680 acres.

T. 8 S., R. 10 E.
Secs. 7 and 18, all;
Secs. 25 to 29, inclusive, all;
Secs. 30, 31 and 32, excluding U.S. Survey 2627;
Sec. 33, excluding U.S. Survey 2627, Alaska Native Claims Settlement Act Sec. 3(e) application F–48315 and Native allotment F–12953;
Secs. 34, 35 and 36, excluding U.S. Survey 2627.

Containing approximately 6,911 acres.

T. 9 S., R. 10 E.
Sec. 1, excluding U.S Survey 2627, Native allotments F–15006 and F–14042 Parcel A and Yukon River;
Sec. 7, excluding Yukon River and Kala Slough;
Secs. 8, 9 and 10, excluding Yukon River and its interconnecting slough;
Sec. 11, excluding Yukon River;
Sec. 12, excluding U.S. Survey 2627, Native allotment F–15006 and Yukon River;
Sec. 13, excluding Yukon River;
Sec. 14, all;
Secs. 15 and 16, excluding the interconnecting slough of Yukon River;
Sec. 17, all;
Secs. 18 and 19, excluding Kala Slough;
Secs. 20 and 21, all;
Sec. 22, excluding the interconnecting slough of Yukon River;
Sec. 23, excluding Native allotment F–026970;
Sec. 24, excluding Native allotment F–026970 and Yukon River;
Secs. 25 and 26, excluding Yukon River;
Secs. 27 and 28, excluding the interconnecting slough of Yukon River;
Sec. 29, excluding Kala Slough and the interconnecting slough of Yukon River;
Sec. 30, excluding Kala Slough;
Sec. 31, all;
Sec. 32, excluding Kala Slough and the interconnecting slough of Yukon River;
Secs. 33 and 34, all;
Sec. 35, excluding Yukon River;
Sec. 36, excluding Yukon River and its interconnecting sloughs.

Containing approximately 14,925 acres.

T. 10 S., R. 10 E.
Sec. 1, excluding Native allotment F–13407, Yukon River and its interconnecting sloughs;
Sec. 2, excluding Yukon River;
Sec. 11, excluding Native allotment F–15053;
Sec. 12, excluding Native allotments F–15053 and F–13336, Yukon River and its interconnecting slough;
Sec. 13, excluding Native allotment F–13336 and Yukon River;
Sec. 24, excluding Kala Slough.

Containing approximately 2,420 acres.

T. 8 S., R. 11 E.
Secs. 13 to 29, inclusive, all;
Sec. 30, excluding Native allotment F–15479 Parcel C;
Secs. 31 to 36, inclusive, all.

Containing approximately 15,304 acres.

T. 9 S., R. 11 E.
Secs. 1 to 4, inclusive, all;
Sec. 5, excluding Native allotment F–15027;
Sec. 6, excluding U.S. Survey 2627, Native allotments F–15058 Parcel A, F–14042 Parcel A, F–15006, F–15281 Parcel A and F–13398;
Sec. 7, excluding Public Land Order 1405, Public Land Order 843, Native allotments F–15281 Parcel A, F–15056, F–15058 Parcel A, F–15006 and F–13398 and Yukon River;
Sec. 8, excluding Public Land Order 1405, Public Land Order 843 and Native allotments F–15057 Parcel B, F–13398 and F–15056;
Sec. 9, all;
Sec. 10, excluding Native allotment F–15248;
Sec. 11, excluding Native allotment F–14992 Parcel B;
Secs. 12 to 16, inclusive, all;
Sec. 17, excluding Public Land Order 843;
Sec. 19, excluding Public Land Order 843 and Yukon River;
Sec. 20, excluding Public Land Order 843 and Native Allotment F–15057 Parcel C;
Sec. 21, excluding Native allotment F–15057 Parcel C;
Secs. 22 to 27, inclusive, all;
Secs. 28 and 29, excluding Native allotment F–15057 Parcel C;
Sec. 30, excluding Native allotments F–15556 Parcel A, and F–15057 Parcel D and Yukon River and its interconnecting slough;
Sec. 31, excluding Native allotment F–15057 Parcel D, Yukon River and its interconnecting slough;
Secs. 32, 33 and 34, all;
Sec. 35, excluding Yukon River;
Sec. 36, excluding Native allotment F–15281 Parcel B and Yukon River.

Containing approximately 18,108 acres.

T. 10 S., R. 11 E.
Sec. 1, excluding Native allotment F–14025, Yukon River and its interconnecting slough;
Sec. 2, excluding Yukon River and its interconnecting slough;
Sec. 3, excluding Yukon River;
Sec. 4, all;
Sec. 5, excluding Native allotment F–14421 and the interconnecting slough of Yukon River;
Sec. 6, excluding Native allotments F–13407 and F–14421, Yukon River and its interconnecting slough;
Secs. 7 to 12, inclusive, excluding Yukon River;
Secs. 13, 14 and 15, all;
Secs. 16 and 17, excluding Yukon River;
Sec. 18, excluding Yukon River and Kala Slough;
Sec. 19, excluding Kala Slough;
Sec. 20, all.

Containing approximately 8,617 acres.

T. 9 S., R. 12 E.
Secs. 1 to 23, inclusive, all;
Sec. 24, excluding U.S. Survey 4437;
Sec. 25, excluding U.S. Survey 4437, Native allotments F–13400 and F–15058 Parcel B and Yukon River;
Sec. 26, excluding Native allotment F–15058 Parcel B and Yukon River;
Secs. 27, 28, 29 and 30, all;
Sec. 31, excluding U.S. Survey 5001, Native allotments F–15281 Parcel B, F–15479

Parcel D, F–033115 and F–13405 and Yukon River;
Sec. 32, excluding U.S. Survey 5001, Native allotments F–13405 and F–033115 and Yukon River;
Secs. 33 and 34, excluding Yukon River;
Sec. 35, excluding Native allotment F–15058 Parcel B and Yukon River;
Sec. 36, excluding Yukon River.

Containing approximately 19,700 acres.

T. 10 S., R. 12 E.
Sec. 1, excluding Gohn Creek;
Secs. 2 and 3, excluding Gohn Creek and Yukon River;
Secs. 4 and 5, excluding Yukon River;
Sec. 6 excluding Native allotment F–14025 and Yukon River;
Secs. 7 and 8, excluding Yukon River;
Secs. 9 and 10, excluding Native allotment F–13406 and Yukon River;
Secs. 11, 12 and 13, excluding Gohn Creek;
Secs. 14 and 15, all;
Sec. 16, excluding Native allotment F–13406;
Secs. 17 and 18, all.

Containing approximately 9,896 acres.
Aggregating approximately 102,211 acres.
Total aggregated acreage, approximately 105,452 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14858–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail —The uses allowed on a twenty--five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail —The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles track vehicles, and four-wheel drive vehicles.

60 Foot Road —The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site —The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 9 C5, L, M, N) An easement for a proposed access Trail fifty (50) feet in width from site EIN 14 C5, M, N in Sec. 16, T. 10 S., R. 11 E., Kateel River Meridian, southeasterly to public lands in Sec. 6, T. 11 S., R. 12 E., Kateel River Meridian. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 13 L) An easement sixty (60) feet in width for an existing road from Galena in Sec. 5, T. 9 S., R. 10 E., Kateel River Meridian, southeasterly to Louden. The uses allowed are those listed above for a sixty (60) foot wide road easement.

c. (EIN 14 C5, M, N) A one (1) acre site easement upland of the ordinary high-water mark in Sec. 16, T. 10 S., R. 11 E., Kateel River Meridian, on the left bank of the Yukon River. The uses allowed are those listed above for a one (1) acre site easement.

d. (EIN 21 I) An easement twenty-five (25) feet in width, for an existing utility line from the Galena Air Force Base in Sec. 4, T. 9 S., R. 10 E., Kateel River Meridian, easterly to Sec. 2, T. 9 S., R. 10 E., Kateel River Meridian. The uses allowed are those activities associated with the construction, operation, and maintenance of the utility line. The users allowed are limited to the United States Government and its authorized agents and assignees.

e. (EIN 23 M, N) An easement for a proposed access Trail fifty (50) feet in width from site EIN 23a M, N on the right bank of the Yukon river in Sec. 11, T. 8 S., R. 9 E., Kateel River Meridian, northeasterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 117(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Comunication Site right-of-way, F–23071, containing approximately 3.52 acres located within SW¼, Sec. 20, T. 9 S., R. 11 E., Kateel River Meridian, issued to RCA Alaska Communications, Inc., under the provisions of Pub. L. 94–579 (October 21, 1976) Title V, 90 Stat. 2743; and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c),) that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Gana-a 'Yoo, Limited (for the village of Galena) is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 105,452 acres. The remaining entitlement of approximately 9,748 acres will be conveyed at a later date.

Pursuant to Sec. 4(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited, when the surface estate is conveyed to Gana-a 'Yoo, Limited, and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water bodies are considered to be navigable:

Yukon River and its interconnecting sloughs;
Gohn Creek;
Kala Slough.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the

Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file and appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until June 30, 1980 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.
Gana-a 'Yoo, Limited, Box 38, Galena, Alaska 99741.
Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

Ricky M. Elliott,

Chief, Branch of Adjudication.

[FR Doc. 80-16440 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 30092]

Colorado; Invitation to Participate in Coal Exploration License Application of Northern Minerals Co.

May 22, 1980.

Members of the public are hereby invited to participate with Northern Minerals Company, a Delaware Corporation, in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado.

T. 2 N., R. 93 W., 6th P.M.
Sec. 19: Lots 1 thru 4, NE¼, E½W½, N½SE¼;
Sec. 20: Lots 2, 4, 6 thru 13, 22, 23, 25, NW¼SW¼;
Sec. 27: Lots 1 thru 6, E½, E½W¼, SW¼SW¼ (All);
Sec. 28: Lots 1 thru 10, W½SE¼, SE¼SE¼;
Sec. 30: Lots 1 thru 4, E½W½;
Sec. 31: Lots 1 thru 4, E½NW¼, NE½SW¼.
T. 2 N., R. 94 W., 6th P.M.
Sec. 23: Lots 13, 15, 16, 18, 25, NE¼SE¼, S½SE¼;
Sec. 24: Lots 1, 4, E½, E½W½, W½SW¼;
Sec. 25: All;
Sec. 26: E½, E½W½, W½SW¼;
Sec. 36: E½NE¼, NE¼SE¼.
Containing 4,526.38 Acres, more or less.

Members of the public are advised that all of the foregoing lands are embraced in outstanding coal preference right lease applications and are not subject to competitive leasing until such applications are disposed of by the Department in accord with law and applicable regulations. The holder of the lease applications, Northern Minerals Company, may be issued lease(s) covering some or all of the described lands if the applications are granted. This factor, however, does not preclude participation on a pro rata cost sharing basis by qualified parties in the exploration program described herein.

Any party electing to participate in this proposed program must send written notice of that election to the Bureau of Land Management and Northern Minerals Company directed to the following persons at the addresses indicated:

Leader, Craig Team, Branch of Adjudication, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202.
Manager of Exploration and Acquisitions, Northern Minerals Company, P.O. box 17583, Terminal Annex, Denver, CO 80217.

Such written notice must be received by the above indicated persons at the addresses shown not later than June 30, 1980.

A copy of the exploration plan, as submitted by Northern Minerals Company, is available for public review during normal business hours in the following office, under Serial No. C-30092: Colorado State Office, Bureau of Land Management, Room 701, Colorado State Bank Building, 1600 Broadway, Denver, Colorado.

The exploration plan and lands to be included in the exploration license, if issued, are subject to the approval of the U.S. Geological Survey and the Bureau of Land Management, both agencies of the Department of the Interior.

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(d)(1), 43 FR 42584 at 42614 (No. 140, July 19, 1979).

Andrew W. Heard, Jr.,

Leader, Craig Team Branch of Adjudication.

[FR Doc. 16442 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[W-70805 Amendment]

Wyoming; application

May 21, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Mountain Fuel Supply Company of Salt Lake City, Utah filed an application amendment for a right-of-way to construct a 6 inch and a 12 inch pipeline for the purpose of transporting processed and unprocessed gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 15 N., R. 119 W.,
Sec. 6, lot 5.
T. 15 N., R. 120 W.,
Sec. 2, E½SE¼;
Sec. 10, NW¼NW¼.

The proposed pipelines will serve to transport gas from Chevron Production Plant in lot 5, section 6, T. 15 N., R. 119 W., to a point of connection with Mountain Fuel Supply Company's existing Transmission Mainline No. 36 in the NW¼NW¼ of section 10, T. 15 N., R. 120 W., Uinta County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Jon A. Johnson,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-16448 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[M 46311]

Montana, Notice of Invitation; Coal Exploration License Application

May 21, 1980.

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.,
Sec. 3: SW¼SW¼;
Sec. 4: N½SE¼;
Sec. 10: NW¼NE¼, E½NW¼, N½SE¼;
Sec. 11: N½SW¼;
Sec. 14: W½E½, N½NW¼, SW¼NW¼, SW¼;

Sec. 15: N½N½, SE¼NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 22: NW¼SE¼;
Sec. 23: N½NE¼, E½NW¼;
Sec. 24: NW¼NW¼.
T. 8 S., R. 40 E., P.M.M.,
Sec. 19: SW¼SW¼.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107, and Spring Creek Coal Company, c/o Nerco, Inc., 111 SW Columbia, Portland, Oregon 97201. Such written notice must refer to the serial number M 46311 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in this newspaper, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the U.S. Geological Survey and the Bureau of Land Management. Copies of the exploration plan as submitted by Spring Creek Coal Company may be examined during normal business hours at the Bureau of Land Management State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana.

Edgar D. Stark,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-16453 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Utah 24667]

Utah; Termination of Proposed Withdrawal and Reservation of Lands

Notice of a Bureau of Land Management, U.S. Department of the Interior application, Utah 24667 for withdrawal and reservation of lands was published as FR 74-24, on pages 833-834 of the issue of January 3, 1974. The lands were proposed for use in investigations, studies, and experiments by the Department of the Interior, or with others in the improvement, management, use, and protection of the lands and their natural resources under section 101 of the Public Land Administration Act (43 U.S.C. 1362) and pursuant to paragraph 10 of the notice of oil shale lease published in the November 30, 1973, issue of the **Federal Register** (38 FR 33187-33199). The applicant agency has canceled its application in its entirety. The lands involved are described as follows:

Salt Lake Meridian, Utah

T. 10 S., R. 24 E.,
Sec. 35
T. 11 S., R. 25 E.,
Sec. 5, SW¼NW¼, and W½SW¼;
Sec. 6, SE¼NE¼, and NE¼SE¼.

The areas described aggregate 840.00 acres in Uintah County. Therefore, pursuant to the regulations contained in 43 CFR Part 2311, such lands, at 10 a.m. on July 10, 1980, will be relieved of the segregative effect of the above-mentioned application.

Dated: May 22, 1980.

Gary J. Wicks,

State Director.

[FR Doc. 80-16454 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 23394]

Order Providing for Opening of National Forest Lands

The Federal Power Commission (now Federal Energy Regulatory Commission) issued an order November 6, 1975 (FR 75-30143) vacating in their entirety lands withdrawn for Power Development Project No. 1404 affecting portions of the following described lands. These lands are located in the Arapaho and White River National Forests.

Sixth Principal Meridian

T. 8 S., R. 79 W.,
Sec. 3: W½NE¼, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SE¼;
Sec. 4: NE¼NE¼.

The area described aggregates approximately 15.15 acres.

At 10 a.m. on June 30, 1980 the above described lands shall be open to such forms of appropriation as may by law be made of National Forest Lands.

Any questions concerning these lands should be addressed to the undersigned at the Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 80-16505 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 23329]

Order Providing for Opening of National Forest Lands

The Federal Power Commission (now Federal Energy Regulatory Commission) issued an order November 4, 1975 (FR 75-30411) vacating in their entirety lands withdrawn for Power Development Project Nos. 892 and 1100. All of the subject lands lie within the Rio Grande National Forest.

Power Project 892 affects portions of the following described lands:

New Mexico Principal Meridian

T. 47 N., R. 7 E.,
Sec. 13: SE¼NE¼, N½SE¼.
T. 47 N., R. 8 E.,
Sec. 18: S½NW¼.

The area described aggregates approximately 6 acres.

Power Project 1100 affects portions of the following described lands:

New Mexico Principal Meridian

T. 47 N., R. 7 E.,
Sec. 23: NE¼NE¼,
Sec. 24: N½NW¼, SE¼NW¼.

The area described aggregates approximately 6 acres.

At 10 a.m. on July 7, 1980, the above described lands shall be open to such forms of appropriation as may by law be made of National Forest Lands.

Any questions concerning these lands should be addressed to the undersigned at the Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 80-16506 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf, Gulf of Mexico; Proposed Oil and Gas Lease Sale No. A62

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior has established a policy pursuant to Sec. 19 of the OCS Lands Act, as amended, with respect to sale notices to further and enhance consultation with the affected coastal States. That policy includes providing the affected States the opportunity to review the proposed sale notice before its final publication in the **Federal Register.** The following is a proposed sale notice for proposed Sale No. A62 in the offshore waters of the Gulf of Mexico area. This notice is hereby published as a matter of information to the public.

Dated: May 23, 1980.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Approved:

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 80-16354 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-84-M

PROPOSED SALE NOTICE

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300) as well as the Department of Energy Organization Act (91 STAT. 565) and the regulations issued thereunder (10 CFR Parts 376 and 390).

2. Filing of Bids. Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., September 29, 1980; or by personal delivery to the Louisiana Superdome, Gate "C", Hyatt Ramp, Level 200, Rooms 4 and 5, 1500 Poydras Street, New Orleans, Louisiana between the hours of 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t., September 30, 1980. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., September 30, 1980. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 45 FR 26827, April 21, 1980, as corrected in 45 FR 27836, April 24, 1980 and 45 FR 28822, April 30, 1980.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10:00 a.m., c.s.t., September 30, 1980" must be submitted for each tract. A suggested form appears in 43 CFR Part 3300 (44 FR 38289, June 29, 1979), Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft on a solvent bank, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 (44 FR 38289, June 29, 1979), Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental of $3 per acre or fraction thereof. The following systems will be utilized. (These systems are subject to final approval by the Departments of Energy and Interior).

(a) Bonus Bidding with 33 1/3 Percent Royalty. Bids on tracts A62-71, A62-72, A62-73, A62-74, A62-75, A62-81, A62-82, A62-83, A62-113, A62-114, A62-115, A62-116, A62-129, A62-130, A62-148, A62-149, A62-150, A62-151, A62-152, A62-153, A62-154, and A62-232 must be on a cash bonus basis with a fixed royalty of 33 1/3 percent.

(b) Bonus Bidding with a Fixed Sliding Scale Royalty. Bids on tracts A62-12, A62-13, A62-14, A62-18, A62-19, A62-20, A62-21, A62-22, A62-23, A62-24, A62-25, A62-26, A62-27, A62-28, A62-29, A62-30, A62-37, A62-44, A62-45, A62-48, A62-49, A62-51, A62-52, A62-65, A62-66, A62-67, A62-69, A62-70, A62-76, A62-96, A62-100, A62-104, A62-105, A62-106, A62-107, A62-108, A62-112, A62-117, A62-118, A62-119, A62-123, A62-124, A62-125, A62-126, A62-142, A62-143, A62-144, A62-145, A62-147, A62-155, A62-156, A62-157, A62-158, A62-159, A62-160, A62-161, A62-166, A62-227, and A62-231

must be submitted on a cash bonus basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way; when the quarterly value of production, adjusted for inflation, is less than or equal to $10.812077 million, a royalty of 16.66667 percent in amount or value of production saved removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $10.812078 million, but less than or equal to $445.239477 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved removed or sold in quarter j

b = 13.0

Ln = natural logarithm

Vj = the value of production in quarter j adjusted for inflation, in millions of dollars

s = 3.0

When the adjusted quarterly value of production is equal to or greater than $445.239478 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., the the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis,

Figure 1
Form of the Sliding Royalty Schedule

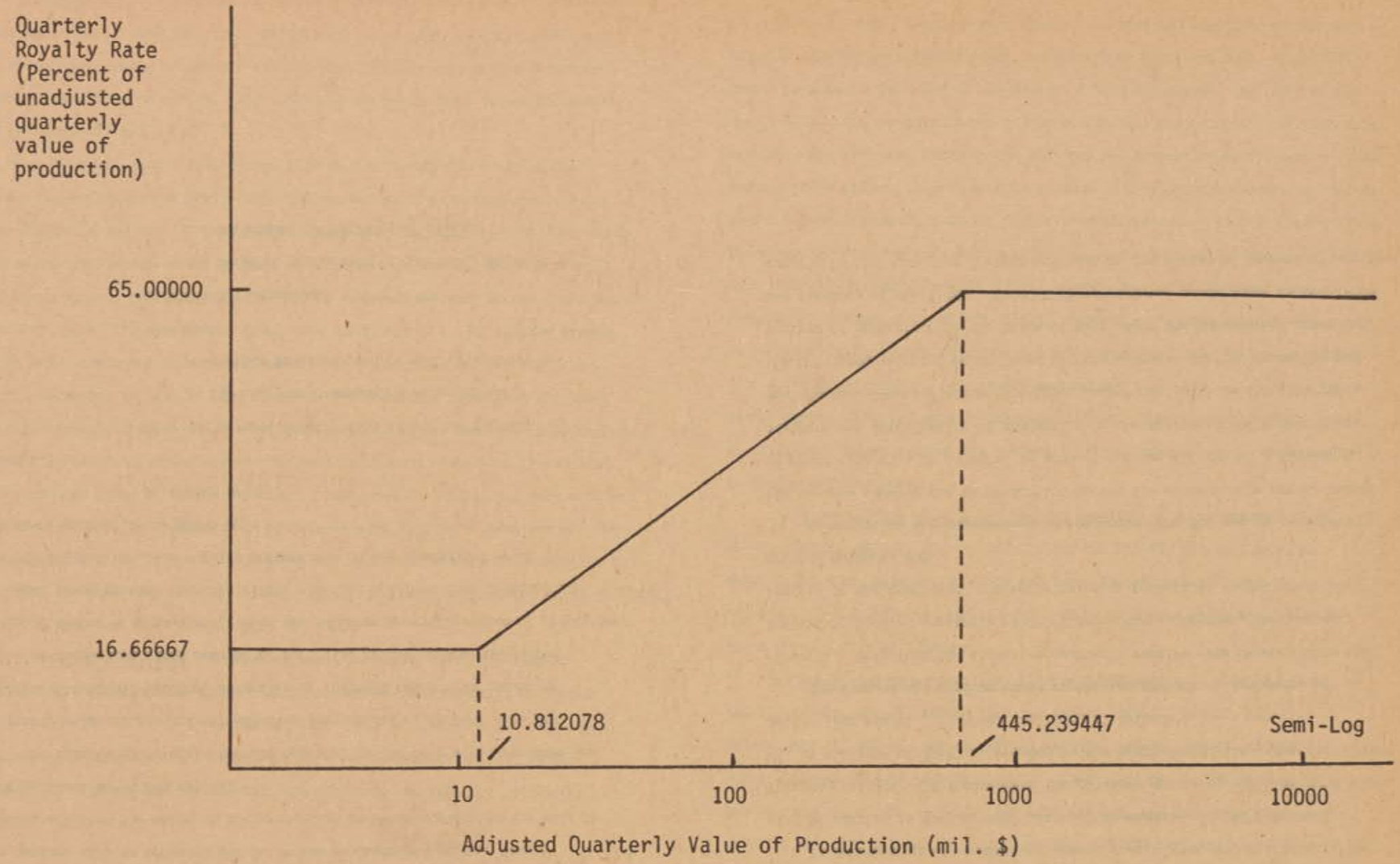


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	26.19374	7.858122
90.000000	200.0	4/3	67.500000	40.47570	36.428130
270.000000	200.0	4/3	202.500000	54.75766	147.845682
810.000000	200.0	4/3	607.500000	65.00000	526.500000
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	23.29287	6.987861
90.000000	250.0	5/3	54.000000	37.57483	33.817347
270.000000	250.0	5/3	162.000000	51.85679	140.013333
810.000000	250.0	5/3	486.000000	65.00000	526.500000

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E). All values are rounded for display purposes only.

U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

(c) Bonus Bidding with a Fixed Net Profit Share. Bids on tracts A62-53, A62-54, A62-55, A62-56, A62-57, A62-85, A62-86, A62-87, A62-88, A62-89, A62-120, A62-121, A62-122, A62-128, A62-133, A62-134, A62-135, A62-136, A62-162, A62-163, A62-164, A62-165, A62-168, A62-169, A62-170, A62-171, A62-172, A62-173, A62-174, A62-175, A62-176, A62-177, A62-178, A62-179, A62-180, A62-181, A62-182, A62-183, A62-184, and A62-233 must be submitted on a cash bonus basis with a fixed net profit share rate of 50 percent and a 1.25 capital recovery factor. (Note: The capital recovery factor represents the actual capital recovery premium that is debited to the net profit share lease capital account, which is made in addition to the debit for actual expenses). The net profit share payment shall be calculated according to the Department of Energy regulations 10 CFR 390.

(d) Bonus Bidding with a 16 2/3 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 16 2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., c.s.t., September 30, 1980, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

6. Bid Opening. Bids will be opened on September 30, 1980, beginning at 10:00 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, September 30, 1980, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts on a solvent bank, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following leasing maps/official protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps - Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set; and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf Official Protraction Diagrams:

NH 15-12 Ewing Bank

NH 16-7 Viosca Knoll

NH 16-10 Mississippi Canyon

NG 15-3 Green Canyon

These sell for $2 each.

12. Tract Descriptions. The tracts offered for bids are as follows: Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice. Some of the blocks are included in prior environmental statements rather than the environmental statement for this sale.

TENTATIVE TRACT LIST
OCS SALE #A62

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP NO. 12
(Approved March 7, 1977)

Tract	Block	Description	Acreage
A62-1	12	All	5000
A62-2	14	All	5000

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-3	53	All	5000
A62-4	54	All	5000
A62-5	58	All	5000
A62-6	59	All	5000
A62-7	64	All	5000
A62-8	68	N 1/2	2500
A62-9	79	All	5000
A62-10	90	All	5000
A62-11	91	All	5000
A62-12	97	All	5000
A62-13	166	All	5000
A62-14	167	All	5000
A62-15	203	All	5000
A62-16	211	All	5000
A62-17	240	All	5000

OCS LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
A62-18	157	All	2170.32
A62-19	289	All	5000
A62-20	290	All	5000
A62-21	291	All	5000
A62-22	293	All	5000
A62-23	298	All	5000
A62-24	299	All	5000
A62-25	300	All	5000
A62-26	315	All	5000
A62-27	317	All	5000
A62-28	363	All	5000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-29	489	All	5000
A62-30	490	All	5000
A62-31	518	All	5000
A62-32	519	All	5000
A62-33	523	All	5000
A62-34	547	All	5000
A62-35	548	All	5000
A62-36	553	All	5000
A62-37	646	All	5000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
A62-38	2	1/	2413.79 (est.)
A62-39	16	1/	2417.32 (est.)
A62-40	43	All	5000
A62-41	50	All	5000
A62-42	65	All	5000
A62-43	66	S 1/2	2500

OCS LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-44	348	All	5000
A62-45	349	All	5000

OCS LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
(Approved June 8, 1954; Revised June 25, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-46	77	All	5000
A62-47	78	All	5000
A62-48	89	All	5000
A62-49	91	All	5067.26
A62-50	221	All	5204.83

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-51	275	All	5000
A62-52	280	All	5000
A62-53	304	All	5000
A62-54	305	All	5000
A62-55	306	All	5000
A62-56	317	All	5000
A62-57	318	All	5000
A62-58	326	All	5000
A62-59	336	All	5000
A62-60	341	All	5000
A62-61	350	All	5000
A62-62	396	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
A62-63	24	All	5000
A62-64	34	All	5000
A62-65	62	All	5000
A62-66	64	All	2965.03

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-67	100	All	5000
A62-68	122	All	5000
A62-69	160	All	5000
A62-70	198	All	3545.99

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION, LOUISIANA MAP NO. 3D
(Approved April 16, 1971; Revised January 18, 1972)

Tract	Block	Description	Acreage
A62-71	231	7/	3592.72
A62-72	232	All	4818.68
A62-73	234	2/	1756.63
A62-74	236	8/	2070.72
A62-75	242	9/	3068.22
A62-76	247	All	4926.98
A62-77	274	All	5035.27

OCS LEASING MAP, EUGENE ISLAND AREA, LOUISIANA MAP NO. 4
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-78	76	All	5000
A62-79	90	N1/2; SW1/4	3750
A62-80	113A	All	5000
A62-81	116	W1/2	2500
A62-82	117	All	5000
A62-83	129A	All	3824.72
A62-84	133	All	5000
A62-85	142	All	5000
A62-86	143	All	5000
A62-87	146	All	5000
A62-88	147	All	5000
A62-89	148	All	5000
A62-90	159	All	5000
A62-91	160	All	5000
A62-92	181	All	5000
A62-93	182	All	5000
A62-94	226	All	5000
A62-95	240	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-96	396	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
A62-97	12	All	5000
A62-98	13	3/	4357.81 (est.)
A62-99	14	4/	3237.49 (est.)
A62-100	50	All	5000
A62-101	67	1/	587.05 (est.)
A62-102	173	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, SOUTH ADDITION, LOUISIANA MAP NO. 5A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-103	319	All	5000
A62-104	332	All	5300.60

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954)

Tract	Block	Description	Acreage
A62-105	76	All	5000
A62-106	77	All	5000
A62-107	96	All	5000
A62-108	97	All	5000
A62-109	160	All	5000
A62-110	174	All	3772.18
A62-111	192	All	5000
A62-112	200	All	5000
A62-113	208	All	5000
A62-114	209	All	5000

OCS LEASING MAP, SOUTH TIMBALIER AREA, SOUTH ADDITION, LOUISIANA MAP NO. 6A
(Approved September 8, 1959; Revised July 22, 1968)

Tract	Block	Description	Acreage
A62-115	227	All	5000
A62-116	228	All	5000
A62-117	246	All	5000
A62-118	269	All	5000
A62-119	274	All	5000
A62-120	284	All	5000
A62-121	285	All	2148.46
A62-122	287	All	5000

OCS LEASING MAP, SOUTH PELTO AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954)

Tract	Block	Description	Acreage
A62-123	2	1/	3344.50 (est.)
A62-124	3	1/	4756.84 (est.)
A62-125	4	All	5000
A62-126	7	All	5000

OCS LEASING MAP, GRAND ISLE AREA, LOUISIANA MAP NO. 7
(Approved June 8, 1954)

Tract	Block	Description	Acreage
A62-127	34	All	5000

OCS LEASING MAP, GRAND ISLE AREA, SOUTH ADDITION, LOUISIANA MAP NO. 7A
(Approved September 8, 1959; Revised March 7, 1961)

Tract	Block	Description	Acreage
A62-128	91	All	5000
A62-129	100	All	4539.89
A62-130	101	All	4539.89

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
A62-131	27	All	5000
A62-132	102	All	5000

OCS LEASING MAP, WEST DELTA AREA, SOUTH ADDITION, LOUISIANA MAP NO. 8A
(Approved September 8, 1959; Revised November 24, 1961)

Tract	Block	Description	Acreage
A62-133	143	All	5000
A62-134	144	All	5000
A62-135	147	All	5000
A62-136	148	All	5000

OCS LEASING MAP, SOUTH PASS AREA, LOUISIANA MAP NO. 9
(Approved June 8, 1954; Revised July 22, 1954; Revised May 11, 1973)

Tract	Block	Description	Acreage
A62-137	35	1/	741.70 (est.)
A62-138	38	1/	4747.92 (est.)
A62-139	45	All	4999.96
A62-140	56	5/	2999.84 (est.)

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-141	(77 (78	1/	4655.16 (est.)
A62-142	108	All	4994.55
A62-143	126	All	4994.55
A62-144	150	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA MAP NO. 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-145	265	All	4994.55
A62-146	301	All	4999.96
A62-147	315	All	4999.96

OCS LEASING MAP, BRETON SOUND AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-148	39	1/	1237.38 (est.)
A62-149	40	1/	4877.30 (est.)
A62-150	41	All	4994.55
A62-151	42	1/	4551.84 (est.)
A62-152	43	1/	1994.55 (est.)
A62-153	54	N1/2; N1/2SW1/4; N1/2S1/2SW1/4; SW1/4SW1/4SW1/4; N1/2SE1/4; N1/2S1/2SE1/4	4448.27
A62-154	55	N1/2	2497.27

OCS LEASING MAP, CHANDELEUR AREA, LOUISIANA MAP NO. 11
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-155	17	All	5000
A62-156	25	All	5000
A62-157	32	All	5000
A62-158	33	All	5000
A62-159	34	All	5000

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; Revised August 1, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
A62-160	24	All	5760
A62-161	68	All	5760
A62-162	864	All	5760
A62-163	865	All	5760
A62-164	908	All	5760
A62-165	909	All	5760

OCS OFFICIAL PROTRACTION DIAGRAM, EWING BANK NH 15-12
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
A62-166	304	All	3140.42

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON NH 16-10
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
A62-167	149	All	5611.56

OCS OFFICIAL PROTRACTION DIAGRAM, GREEN CANYON NG 15-3
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
A62-168	89	All	5760
A62-169	90	All	5760
A62-170	91	All	5760
A62-171	133	All	5760
A62-172	134	All	5760
A62-173	135	All	5760
A62-174	136	All	5760
A62-175	137	All	5760
A62-176	138	All	5760
A62-177	139	All	5760
A62-178	140	All	5760
A62-179	179	All	5760
A62-180	180	All	5760
A62-181	181	All	5760
A62-182	182	All	5760
A62-183	183	All	5760
A62-184	184	All	5760

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-226	69	S1/2	2500

OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
A62-227	171	All	5000

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954)

Tract	Block	Description	Acreage
A62-228	34	All	3772.18

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
A62-229	78	All	5000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
A62-230	575	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
A62-231	26	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION, LOUISIANA MAP NO. 3D
(Approved April 16, 1971; Revised January 18, 1972)

Tract	Block	Description	Acreage
A62-232	235	6/	3633.65

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
A62-233	123	All	4994.55

1/ That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

2/ That portion of the lease block located landward of a line three marine leagues seaward of a line extending from a point on Shell Keys at a latitude 29°24'32.15"N., longitude 91°51'16.59"W., (X = 1,834,019.00, Y = 270,301.00), northwesterly in a straight line to Tigre Point at latitude 29°32'23.13"N., longitude 92°14'57.15"W., (X = 1,708,756.00, Y = 318,661.00). The coordinates used refer to the Louisiana Plane Coordinate System, South Zone.

3/ That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13) excluding the S1/2SE1/4.

4/ That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13) excluding the S1/2S1/2.

5/ That portion of the lease block located landward of a line which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, December 13, 1965, United States vs. Louisiana No. 9 Original (382 U.S. 288).

6/ A portion of Block 235, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the northwest corner of Block 235, the coordinates of which referred to the Louisiana (Lambert) coordinate System (South Zone) are: X = 1,765,446.562 and Y = 246,149.987;

From the initial corner,

South	8,033.742 ft.	to X=1,765,446.562	Y=238,116.245
S.68°53'24"E.	15,214.20 ft.	to X=1,780,204.612	Y=232,418.716
North	11,981.284 ft.	to X=1,780,204.612	Y=244,400.00
N.56°36'22"W.	3,179.53 ft.	to X=1,777,550.00	Y=246,149.987
West	12,103.483 ft.	to the point of beginning.	

The position of the corners and direction of the lines are referred to the Louisiana (Lambert) Coordinate System (South Zone).

7/ A portion of Block 231, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the Northwest Corner of Block 231, the coordinates of which referred to the Louisiana (Lambert) Coordinate System (South Zone) are: X = 1,750,688.512; Y=260,908.037.

From the initial corner,

South	14,758.05 ft.	to X=1,750,688.512	Y=246,149.987
East	14,758.05 ft.	to X=1,765,446.502	Y=246,149.987
North	5,700.013 ft.	to X=1,765,446.502	Y=251,850.000
N.58°17'31"W.	4,756.54 ft.	to X=1,761,400.000	Y=254,350.000
N.55°58'50"W.	4,825.97 ft.	to X=1,757,400.000	Y=257,050.000
N.50°00'48"W.	6,003.70 ft.	to X=1,752,800.000	Y=260,908.037
West	2,111.488 ft.	to the point of beginning	

8/ A portion of Block 236, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the Southwest corner of Block 236, the coordinates of of which referred to the Louisiana (Lambert) Coordinate System (South Zone) are: X = 1,780,204.612 and Y = 231,391.937;

From the initial corner,

East	13,495.388 ft.	to X=1,793.700	Y=231,391
N.46°26'43"W.	5,381.42 ft.	to X=1,789,800	Y=235,100
N.40°36'05"W.	3,687.82 ft.	to X=1,787,400	Y=237,900
N.46°41'05"W.	4,810.41 ft.	to X=1,783,900	Y=241,200
N.49°06'33"W.	4,888.34 ft.	to X=1,780,204.612	Y=244,400
South	13,008.063 ft.	to the point of beginning	

9/ A portion of Block 242, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the Southwest corner of block 242, the coordinates of which referred to the Louisiana (Lambert) Coordinate System (South Zone) are: X = 1,794,962.662 and Y=216,633.887;

From the initial corner,

East	14,758.05	ft.	to X=1,809,720.712	Y=216,633.887
North	4,635.811	ft.	to X=1,809,720.712	Y=221,269.698
Northwesterly along the arc of a 54,721.8 ft. radius circle to			X=1,804,097.05	Y=224,484.49
N.56°51'08"W	10,909.83	ft.	to X=1,794,962.662	Y=230,450.00
South	13,816.113	ft.	to the point of beginning.	

13. Lease Terms and Stipulations. All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2.

(a) For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4(b), Form 3300-1 will be amended as follows:

> Sec. 6 Royalty on Production. (a) The lessee agrees to pay the lessor royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $10.812077 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $10.812078 million, but less than or equal to $445.239477 million, the royalty percent due on the unadjusted value or amount of production is given by
>
> $$Rj = b[LN\ (Vj/S)]$$
>
> where
>
> Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j
>
> b = 13.0
>
> Ln = natural logarithm
>
> Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars
>
> S = 3.0
>
> When the adjusted quarterly value of production is equal to or greater than $445.239478 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

(b) For leases resulting from this sale for tracts offered on a cash bonus basis with a fixed net profit share, listed in paragraph 4(c), Form 3300-1 will be amended as follows:

Sec. 4 Rentals. The phrase "which commences prior to a discovery in paying quantities of oil or gas on the leased area" is hereby deleted and replaced by "which commences prior to the date the first profit share payment becomes due".

Sec. 5. Minimum Royalty. Hereby deleted.

Sec. 6. Royalty on Production. Hereby replaced by Fixed Net Profit Share. The lessee agrees to pay a net profit share rate of 50 percent with a 1.25 capital recovery factor.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term Supervisor refers to the Gulf of Mexico Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

Stipulation No. 1

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager for review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

Stipulation No. 2

(To be included only in the leases resulting from this proposed sale for Tracts A62-53, A62-54, A62-55, A62-56 and A62-57.)

a. No structures, drilling rigs, or pipelines will be allowed within the 55 m isobaths of Sonnier Banks as shown in Figure 3 attached to and made a part of this lease.

b. Operations within the areas shown as "1 Mile Zone" in Figure 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

c. Operations within the area shown as "3 Mile Zone" in Figure 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (1) above or other appropriate operational restrictions.

Stipulation No. 3

(To be included only in the lease resulting from this proposed sale for Tract A62-62).

Operations within the area shown as "3 Mile Zone" in Figure 4, (Rezak Bank) attached to and made a part of this lease, shall be restricted as specified in either (a) or (b) below at the option of the lessee.

a. All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

b. The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (a) above or other appropriate operational restrictions.

Stipulation No. 4

(To be included only in the lease resulting from this proposed sale for Tract A62-104.)

Operations within the area shown as "3 Mile Zone" in Figure 5, (Diaphus Bank), attached to and made a part of this lease, shall be restricted as specified in either (a) or (b) below at the option of the lessee.

a. All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

b. The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (a) above or other appropriate operational restrictions.

Stipulation No. 5

(To be included only in the leases resulting from this proposed sale for Tracts A62-133, A62-134, A62-135 and A62-136.)

a. No structures, drilling rigs, or pipelines will be allowed within the 85 m isobath of Sackett Bank as defined in Figure 6 attached to and made a part of this lease.

b. Operations within the areas shown as "1 Mile Zone" in Figure 6 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

c. Operations within the area shown as "3 Mile Zone" in Figure 6 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (1) above or other appropriate operational restrictions.

Stipulation No. 6

(To be included only in the leases resulting from this proposed sale for Tracts A62-37, A62-54, A62-70, A62-96, A62-128, A62-136 through A62-141, A62-144, and A62-166 through A62-184.)

All or portions of this lease may be subject to mass movement of sediments, unstable slopes, shallow faults, or gaseous sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

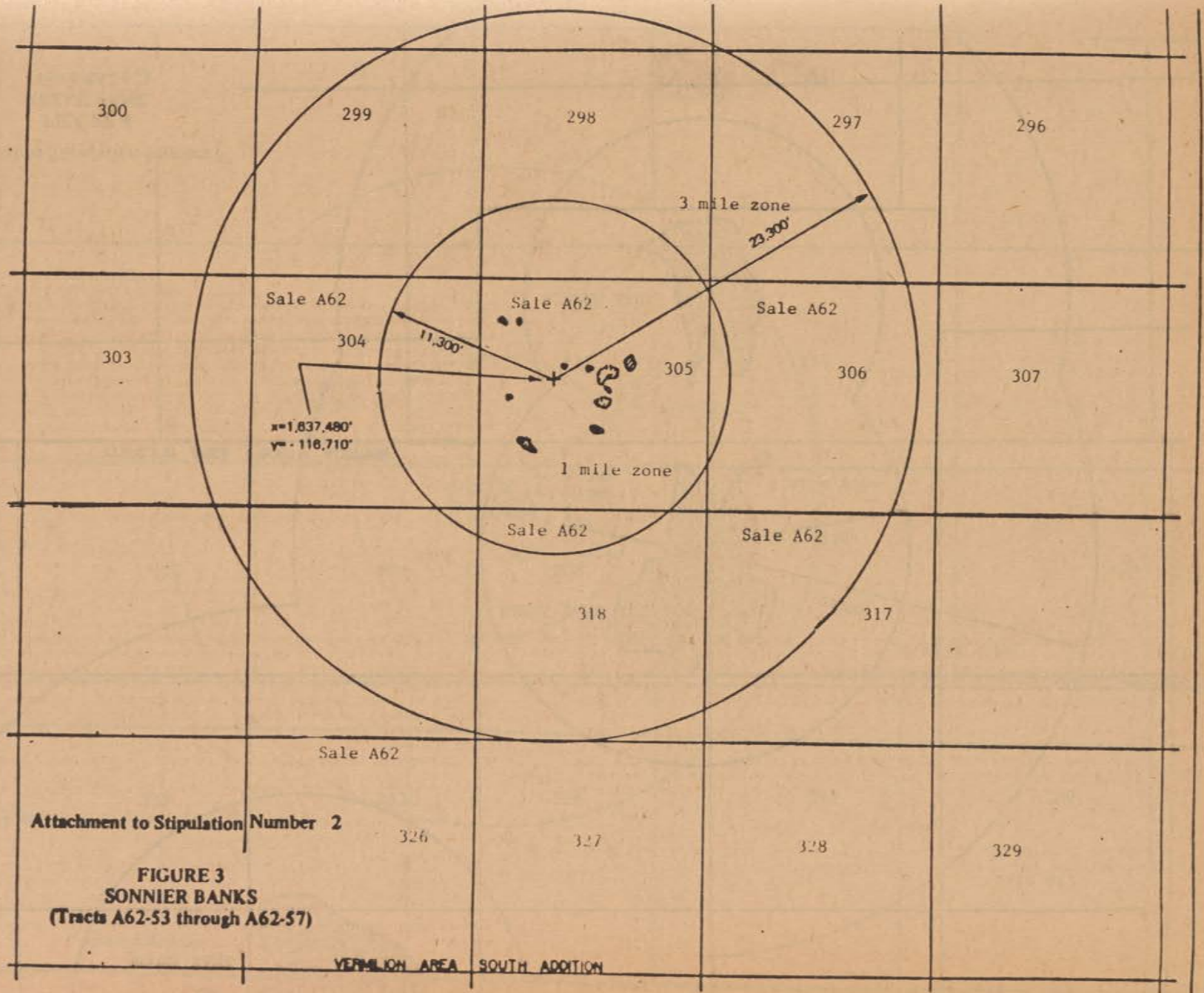
If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all such unstable areas must be mapped. The Supervisor may also require soil testing before exploration and production operations are allowed.

Stipulation No. 7

(To be included only in the leases resulting from this proposed sale for the fixed sliding scale and the 33 1/3 percent royalty tracts listed in paragraph 4 of this notice.)

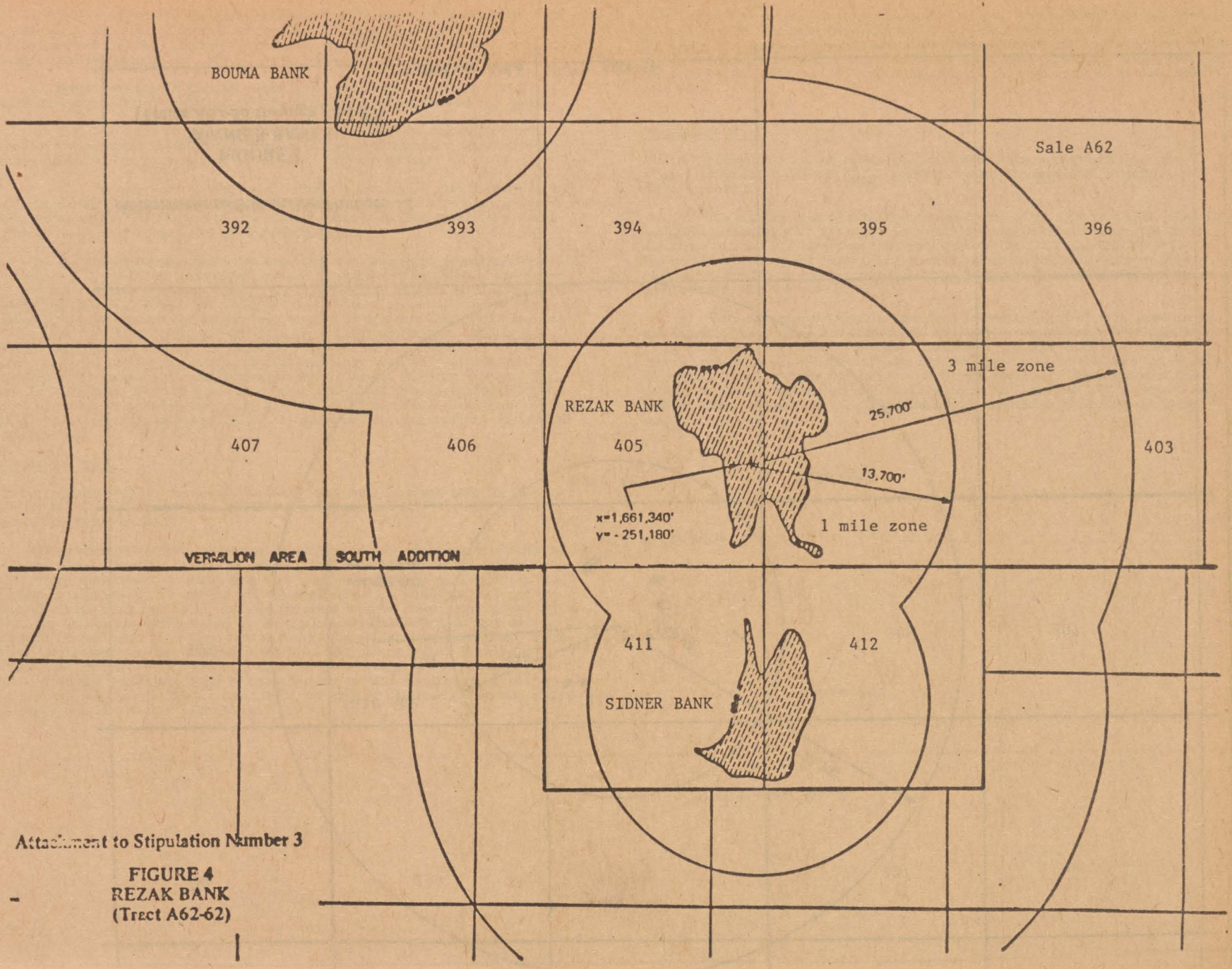
a. The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for one year or more.

b. Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16 2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16 2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.



Attachment to Stipulation Number 2

FIGURE 3
SONNIER BANKS
(Tracts A62-53 through A62-57)



Attachment to Stipulation Number 3

FIGURE 4
REZAK BANK
(Tract A62-62)

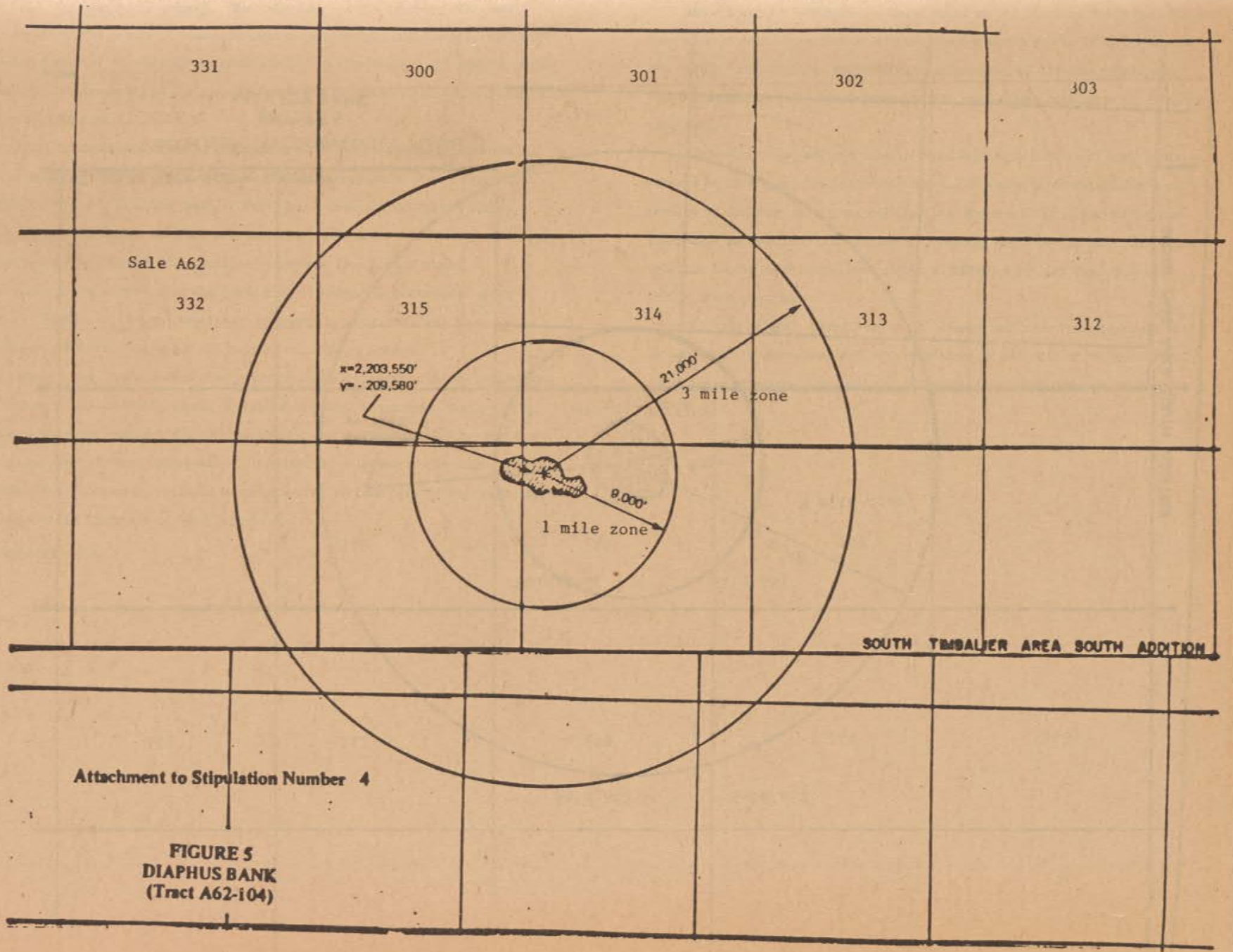
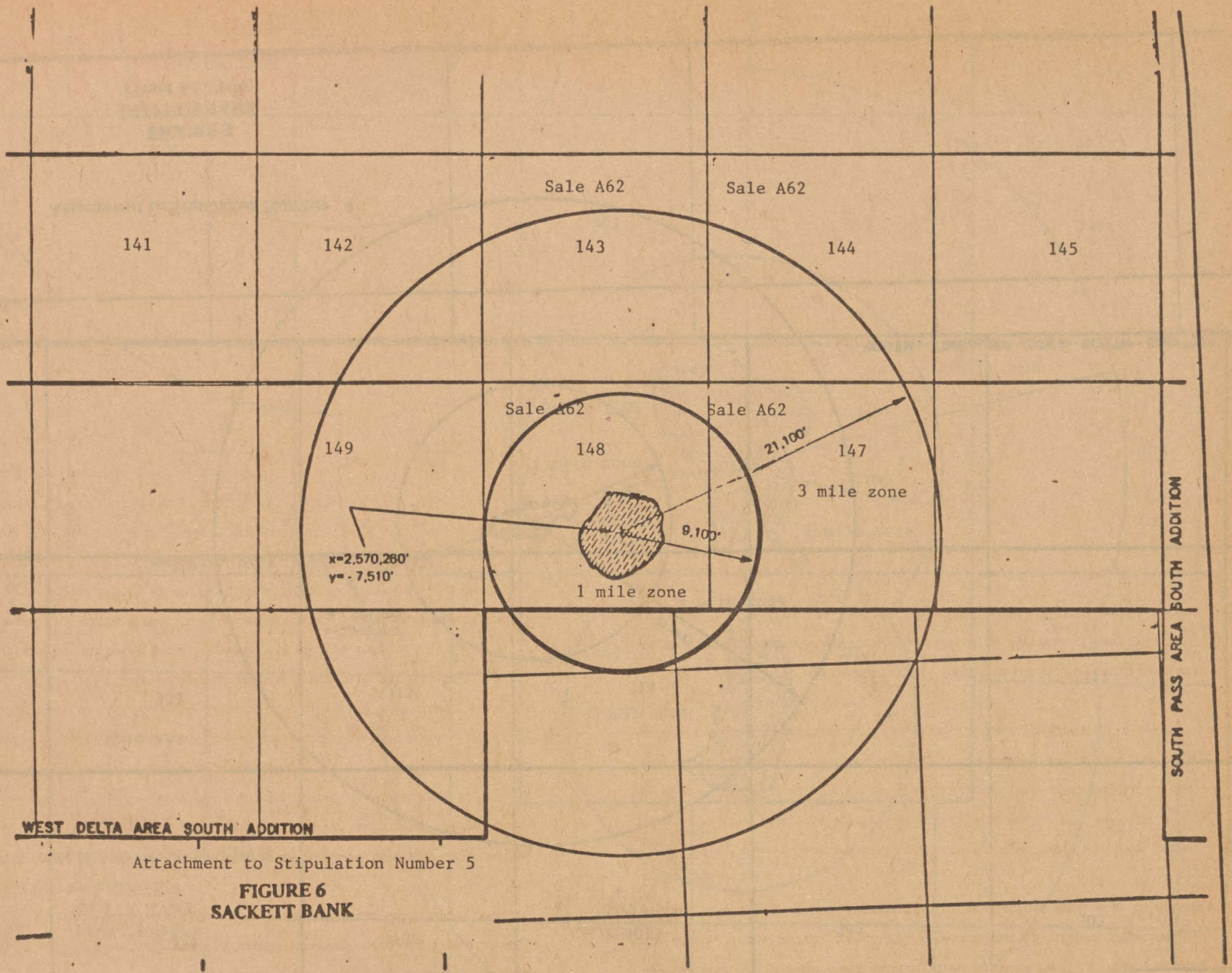


FIGURE 5
DIAPHUS BANK
(Tract A62-104)



Attachment to Stipulation Number 5

FIGURE 6
SACKETT BANK

14. Information to Lessees. The Department of the Interior will seek the advice of the States of Texas, Louisiana, Mississippi and Alabama, and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM, and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

Bidders are advised that the Department of Energy is authorized, under Section 302(b) & (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

BILLING CODE 4310-84-C

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a net profit share payment.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil Exploration and Production

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production, has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4082, Block 18, portion, Sabine Pass Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 22, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80–16449 Filed 5–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil Exploration and Production

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production, has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 3957 and OCS–G 4191, Blocks 8 and 11, Sabine Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 22, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80–16450 Filed 5–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A., has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3799, Block 267, Mississippi Canyon Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 22, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80–16451 Filed 5–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Self; Transco Exploration Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Transco Exploration Company, has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3388, Block 336, East Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd.,

Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and the other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 22, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-16455 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-31-M

Floodplains and Wetlands Executive Orders; Availability for Public Comment on Geological Survey Interim Procedures for Implementation

AGENCY: Geological Survey, Department of the Interior.

ACTION: Interim guidelines.

SUMMARY: The Geological Survey is making available for public review and comment the interim procedures it will use to implement Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. The Geological Survey will consider comments from the public and other governmental agencies when finalizing its procedures.

DATES: These interim procedures are effective as of May 30, 1980, and will remain in effect until a final form is published, but not later than December 31, 1980, reflecting field testing and outside comment. Comments must be received by: June 30, 1980.

ADDRESS: All comments should be sent to: Daniel B. Krinsley, Chief, Environmental Impact Analysis Program, Mail Stop 760, U.S. Geological Survey, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Priscilla Woll, telephone (703) 860–7455.

SUPPLEMENTARY INFORMATION: Executive Order 11988, Floodplain Management, affirmed that it is the policy to protect and enhance the natural and beneficial values of floodplains and to actively discourage noncompatible development. The Executive Order 11990, Protection of Wetlands, recognized that our remaining wetlands are a valuable national resource. All Federal agencies are to do everything possible to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

The U.S. Water Resources Council's Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030, February 10, 1978) provides the basic implementation guidelines. The Survey's interim procedures, based on the Department of the Interior's procedures, incorporate the Water Resources Council's guidelines and make them specific to the various Survey programs. The interim procedures described in this notice are to guide all Geological Survey employees in assuring that all their actions further the intent and purpose of both Presidential Executive Orders.

U.S. Geological Survey Procedures for Floodplain Management and Wetlands Protection

1. *Purpose:* This identifies the U.S. Geological Survey policy and procedures for implementing Executive Order 11988, Floodplain Management, May 24, 1977, and Executive Order 11990, Protection of Wetlands, May 24, 1977, pursuant to Chapter 1 of Part 520 of the Department of the Interior Manual, issued June 11, 1979.

2. *Background: Floodplain* is defined in Executive Order 11988 as lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a 1 percent or greater chance of flooding in any given year.

Wetlands are defined in Executive Order 11990 as those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

A. Executive Orders 11988 and 11990 apply to three general classes of Federal activities:

(1) acquiring, managing, and disposing of Federal land and facilities;

(2) providing Federally undertaken, financed, or assisted construction and improvements; and

(3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

B. In the U.S. Geological Survey, these procedures shall apply to regulatory functions and internal program initiatives in floodplains and wetlands involving, but not limited to:

(1) dredging of river or seaport sites

(2) constructing special-purpose facilities

(3) drilling exploratory, development, or service wells

(4) excavating with power equipment for exploration or operational purposes

(5) establishing field camps for more than 15 people for more than 1 month.

These procedures do not apply to internal program initiatives involving non-destructive data collection activities, including establishment of instrumentation that measures environmentally significant hydrologic characteristics, such as stream-gaging stations and water-level observation wells.

3. *Policy:* It is the policy of the U.S. Geological Survey to:

A. Carry out its functions in a manner that exhibits leadership in the preservation, restoration, or enhancement of the natural and beneficial values of floodplains and wetlands, by avoiding (if practical) or minimizing the risk of their destruction, loss, or degradation, and by minimizing the impact of floods on human safety, health, and welfare.

B. Utilize National Environmental Policy Act procedures and documents to comply with the Executive Orders.

C. Incorporate the Unified National Program for Floodplain Management into relevant Geological Survey programs.

4. *Responsibilities:*

A. The Director shall be responsible for all statements of findings required by the Executive Orders.

B. Assistant Director-Program Anasysis shall be responsible for assuring that all budget requests for any proposed construction activity to be located in floodplains or wetlands reflect consideration of natural and beneficial values of floodplains and wetlands.

C. Assistant Director-Administration, Chiefs of Geologic, Water Resources, Conservation, and National Mapping Divisions, and the Chief, Land Information and Analysis Office, shall be responsible for:

(1) Assuring that all stages of program planning reflect consideration of natural and beneficial values of floodplains and wetlands and are in compliance with these procedures;

(2) Assuring appropriate consultation with Surface Managing Agencies and other agencies or institutions with expertise in the natural and beneficial values of floodplains and wetlands.

D. District Offices of the Water Resources Division shall be responsible

for providing available hydrologic data that may be needed by other units of the Geological Survey to comply with the Executive Orders and for technical advice and assistance in making the requisite identification of location of floodplains and wetlands. Such assistance shall also include identification of other available sources of hydrologic data and expertise.

5. *Procedures:* The Geological Survey shall use Water Resources Council Guidelines, and the Unified National Program for Floodplain Management as reference documents in performing the required evaluations. National Environmental Policy Act procedures (516 DM 1–7), as modified by the procedures in 520 DM 1, shall be used to implement this policy and to provide for public involvement, public notification, consultation, coordination, and documentation.

Dated: May 23, 1980.

H. William Menard,

Director.

[FR Doc. 80-16399 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

Potential U.S. World Heritage Nominations for 1981

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Notice of public meeting and request for public comment.

SUMMARY: The Department of the Interior, through the Heritage Conservation and Recreation Service, previously published an inventory of suggested U.S. World Heritage properties in the **Federal Register** on April 30, 1980 (45 FR 28828). The inventory included 275 natural and cultural properties in the United States recommended for consideration for the World Heritage List. The Department announces and invites comments on properties which have been identified as potential U.S. World Heritage nominations for 1981. The Department will host a public meeting to discuss and recieve comments on the potential nominations.

DATES: The World Heritage public meeting will be held on Wednesday, June 18, 1980, at 10:00 a.m. Written comments on any property listed as a potential 1981 U.S. World Heritage nominations should be received by July 1, 1980. A final list of proposed U.S. nominations will be published in the **Federal Register** on or before July 15, 1980. A Federal interagency panel will meet in November 1980 to review the accuracy and completeness of the proposed 1981 nominations and will recommend properties to the Secretary of the Interior. The Secretary will then transmit formal nomination(s) to the Department of State on or before December 1, 1980, for submission to the United Nations Educational, Scientific and Cultural Organization (UNESCO) by January 1, 1981.

ADDRESSES: The World Heritage public meeting will be held in Room 7000A, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240. Written comments on any potential U.S. nomination should be sent to the Director, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (Attn: Division of State Heritage Programs).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ritsch, Acting Associate Director for Natural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (202–343–4278).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), ratified by the United States and 47 other Nations as of this date, establishes a means by which natural and cultural properties of outstanding universal value to mankind may be recognized and protected.

The country nominating a property for inclusion on the World Heritage List assumes responsibility for taking all necessary and appropriate legal, scientific, technical, administrative and financial measures for the identification, protection, conservation, presentation, and rehabilitation of the property it nominates. The Department is seeking to clarify the legal implications of nominating a non-Federal property to the World Heritage List and the Federal responsibility for the preservation of properties included on the List, i.e., the need to ensure that owner(s) take all necessary measures to preserve the integrity of the nominated property. Until this legal question is resolved, U.S. nominations will be limited to properties owned or controlled by the Federal government.

A January 9, 1980, **Federal Register** notice (45 FR 1947) identified the criteria which natural and cultural properties must satisfy in order to be placed on the World Heritage List.

Potential U.S. World Heritage Nominations for 1981

The Heritage Conservation and Recreation Service has identified the following natural and curltural properties, arranged alphabetically by State, as potential U.S. World Heritage nominations for 1981:

Alaska

Bristol Bay, Kenai Peninsula and Unorganized Boroughs

Katmai National Monument. The lakes, forests, mountains, marshland, and lagoons contained within this site abound in wildlife, including the Alaskan brown bear, the world's largest carnivore. Its interior wilderness includes the Valley of 10,000 Smokes, which resulted from a 1912 volcanic eruption. The eruption produced countless fumeroles, a few of which are still active today.

Unorganized Boroughs

Mount McKinley National Park. A unique and spectacular combination of geologic features, including major earthquake faults, active glaciers, and Mt. McKinley, the highest mountain peak in North America at 20,320 feet. Caribou, Dall sheep, moose, grizzly bear, and timber wolves are found here.

Arizona

Pima County

Organ Pipe Cactus National Monument/Cabeza Prieta National Wildlife Range. A joint National Park Service/U.S. Fish and Wildlife Service proposal, this area contains block-faulted mountains separated by wide valleys, along with playas, lava fields, and sands. Plants and animals which are representative of the Sonoran Desert are found in this area and nowhere else in the United States.

Florida

St. Johns County

Castillo de San Marcos National Monument, St. Augustine. The oldest masonry fort in the continental United States, the Castillo guarded Spanish Saint Augustine, which was the first permanent settlement by Europeans in that area. It is a significant symbol of the Hispanic heritage of the United States.

Georgia

Carlton and Ware Counties (extends into Baker County, Florida)

Okefenokee National Wildlife Refuge. This area contains what is considered to be the largest and most primitive swamp in the United States dedicated to the

preservation of native flora and fauna. It encompasses a vast peat bog, interspersed with upland prairies, marshes, and open water. This diversity of habitat is home for a wide range of uncommon, threatened, or endangered species, including black bear, otter, and American alligator.

Kentucky

Barren, Edmonson, and Hart Counties

Mammoth Cave National Park. This series of underground passages, with beautiful limestone, gypsum and cave onyx formations, deep pits, high domes, and an underground river, is one of the outstanding examples of karst terrain in the world. It has 215 miles of surveyed interconnected passages, making it the most extensive network of cave passages known on earth. It contains a rich collection of plant and animal species and has evidence of use by early subsistence societies.

New Mexico

San Juan County

Chaco Canyon National Monument. This canyon, which includes numerous smaller ruins, contains thirteen major Indian ruins that represent a high point of Pueblo pre-Columbian culture.

New York

Dutchess County

Home of Franklin D. Roosevelt National Historic Site and Eleanor Roosevelt National Historic Site, Hyde Park. This proposal contains the birthplace and lifelong home of Franklin D. Roosevelt, distinguished for his leadership of the United States in World War II and his role in the founding of the United Nations. Mrs. Roosevelt, who chaired the Human Rights Commission of the United Nations, was instrumental in drafting the Universal Declaration of Human Rights.

New York County (extends into Hudson County, New Jersey)

Statue of Liberty National Monument. This colossal statue was a gift from the French, commemorating the friendship of the two Nations in the American Revolution. The area also include Ellis Island, through which millions of immigrants, mostly European, entered the United States.

North Carolina

Dare County

Wright Brothers National Memorial, Kitty Hawk. The first sustained flight in a heavier-than-air machine was completed here by Wilbur and Orville Wright on December 17, 1903.

Tennessee

Haywood and Swain Counties (extends into Blount, Cocke, and Sevier Counties)

Great Smoky Mountains National Park. This area, which includes one of the oldest uplands on earth, has a diversity of lush vegetation associated with its varied topography, including spruce-fir, hemlock, deciduous, and mixed forests. Many fast flowing, clear mountain streams crisscross the area.

Pennsylvania

Adams County

Gettysburg National Military Park. One of the most significant battles of the American Civil War, Gettysburg is symbolic of that conflict, not only because of the battle, but also because of Abraham Lincoln's Gettysburg Address, which was delivered at the dedication of the national military cemetery here.

Virginia

James City and York Counties

Colonial National Historical Park, Jamestown-Yorktown vicinity. This part encompasses most of Jamestown Island, site of the first permanent English settlement in the United States (1607), and Yorktown, scene of the culminating battle of the American Revolution (1781).

Washington

Clallam, Grays Harbor, Jefferson and Mason Counties

Olympic National Park. This area's diverse topography, ranging from alpine ridges and ice fields to offshore islets and sand spits, contains the finest remnant of Pacific Northwest temperate rain forest. The rare Roosevelt elk is found here, along with coyote, marten, mink, fisher, and marmots.

David F. Hales,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

May 28, 1980.

[FR Doc. 80-16604 Filed 5-29-80; 8:45 am]

BILLING CODE 4310-03-M

Office of Surface Mining Reclamation and Enforcement

Availability of Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice of Availability of Surface Mining and Reclamation Plan.

SUMMARY: Pursuant of § 211.5(b) of Title 30, CFR, notice is hereby given that the Office of Surface Mining has received a proposed mine plan for a coal mining and reclamation operation on Federal coal lands:

Location of Lands

Applicant: Great National Corporation (Nevada).
Mine Property Name: McCurtain No. 2—Federal.
State: Oklahoma.
County: Haskell.
OSM Reference No: 36-0008.
General Description of Affected Lands: Approximately 140 acres under coal lease NM 24005, located in Sections 14 and 15, T8N, R22E.

This mine is located approximately one (1) mile north of McCurtain, Oklahoma, and lies between two nonfederal tracts previously mined by the Great National Corporation under permits issued by the Oklahoma Department of Mines. The Great National Corporation is presently surface mining coal approximately one (1) mile east of the Federal lease under a permit issued by the Oklahoma Department of Mines. The company proposes to mine on 140 acres of a Federal coal lease that contain approximately 32 acres of of strippable coal.The company expects to produce coal for three years or until the strippable reserves are exhausted. Mining will be open pit stripping and removal of overburden with a dragline after blasting. All coal will be shipped by rail. The reclamation plan is designed to provide producitivity equal to or better than existing pastureland and rangeland. Other surface mining operations are conducted in the McCurtain area of eastern Oklahoma.

The mine plan is available for public review at Region IV, Office of Surface Mining, 818 Grand Avenue, Scarritt Building, Fifth Floor, Kansas City, Missouri 64106.

The Office of Surface Mining has not yet determined whether the plan is adequate and may, during the course of its review, request additional information. Any information so obtained will also be available for public review. Prior to a final decision on this mine plan, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to Section 211.5(c)(2) of Title 30, Code of Federal Regulations.

DATES: Comments on the plan should be received by the Region IV Office not later than June 30, 18[980.

ADDRESSES: Comments should be sent to the Regional Director, Office of Surface Mining, Reclamation and Enforcement, Region IV, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:
Assistant Regional Director, Division of Technical Services and Research, Office of Surface Mining, Region IV, 818 Grand Avenue, Room 426, Scarritt Building, Kansas City, Missouri 64106. Telephone: (816) 374–5109 or FTS 758–5109.

David R. Maneval,

Assistant Director, Technical Services & Research.

[FR Doc. 80–16470 Filed 5–29–80; 8: 45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before June 19, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevent transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicated that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices on or before June 30, 1980, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Motor Carrier Board, Members Holyfield, Hedetniemi, and Healy.

Agatha L. Mergenovich,

Secretary.

Federal Register Summary for Certificate or Permit

MC–FC–78388. By decision of January 29, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132. The Motor Carrier Board approved the transfer to Spark, Inc., of Philadelphia, PA, of Certificate MC 70996 issued 12/5/61 to Stanley H. Salkowitz, of Philadelphia, PA, authorizing the transportation of household goods and property usual in a store when part of the stock, equipment, or supplies of such store, between Philadelphia, PA, on the one hand, and, on the other, points in NJ. Applicant's representative is: Richard Rueda, 133 N. 4th Street, Philadelphia, PA 19106.

MC–FC–78444. By decision of February 4, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132. The Motor Carrier Board approved the transfer to Venera A. Wright d.b.a. Riteway Trucking Company of Dewitt, New York of Certificate MC 4056 issued November 8, 1940 to Glen Lindsley d.b.a. Lindsley Motor Express authorizing the transportation of general commodities, except those of unusual value, and except high explosives, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over a regular route, between Syracuse, N.Y., and Marcellus, N.Y.; from Syracuse over New York Highway 5 to junction New York Highway 174, thence over New York Highway 174 to Marcellus, and return over the same route. Service is authorized to and from the intermediate and off-route points of Camillus, Marcellus Falls, Split Rock, Marietta, and Amber, N.Y. Applicant's representative is: Thomas V. Dadey, 824 State Tower Building, Syracuse, New York 13202. TA application has not been filed.

MC–FC–78531. By decision of April 23, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Command Bus Company, Inc., of Brooklyn, NY, of certificate MC 142530 (Sub-1) issued April 21, 1978, to Pioneer Bus Corp., of Staten Island, NY, authorizing the transportation of passengers and their baggage, in the same vehicle with passengers, in special operations, beginning and ending at those points in the Borough of Brooklyn, NY, on and south of Atlantic Avenue and extending to the site of the New Jersey Sports and Exposition Authority, at or near East Rutherford, NJ.

Applicant's representative is: Sheldon Rudoff, Attorney, 235 East 42nd Street, New York, NY, 10017. Application for TA has been filed. Transferee holds no authority; however its affiliate holds authority under docket No. MC–1111.

MC–FC–78541. (Republication). By decision of March 21, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Henry's Transportation Company, Inc. of Pocatello, ID, of Certificate MC 115904 (Sub-35) issued October 31, 1975 to Grover Trucking Co., of Idaho Falls, ID, authorizing the transportation of *Crushed scrap automobiles and parts,* from points in Colorado, to points in California, Nevada, Oregon, Utah, and Washington, from points in Idaho, to points in California, Nevada, and Utah, from points in Kansas (except Parsons), to points in California, from points in Kansas (except Kansas City), to points in Oregon and Washington, from points in Kansas (except Kansas City and Parsons), to points in Utah, from points in Montana, to points in California, Nevada, and Utah, from points in Nebraska, to points in California, Nevada, Oregon, Utah, and Washington, from points in Nevada, to points in California, Oregon, Utah, and Washington, from points in New Mexico, to points in California, Nevada, Oregon, Utah, and Washington, from points in Oregon, to points in California, and Nevada, from points in Utah, to points in California and Nevada, from points in Washington (except Vancouver), to points in Nevada, from points in Wyoming, to points in California, Nevada, Oregon, Utah, and Washington. Applicant's representative is: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transferee holds no authority from the Commission. An application seeking TA lease has not been filed.

MC–FC–78570. By decision of May 13, 1980 issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR 1133. The Motor Carrier Board approved the transfer to Sero Ski Ventures, inc., of Glen Allen, VA, of License MC 130473 issued March 26, 1979 to MS Ltd., of Richmond, VA, authorizing operations as a broker at Henrico County, VA, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, in round-trip tours, in special and charter operations, between points

in the United States (including AK and HI), restricted to the transportation of tour groups, beginning and ending at points in Richmond, VA, Chesterfield County, Henrico County and Hanover County, VA. Applicant's representative is: Hamill D. Jones, Jr., 815 Mutual Bldg., Richmond, VA, 23219. Transferee holds no authority from this Commission.

[FR Doc. 80-16407 Filed 5-29-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Proposed Consent Decree in Action Under the Clean Water Act in Which the United States Seeks to Enforce Compliance by the United States Steel Corporation With the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, 38 FR 19029, notice is hereby given that on May 14, 1980, a proposed consent decree in *United States of America* v. *United States Steel Corporation* was lodged with the United States District Court for the Northern District of Ohio (Eastern Division). The proposed consent decree requires United States Steel Corporation to install a blast furnace recycle system at its Lorain, Ohio facility and upgrade treatment at its coke plant and pipe mill lagoon to meet the effluent limitations prescribed by its NPDES permit in accordance with the compliance schedule contained in the decree. The decree provides that USSC will spend $4 million over four years on a dust suppression program to offset the payment of civil penalties. Such expenditures are intended by the parties to be net expenditures after calculation of any tax benefit. The decree also provides for stipulated penalties of $7,500 per day for failure to comply with the terms of the consent decree.

The proposed consent decree may be examined at the office of the United States Attorney, U.S. Courthouse, Room 400, Cleveland, Ohio 44114; at the Region V office of the Environmental Protection Agency, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty days from the date of this notice. Comments should be directed to the Deputy Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530 and should refer to *United States of America* v. *United States Steel Corporation*, D. J. Ref. 90-5-1-1-987. In requesting a copy, please enclose a check in the amoumt of $1.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 8-16443 Filed 5-29-80; 8:45 am]

BILLING CODE 4410-01-M

[Attorney General Order No. 895-80]

Application of the Times Printing Co. and the Chattanooga News-Free Press Co. for Approval of a Joint Newspaper Operating Arrangement

May 23, 1980.

On May 19, 1980, pursuant to 28 CFR § 48.7, this Office received the Report of the Assistant Attorney General in Charge of the Antitrust Division in the above-styled matter. That Report noted that the applicants had implemented a joint operating arrangement on May 12, and concluded that "the Attorney General has no authority to grant an exemption for operating arrangements that are already in effect."

A. Assuming, without deciding, that the Attorney General does have authority to grant an exemption for a proposed arrangement similar but not identical to an arrangement already in effect, and that this application presents such a situation, the Antitrust Division is directed to submit a Supplemental Report. That Report should set forth in detail the facts and the Division's conclusions on the following two questions raised by the application for an exemption:

1. Is more than one of the newspaper publications involved in the arrangement a publication other than a failing newspaper (15 U.S.C. § 1803(b))?

2. Would approval of such arrangement effectuate the policy and purpose of the Newspaper Preservation Act (*id.*)?

These questions should be answered without regard to the effect of the arrangement implemented on May 12.

B. Pursuant to 28 CFR § 48.7(d), any person may file a reply to the original Report of the Assistant Attorney General in Charge of the Antitrust Division within 30 days after that Report was filed. In addition, any person may, within 30 days after the filing of the Supplemental Report required by this Order, file a reply to that Supplemental Report for the consideration of the Attorney General.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-16521 Filed 5-29-80; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Notice of Solicitation

The National Institute of Justice announces a competitive research grant solicitation to support an experimental study of probation and alternatives to probation in the State of Maryland. The major objective of this research is to acquire greater understanding about the efficiency and effectiveness of the probation sanction compared to other alternatives for selected offense and offender sub-groups. The solicitation focuses upon the implementation of a controlled experiment with random assignment to experimental and control groups in three Maryland jurisdictions.

The solicitation requests submission of draft proposals rather than full, formal proposals. Full proposals will be requested from those applicants receiving favorable review by a peer review panel. In order to be considered, a draft proposal must be postmarked to the National Institute no later than July 25, 1980. One grant is expected to be awarded under this announcement. A maximum of $200,000 will be awarded for a project with an expected duration of 24 months.

Additional information and copies of the solicitation may be obtained by contracting: Lawrence A. Greenfeld, Corrections Division, Office of Research Programs, National Institute of Justice, 633 Indiana Avenue N.W., Washington, D.C. 20531 (301) 492-9118.

Harry M. Bratt,

Acting Director, National Institute of Justice.

[FR Doc. 80-16456 Filed 5-29-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Reallocation of Funds; CETA

AGENCY: Employment and Training Administration, Labor.

ACTION: Thirty-Day Notice of Intent to Reallocate Funds Under Title II–D of the Comprehensive Employment and Training Act (CETA).

SUMMARY: Pursuant to 20 CFR 676.47, the Department of Labor announces its intent to reallocate funds in the following amounts from the CETA prime sponsors indicated below. The purpose of this notice is to provide 30 days notice to all interested parties of the Department's intent to reallocate these funds.

COMMENTS DUE: June 30, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Administrator, Office of Comprehensive Employment Development, 601 D Street, N.W., Room 5010, Washington, D.C. 20213, Telephone: 202–376–6254.

SUPPLEMENTARY INFORMATION: A review of the following prime sponsors' actual Title II–D operations, compared to their Fiscal Year 1980 planned operations as of April 30, 1980, indicates that these prime sponsors are substantially below plan and are not effectively utilizing the funds available to them. Therefore, the Department is notifying these prime sponsors that it intends to rellocate excess funds which have accumulated due to the underperformance.

The estimated amount to be reallocated from each prime sponsor is indicated below. The prime sponsors are given 30 days to reply to the notice of intent to reallocate and to correct identified deficiencies. The Governor of the appropriate State and the general public are also given 30 days in which to comment on the proposed allocations.

Reallocations Based on April Data

	Title II–D
REGION I	
City of New Haven, Connecticut	$29,000
City of Worcester, Massachusetts	21,140
Balance of State, Rhode Island	65,450
REGION II	
Onondaga County, New York	45,686
Hempstead County, New York	64,841
Westchester County, New York	84,448
Camden County, New Jersey	54,925
Essex County, New Jersey	14,535
REGION III	
Balance of State, Pennsylvania	40,785
Southern Allegheny Consortium	260,040
Westmoreland County, Pennsylvania	38,191
Bucks County, Pennsylvania	738,576
Balance of State, Delaware	95,880
District of Columbia	999,792
Prince Georges County, Maryland	97,370
REGION IV	
Hillsborough County, Florida	79,910
Balance of State, Florida	240,100
Broward County, Florida	577,125

Reallocations Based on April Data—Continued

	Title II–D
Heartland Consortium, Florida	69,083
Sarasota County, Florida	19,260
Marion County, Florida	38,286
Seminole County, Florida	37,666
DeKalb County, Georgia	24,202
Gwinnett County, Georgia	31,356
Louisville/Jefferson Consortium, Georgia	89,352
City of Charlotte, North Carolina	45,920
Robeson County, North Carolina	71,187
Balance of State, Tennessee	421,383
City of Chattanooga, Tennessee	24,553
REGION V	
St. Clair County, Michigan	100,000
Region III Consortium, Minnesota	95,000
City of Duluth, Minnesota	37,000
Hennepin County, Minnesota	108,000
Columbus/Franklin Consortium, Ohio	318,000
Central Ohio Rural Consortium	108,000
REGION VI	
City of New Orleans, Louisiana	300,000
Oklahoma City Consortium	250,000
Tulsa Consortium, Oklahoma	150,000
Texas Panhandle Alliance	121,037
Capitol Area Manpower Consortium, Texas	202,803
Cameron County, Texas	421,237
Coastal Bend Consortium, Texas	166,258
City of Dallas, Texas	1,144,059
Dallas County Consortium, Texas	34,937
West Central Texas Consortium	42,513
City and County of El Paso, Texas	609,706
Tarrant County, Texas	92,289
North Texas State Regional Consortium	58,308
Gulf Coast Consortium, Texas	341,184
Permian Basin Consortium, Texas	217,802
REGION VII	
Central Iowa Regional Area of Governments	90,700
Linn County, Iowa	48,400
Woodbury County, Iowa	102,800
Iowa Balance of State	252,900
Nebraska Balance of State	101,800
Kansas City/Wyandotte Consortium, Kansas	101,100
REGION VIII	
None.	
REGION IX	
Stanislaus County, California	299,490
Shasta County, California	52,280
San Luis Obispo, California	53,000
Ventura County, California	1,300,000
Inland Manpower Consortium, California	1,076,520
Merced County, California	18,000
City of San Diego, California	1,305,660
Arizona Balance of State	800,000
Pima County, Arizona	11,872
Washoe County, Nevada	111,275
Hawaii Balance of State	336,601
Commonwealth of Northern Marianas	33,672
REGION X	
Balance of State, Oregon	706,308
Thurston County, Washington	199,001
Yakima County, Washington	112,546

Signed at Washington, D.C., this 23rd day of May 1980.

Charles B. Knapp,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 80–16427 Filed 5–29–80; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

[TA-W-6914]

Buckbee-Mears Co., In-Line Products Division; Negative Determination Regarding Application for Reconsideration

By an application dated April 30, 1980, the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing TV parts (Sony masks) at Buckbee-Mears Company, In-Line Products Division, St. Paul, Minnesota. The determination was published in the **Federal Register** on April 18, 1980 (45 FR 26494).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioners claim that the TV parts (Sony masks) which they produced are different from the aperture masks under which they first petitioned, TA–W–2404. The petitioners further claim that the production of these parts was transferred to West Germany and that they now enter the U.S. in assembled TV sets.

The Department's review indicated that the workers of the In-Line Products Division of Buckbee-Mears, St. Paul, Minnesota, were denied eligibility because they did not meet the "contributed importantly" test of Section 222 of the Trade Act of 1974. The review also showed that the workers producing Sony masks were the subject group under investigation. Evidence developed during the course of the investigation revealed that since October, 1978, all the production and sales of the Sony masks at the St. Paul facility had been exclusively for the export market.

The Department does not see any validity in the petitioners' claim that the transfer of the production of Sony masks to West Germany is a basis for certification since all the production and sales of these masks were exclusively for the export market. The Sony masks are now being produced in a company plant in Mullheim, West Germany, where they are shipped to Japan for assembly into Sony color TV sets.

With respect to the petitioners' claim that component parts (Sony masks) are like or directly competitive with the completed article (color TV sets), it should be noted that the Department has determined earlier that component parts are not like or directly competitive with the finished article. This position is supported by the courts in at least one decision, *United Shoe Workers of America* v. *Bedell*, 506 F. 2d 174 (1974). In this case, the court ruled on a petition seeking a generous interpretation of the

term "like or directly competitive." The court ruled that imported finished women's shoes were not like or directly competitive with domestically produced shoe counters, a component of footwear.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 22nd day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-16430 Filed 5-29-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5137-5140B]

Vecellio and Grogan, Inc., Mining Division; Investigation Regarding Termination of Certification of Eligibility to Apply for Worker Adjustment Assistance

Following a Department of Labor investigation under Section 222 of the Trade Act of 1974 ("the Act") and in accordance with Section 223 of the Act, on May 31, 1979, the Department of Labor issued certifications of eligibility to apply for adjustment assistance applicable to workers and former workers of Vecellio and Grogan's Whitby Strip Mine, Raleigh County, West Virginia, TA-W-5137; Whitby Auger Mine, Raleigh County, West Virginia, TA-W-5138; Sullivan #1 Mine, Raleigh County, West Virginia, TA-W-5139; Sullivan #2 Mine, Raleigh County, West Virginia, TA-W-5140; Mining Division Office, Beckley, West Virginia, TA-W-5140A; and the Mining Division Field Office, Stoco, West Virginia, TA-W-5140B; engaged in employment related to the production of metallurgical coal. The Notice of Certification was published in the Federal Register on June 8, 1979, (44 FR 33182).

Pursuant to Section 223(d) of the Act and 29 CFR 90.17(a), the Director of the Office of Trade Adjustment Assistance has instituted an investigation to determine whether the total or partial separations of the certified workers of Vecellio and Grogan, Inc., Mining Division, Beckley, West Virginia, continue to be attributable to the conditions specified in Section 222 of the Act and 29 CFR 90.16(b).

Pursuant to 29 CFR 90.17(b), the group of workers or any other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated, provided, that such request or submission is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than June 9, 1980.

The record of the certifications (TA-W-5137-5140B), containing non-confidential information is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd and Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 22nd day of May 1980.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-16431 Filed 5-29-80; 8:45 am]

BILLING CODE 4510-28-M

Pension and Welfare Benefit Programs

[Application No. D-1641]

Proposed Exemption for Certain Transactions Involving the Industrial Wire Products Co., Inc. Profit Sharing Plan and Trust; Westbury, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale by the Industrial Wire Products Co., Inc. Profit Sharing Plan and Trust (the Trust) of a mortgage to Mr. John F. Helenck and Mr. Emil S. Helenck, officers and shareholders of Industrial Wire Products Co., Inc. and trustees of the Trust. The proposed exemption, if granted, would affect the participants and beneficiaries of the Trust.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 30, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1641. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Trust, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Trust was terminated by appropriate corporate action on October 31, 1979. An application for a determination upon termination was filed with the Internal Revenue Service (the Service). After receipt of a determination letter from the Service, Trust assets will be distributed to the participants.

2. The Trust owns a mortgage which it received as part of the proceeds from the sale of real property to an unrelated third party in November 1978. The mortgage at inception had a face value of $45,000. The mortgage is being amortized monthly over a period of 12 years with interest at 9 percent.

3. The trustees, who are the sole participants in the Trust, wish to rollover their distributions from the Trust into Individual Retirement

Accounts (IRA). The trustees represent that they have not been able to find an institution which will accept the mortgage in an IRA rollover.

4. The trustees have obtained an independent appraisal of the fair market value of the mortgage. The appraisal was performed by Mr. Stanley Greenstein of The Seldin Organization, Inc. located in Valley Stream, New York. The appraisal states that as of April 10, 1980, the value of the mortgage is 20 percent less than the current outstanding balance. The trustees have offered to purchase the mortgage for cash at the fair market value as of the date of sale.

5. The trustees represent that there is no market for the sale of the mortgage to an independent third party and that the proposed transaction is in the best interests of the Trust and its participants and beneficiaries.

6. In summary, the applicants represent that the statutory criteria contained in section 408(a) of the Act will be satisfied by the propsoed sale because; (1) it is a one time transaction for cash, the terms of which can be readily verified; (2) the Trust would dispose of an asset which the trustees find undesirable for distribution to the Trust's participants; and (3) the sale would facilitate the liquidation of the Trust and the distribution of benefits to the participants.

Notice to Interested Persons

Since the only persons affected by the transaction are the sole participants and trustees of the Trust, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions probhibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a mortgage for cash by the Trust to Mr. John F. Helenck and Mr. Emil S. Helenck, the trustees and sole participants of the Trust, provided the price paid is the fair market value as of the date of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 23d day of May 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-16426 Filed 5-29-80; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Delegations of Authority to the Secretary

AGENCY: Merit Systems Protection Board.

ACTION: Delegations of Authority to the Secretary, Merit Systems Protection Board.

Pursuant to the provisions of Pub. L. 95–454 (5 U.S.C. 1205(f)), the Merit Systems Protection Board hereby delegates to the Secretary of the Board, the following functions and duties to be performed by him/her or under his/her direction.

(a) The Secretary shall be the custodian of all the records of the Board, maintaining and ultimately disposing of them as directed, and shall be responsible for making them available to Board members and employees and to the public as appropriate. This function shall include the maintenance of a current docket sheet on all cases before the Board.

(b) The Secretary, with the concurrence of the head of the operating office primarily responsible for the processing of the case, shall fix the time and place for hearings and oral arguments before the Board, Board members and its administrative law judge(s). When necessary, the Secretary, with the concurrence of the head of the operating office primarily responsible for the processing of the case, shall postpone, adjourn, or reschedule hearings before the Board, Board members, or its administrative law judge(s).

(c) The Secretary, with the concurrence of the head of the operating office primarily responsible for the processing of any case before the Board, shall act upon requests for extensions of the time within which to file papers and shall set the time for filing answers or other documents.

(d) The Secretary shall issue all orders and opinions of the Board within 24

hours of authorization by the Board or Board member(s) and shall ensure that all such orders and opinions are properly served. As directed by the Board, the Secretary shall sign all Board orders and opinions and letters.

(e) The Secretary shall prepare and certify records and indices of records for filing in the courts in accordance with court rules.

(f) The Secretary shall attend all Board hearings for the purpose of administering oaths, receiving documentary evidence, and supervising the recording of the transcript.

(g) In cases before the Board, the Secretary shall be responsible for accepting documents which are submitted in the proper form for filing and for rejecting documents which are not submitted in the proper form. The Secretary shall reject documents which are not dated and are not signed by counsel, if any, for the submitting party or by the party if appearing *pro se*. The Secretary shall reject all documents which are not accompanied by a proper certificate of service when service is required to be made by parties under the Board's regulations or any Board order. The Secretary shall reject documents which the Secretary, in consultation with the Office of General Counsel, deems to be unacceptable for any other reason. All documents filed, or required to be filed in any proceeding before the Board, shall be filed with the Office of the Secretary between 9:00 a.m. and 5:30 p.m., Monday through Friday (except Federal holidays). Documents hand delivered for filing must be submitted by 5:30 p.m. to be accepted for filing on that day.

(h) The Secretary shall respond to all Freedom of Information Act requests and make the initial decision to grant or deny release of information requested.

(i) The Secretary shall execute subpoenas when issuance is authorized by the Board.

(j) Notwithstanding any of the foregoing, the Secretary shall submit any matter to the Board which he/she believes appropriate.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert E. Taylor, Secretary, Merit Systems Protection Board, 1717 H Street, N.W., Room 350, Washington, D.C. 20419 (202) 632–4525.

Ruth T. Prokop,

Chairwoman.

[FR Doc. 80–16410 Filed 5–29–80; 8:45 am]

BILLING CODE 6325–20–M

MINIMUM WAGE STUDY COMMISSION

Meeting

May 23, 1980.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name: Minimum Wage Study Commission.
Date: June 10, 1980.
Time: 10:30 a.m.
Place: 1430 K Street, N.W., Suite 1102, Washington, DC 20005.

Original notice of this meeting date appeared in the **Federal Register** May 2, 1980.

Proposed Agenda:

1. Progress Report on Overtime Study—Dr. Ronald Ehrenberg.
2. Progress Report on Conglomerate Study—Arthur Young & Co.
3. Status of Internal and External Research.
4. Executive Session—Internal Personnel Matters.

Next meeting of the Commission will be Tuesday, July 8, 1980.

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, Executive Director, 1430 K St., NW, Suite 500, Washington, DC 20005, telephone (202) 376–2450.

Louis E. McConnell,

Executive Director.

[FR Doc. 80–16428 Filed 5–29–80; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Expansion Arts Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committe Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Panel to the National Council on the Arts will be held June 17, 1980 from 9:00 a.m.–5:30 p.m.; June 18, 1980 from (9:00 a.m.–5:30 p.m.; and June 19, 1980 from 9:00 a.m.–5:30 p.m., in Room 1422, Columbia Plaza Office Complex, 2401 E St. NW., Washington, D.C.

A portion of this meeting will be open to the public on June 17, 1980 from 9:00 a.m.–11:00 a.m. for opening remarks and panel orientation.

The remaining sessions of this meeting on June 17, 1980 from 11:00 a.m.–5:30 p.m.; June 18, 1980 from 9:00 a.m.–5:30 p.m.; and June 19, 1980 from 9:00 a.m.–5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: May 21, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80–16447 Filed 5–29–80; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Council Steering Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting.

NAME: Steering Committee of the NSF Advisory Council.

PLACE: Room 523, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

DATE AND TIME: June 17, 1980, 9 a.m. to 5 p.m.

TYPE OF MEETING: Open.

CONTACT PERSON: Ms. Jeanne Hudson, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, N.W., Washington, D.C. 20550. Telephone (202) 357–9433.

PURPOSE OF STEERING COMMITTEE: The purpose of the Steering Committee, composed of members of the NSF Advisory Council, is to assist the Chairperson and Foundation staff in planning Council activity and related matters not requiring the formation of a separate task group.

SUMMARY MINUTES: May be obtained from the contact person at above stated address.

AGENDA: To review with cognizant NSF staff the issues being studied by the four task groups and other issues of general concern.

Dated: May 27, 1980

M. Rebecca Winkler

Committee Management Coordinator.

[FR Doc. 80-16388 Filed 5-29-80; 8:45 am]

BILLING CODE 7555-01-M

Ad Hoc Subcommittee for Review of Warm Core Rings; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: *Ad Hoc* Subcommittee for the Review of the Warm Core Rings (WCR) Project of the Advisory Committee for Ocean Sciences.

DATE AND TIME: 19-20 June 1980, 8:30 a.m. to 5:00 p.m.

PLACE: National Science Foundation, 1800 G Street, NW, Room 643, Washington, DC 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Rodger W. Baier, International Decade of Ocean Exploration, Science, Room 605, National Science Foundation, Washington, DC 20550; telephone 202/357-9749.

PURPOSE OF SUBCOMMITTEE: To provide the IDOE Ad Hoc Subcommittee members with additional expertise in the review and evaluation of proposals relating to oceanographic research related to the Warm Core Rings Project.

AGENDA: Detailed review and evaluation of proposals for support of the Warm Core Rings Project.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

May 27, 1980.

[FR Doc. 80-16387 Filed 5-29-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering and Applied Science; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering and Applied Science—Task Group on Unique Problems in Engineering Research and Education.

Date: June 16, 1980.

Place: 1800 G Street, N.W., Room 421, Washington, D.C 20550.

Type of meeting: Open.

Contact person: Ms. Mary F. Chezmar, Executive Secretary, Advisory Committee for Engineering and Applied Science, Room 537, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357-9571.

Summary minutes: Ms. Mary Chezmar, Special Assistant, Directorate for Engineering and Applied Science, Room 537, National Science Foundation, Washington, D.C. 20550.

Purpose of Advisory Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering and Applied Science activities and programs.

Agenda:

June 16—9:00 a.m. to 4:30 p.m.

Discussion of the NSF and Department of Education response to President Carter's request for a review, with recommendations, on whether U.S. science and engineering education is adequate to meet the Nation's long-term needs.

Discussion of National Academy of Engineering (NAE), Task Force on Engineering Education, study on issues in engineering education.

M. Rebecca Winkler,

Committee Management Coordinator.

May 27, 1980.

[FR Doc. 80-16386 Filed 5-29-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on the General Electric Test Reactor; Meeting

The ACRS Subcommittee on the General Electric Test Reactor (GETR) will hold a meeting on June 16-17, 1980 at the Sunol Valley Golf Club, 6900 Mission Road, (Highway 680, Andrade Turnoff), Sunol, CA. Notice of this meeting was published May 15.

In accordance with the procedures outlined in the **Federal Register** on October, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Monday and Tuesday, June 16-17, 1980

8:30 a.m. until the conclusion of business each day.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the General Electric Company, their consultants and other interested persons as it continues its review of the geologic, seismologic and structural engineering aspects of the GETR plant site. Other matters related to the NRC Order to Show Cause may also be discussed.

It may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Public Law 92-463), that, should such sessions be required, it is necessary to close portions of this meeting to protect proprietary information. See 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio G. Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 23, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-16287 Filed 5-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-416A and 417A]

Mississippi Power and Light Co., et al.; Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Mississippi Power and Light, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed information concerning proposed additional ownership of the Grand Gulf Nuclear Station, Units 1 and 2. The current holders of the construction permits are Mississippi Power and Light Company and Middle South Energy, Inc. The application proposes to add South Mississippi Electric Power Association as co-owner; it contains information requested by the Attorney General for the purpose of performing an antitrust review of the application as set forth in 10 CFR 50, Appendix L.

Construction of the Grand Gulf Nuclear Station, Units 1 and 2, two boiling water reactors, was authorized on September 4, 1974. This construction is currently underway at the applicant's site in Claiborne County, Mississippi.

The original application was dated November 17, 1972; the related Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matters was initially published in the **Federal Register** on December 6, 1972 (37 FR 25964). The Notice of Receipt of Application for Facility Operating Licenses; Notice of Availability of Applicants' Environmental Report; the Notice of Consideration of Issuance of Facility Operating Licenses and Notice of Opportunity for Hearing was published in the **Federal Register** on July 28, 1978 (43 FR 32903).

A copy of the above documents are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Claiborne County Chancery Clerk's Office, Claiborne County Courthouse, Port Gibson, Mississippi.

Any person who wishes to have his views on the antitrust matters with respect to South Mississippi Electric Power Association presented to the Attorney General for consideration or who desires additional information regarding the matters covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Utility Finance Branch, Office of Nuclear Reactor Regulation, on or before July 29, 1980.

Dated at Bethesda, Maryland, this 16th day of May, 1980.

For the Nuclear Regulatory Commission.

A. Schwencer,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-16266 Filed 5-29-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980 (45 FR 1181) *, as amended, to reflect additional signatories to the international agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations.

Paragraph 3 of Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements, signed December 14, 1979 (44 FR 74784), delegates the functions of the President under section 2(b) of the Trade Agreements Act of 1979 ("the Act") and 701(b) of the Tariff Act of 1930, as amended by section 101 of the Act, to the United States Trade Representative (so designated by section 1-105 of Executive Order 12188) who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, I, Reubin O'D. Askew, United States Trade Representative, in conformity with the provisions of section 2 of the Act (93 Stat. 147), section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151), and paragraph 3 of Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (44 FR 74781), do hereby determine, effective except as otherwise noted on the date of signature of this Notice, that:

1. With respect to the Agreement on Interpretation and Application of Article VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), the following countries have accepted the obligations of the agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

—Finland
—Japan
—Pakistan

* A complete list of signatories to the agreements negotiated in the Multilateral Trade Negotiations may be obtained from the Public Affairs Office, United States Trade Representative, 1800 G Street, NW., Washington, D.C. 20506.

In accordance with section 701(b)(1) of the Tariff Act of 1930, as amended effective January 1, 1970 (93 Stat. 151), each of these countries will be considered a "country under the Agreement."

This determination supercedes that made with respect to Finland and Japan in paragraph 1(b) of the Determination published in the **Federal Register** of January 4, 1980 (45 FR 1182), and that made with respect to Pakistan in paragraph 1(b) of the Determination published in the **Federal Register** of March 21, 1980 (45 FR 18547).

2. With respect to the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, the following countries have accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

—Finland
—Hungary
—Japan

3. With respect to the Agreement on Technical Barriers to Trade, the following countries have accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

—Finland
—Hungary
—Japan

4. With respect to the Agreement on Import Licensing Procedures, Japan has accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of this Agreement.

5. With respect to the Agreement on Trade in Civil Aircraft, the following countries have accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

—Japan
—Switzerland, effective April 2, 1980

6. With respect to the International Dairy Arrangement, Finland has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

7. With respect to the Arrangement Regarding Bovine Meat, Finland has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 80-16441 Filed 5-29-80; 8:45 am]

BILLING CODE 3190-01-M

Color Television Receivers: Extension, Reduction or Termination of Import Relief; Solicitation of Public Views

Presidential Proclamation No. 4634 (44 FR 5633 (1979)) imposed import restrictions on color television receivers and subassemblies thereof from Taiwan and Korea. Presidential Proclamation No. 4511 (42 FR 32747 (1977)) had imposed restrictions upon imports of such products from Japan. These restrictions were imposed pursuant to Section 203(a) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2253(a)), in response to a finding by the USITC that the U.S. industry producing like or directly competitive products was suffering serious injury or threat thereof caused by increasing imports of color television receivers and subassemblies thereof.

The import relief proclaimed will expire on June 30, 1980, unless extended by the President pursuant to section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)) after receiving advice from the USITC and taking into account the considerations contained in section 202(c) (19 U.S.C. 2252(c)).

On My 16, 1980, the USITC reported to the President its advice, under section 203 (i)(3) and (i)(5) of the Trade Act, on the probable economic effects of the expiration of import relief on color television receivers. (See USITC Report No. TA–203–6 of May 1980.)

The Office of the United States Trade Representative chairs the Trade Policy Staff Committee which will consider the recommendation the U.S. Trade Representative will make to the President on what action, if any, should be taken to extend, reduce or terminate the import relief. Interested persons are invited to submit briefs to the Trade Policy Staff Committee on the probable effects of the extension, reduction, or termination of the current import restrictions on those items which are covered by TSUS items 923.74 through 923.83 inclusive. Briefs should address those factors listed under section 202(c) (3) through (9) of the Trade Act (19 U.S.C. 2252(c) (3) through (9)).

Briefs should be submitted in twenty (20) copies to Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1800 G Street NW., Room 735, Washington, D.C. 20506. Comments must be received no later than June 2, 1980, to be considered.

For additional information call March Schweitzer (202) 395–7203.

Ann Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80–16394 Filed 5–29–80; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 11186; 812–4604]

AEtna Life Insurance and Annuity Co.; Application for an Order Granting Exemptions and for an Order Approving an Offer of Exchange

May 22, 1980.

In the matter of Variable Annuity Account B of AEtna Life Insurance and Annuity Company, Variable Annuity Account C of AEtna Life Insurance and Annuity Company, Variable Annuity Account E of AEtna Life Insurance and Annuity Company and AEtna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156 (812–4604).

Notice is hereby given that Variable Annuity Accounts B, C, and E of AEtna Life Insurance and Annuity Company (the "Accounts"), each of which is registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and AEtna Life Insurance and Annuity Company (the "Company"), the principal underwriter therefor (sometimes hereinafter referred to as "Applicants"), filed an application on January 25, 1980, and an amendment thereto on April 23, 1980 pursuant to Section 6(c) of the Act for an order of the Commission granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c) (and Rule 22c–1 thereunder), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and pursuant to Section 11 of the Act for an order approving an offer of exchange. All interested persons are referred to the application on file with Commission for a statement of the representations contained therein, which are summarized below.

The Company, a stock life insurance company domiciled in Connecticut, is a wholly-owned subsidiary of AEtna Life and Casualty Company. Variable Annuity Accounts B, C, and E are separate accounts of the Company established pursuant to the insurance laws of Connecticut for purpose of holding reserves attributable to certain of the Company's variable annuity contracts. The assets of the Accounts are invested in the shares of AEtna Variable Fund, Inc., AEtna Income Shares, Inc., AEtna Variable Encore Fund, Inc., (the "Funds"), open-ended management investment companies registered under the Act. The Company is registered as an investment adviser under the Investment Advisers Act of 1940 and, as such, acts as investment adviser to the Funds.

Under variable annuity contracts currently offered by Applicants, sales charges are deducted from contract purchase payments as they are made. By this application Applicants seeks the necessary exemptions which will permit the offering of new variable annuity contracts (the "Contracts") on which sales loads will be imposed only when, and if, contract values are withdrawn. Contract values will vary with the investment performance of the full purchase payments (less periodic deductions from those values) until the selected annuity commencement date, at which time annuity payments will begin as designated by the Contract owner or participant, as appropriate. The Contract owner may, at any time prior to the annuity commencement date, withdraw some or all of the accumulated contract value. At that time, a deduction for sales charges ("Deferred Sales Charge") would be made. Such charge would vary in amount according to the length of time for which purchase payments had been made under the Contract. The Deferred Sales Charge will not be imposed on withdrawals due to the death of a participant nor will it be imposed upon election of an annuity option involving life contingencies.

The Company proposes to make both single premium and periodic payment Deferred Sales Charge Contracts available through each of the Accounts. The Deferred Sales Charge which would be imposed on single premium Contracts would equal the lesser of: (1) 9% of the original purchase payment, or (2) 5% of the amount surrendered if the contract is surrendered in the first five contract years, 4% in the sixth contract year, 3% in the seventh year, 2% in the eighth year, 1% in the ninth year and zero thereafter.

Two types of periodic payments Deferred Sales Charge Contract are proposed. One (the "Small Group Contract") would be available to individual and small group purchasers. The other (the "Large Group Contract") would be available to large group plans involving at least $100,000 of annual purchase payments and mass solicitation of plan participants. Under the proposed Small Group Contracts, Deferred Sales Charges would be imposed on withdrawals from contract values which would equal the lesser of: (1) 9% of all purchase payments made on the Contract, or (2) 5% of the amount surrendered in the first five purchase payment years, 4% in years six and seven, 3% in years eight and nine, and 2% thereafter. Under the proposed Large Group Contract, the Deferred Sales Charges would be the same as the Small Group Contract, except that the Deferred Sales Charge would equal 2%

in years ten through nineteen, and zero thereafter.

Applicants seeks, in addition, an order pursuant to Section 11 of the Act approving an offer of exchange which may be deemed to be made in connection with all contracts offered through the Accounts. Under each such contract, the Company will (in the absence of contrary instructions from the contract owner or participant, as appropriate) transfer any contract values accumulating in AEtna Variable Encore Fund, immediately prior to the commencement of annuity payments, at AEtna Variable Fund, since AEtna Variable Encore Fund is not available as a funding vehicle for the contracts once annuity payments are to begin.

Section 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or "administrative expenses or fees which are not properly chargeable to sales or promotional activities." Section 2(a)(35) appears to contemplate that a "sales load" will be charged at the time purchase payments are made. The Deferred Sales Charge that would be deducted only upon the surrender of a Contract would be retained by the Company to reimburse it solely for the costs associated with "sales" and "promotional activities." Applicants assert that, but for the timing of the imposition of such charges, the Deferred Sales Charges fall within the statutory definition of "sales load." Applicants have requested an exemption from the operation of the provisions of Section 2(a)(35), to the extent necessary, to offer the Contracts.

Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee Or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act. Section 26(a)(2)(C) provides that no payment to the despositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. For purposes of the Act, the Company is the depositor and the principal underwriter with respect to the subject unit investment trusts and acts as its own custodian.

Section 26(a)(2)(C) provides that no payment to the depositor of or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an "expense." Applicants submit that the proposed Deferred Sales Charge is not the kind of expense comtemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to: (1) designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to prevent the depositor of a unit investment trust from imposing a sales load. They assert that the Deferred Sales Charge to be imposed upon the withdrawal of Contract values is designed to recover costs related solely to the sale of the Contracts. Section 27(c)(2) expressly provides for the deduction of sales loads from purchase payments before the proceeds are deposited with a custodian under the requirements of Section 26. Applicants submit that the Deferred Sales Charges are sales loads to which Section 27(c)(2) applies, and that the deferral of the imposition of the sales charge until withdrawal of Contract value, an event which may never occur, should not be construed in any way as in violation of Section 27(c)(2). Applicants have requested an exemption from the provisions of Section 26(a)(2)(C) and Section 27(c)(2), to the extent necessary, to offer the Contracts.

Applicants have consented to the exemptions requested herein from Sections 26(a) and 27(c)(2) being made subject to the following conditions: (1) that the charges to variable annuity contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdicition being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the Accounts shall not deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services; and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums or charges.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that Sections 2(a)(32) and 27(d) contemplate the deduction of sales charges from purchase payments at the time they are made. Applicants assert that under a Contract, the net amount invested would be the gross purchase payments, and therefore, the holder's "proportionate share" would be the gross purchase payment(s), plus or minus any increase or decrease in value, less the Deferred Sales Charge. Applicants maintain the deferral of the sales charge does not restrict in any way the Contract owner from receiving his or her proportionate share or the value of his or her accout on redemption. The Deferred Sales Charge would be deducted upon redemption in determining the proportionate share or account value, as opposed to being deducted from initial purchase payments. Applicants submit that the deferral of sales charges permits the Contract owner's net amount invested to be increased, to the benefit of the Purchaser. Applicants have requested an exemption from the provisions of Sections 2(a)(32) and 27(d), to the extent necessary to permit the imposition of the Deferred Sales Charge.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificates unless it is a redeemable security. Applicants submit that a Deferred Sales

Charge imposed on redemption of the Contracts is not a restriction on redemption under Section 27(c)(1). Applicants assert that this is particularly true where the deferral of sales charges until the Contract is redeemed has the effect of increasing the Contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit sales charges to be imposed only upon withdrawal of Contract values.

Section 22(c) and Rule 22c–1

Rule 22c–1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing redeemable securities from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. When a Contract owner surrenders all or part of the value of the Contract, the price on redemption will be based on the current net asset value. The deferred Sales Charge will merely be deducted at the time of redemption in arriving at the Contract owner's proportionate share or account value. While Applicants do not believe that the imposition of the Deferred Sales Charge is violative of Section 22(c) or Rule 22c–1, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c–1 thereunder, to the extent necessary, to offer the Contracts.

Section 11

Section 11 of the Act requires approval by the Commission of any exchange of a security of a unit investment trust for the security of any other investment company. In Applicants' view, the transfers described herein involve either an exchange of one mutual fund for another at net asset value, specifically permitted by Section 11, or an exchange of one security of a unit investment trust for another security of the same trust not requiring Section 11 approval; nevertheless, in order to remove any doubt in this regard, and because it might be argued that there is a potential change in the economic interest of participants in the Accounts other than through affirmative voluntary action on their part, Applicants request an order under Section 11 approving such transfers from AEtna Variable Encore Fund to AEtna Variable Fund when annuity payments are about to commence.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following June 17, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-16435 Filed 5-29-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 11186; 811-1656]

Berkshire Capital Fund, Inc.; Filing of Application for Order Declaring That Applicant has Ceased to be an Investment Company

May 23, 1980.

In the matter of Berkshire Capital Fund, Inc., 700 South Street, Pittsfield, MA 01201 (811–1656).

Notice is hereby given that Berkshire Capital Fund, Inc. ("Applicant"), a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, has filed an application on January 7, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 22, 1968, and that the registration statement for 1,000,000 of its common shares became effective under the Securities Act of 1933 on December 12, 1968, at which time public offering of those shares commenced.

According to application, on December 4, 1979, pursuant to an Agreement of Merger and Plan of Reorganization ("Plan"), Massachusetts Financial Development Fund, Inc. ("MFD"), an investment company registered under the Act, acquired all portfolio securities and other assets of Applicant in exchange for shares of capital stock of MFD. Applicant states that its board of directors authorized the merger and related events at meetings held on July 23, August 20 and October 22, 1979, and that the Plan was approved by a majority vote of the shareholders of Applicant on December 4, 1979. The application states that the shares of Applicant were converted into shares of MFD at relative net asset values. A total of 297,158.994 shares of MFD, with an aggregated value of $5,143,855.01 was issued to shareholders of Applicant. The application further states that all expenses incurred by Applicant in connection with effectuating the Plan are being reimbursed to Applicant by Berkshire Management & Research Corporation, Inc., its investment adviser. The cost of preparation of the proxy materials was borne by Massachusetts Financial Services Company, MFD's investment adviser, and MFD bore the expenses it incurred in connection with the Plan.

The application further states that, as of the date of the application, Applicant had no assets, debts or other liabilities, was not a party to any litigation or administrative proceeding, and had no securities holdings. The Applicant further represents that it is not now engaged in any business activities other than those necessary for the winding up of its affairs and that a distribution to all shareholders of Applicant has been made in complete liquidation of their interests in Applicant. The application states that Applicant's legal existence has ceased pursuant to the Business

Corporation Law of the Commonwealth of Massachusetts under which Applicant was created.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment compnay has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than June 16, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–16436 Filed 5–29–80; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 11183; 812–4670]

Paul R. Dupee, Jr.; Filing of Application for an Order Granting Exemption

May 23, 1980.

In the matter of Paul R. Dupee, Jr., 151 Central Park West, New York, New York (812–4670).

Notice is hereby given that Paul R. Dupee, Jr. ("Dupee"), has filed an application for an Order pursuant to Section 9(c) of the Investment Company Act of 1940 (the "Act") exempting him from the provisions of Section 9(a) of the Act.

Applicant Dupee is a member of the Board of Directors of the Capitol Life Insurance Company ("Capitol Life") having been elected to such position on February 18, 1977. Capitol Life is a stock life insurance company organized under the laws of the State of Colorado with its home office located at 1600 Sherman Street, Denver, Colorado 80203. Capitol Life is an indirect wholly-owned subsidiary of Gulf & Western Industries, Inc. Among other things, Capitol Life is the depositor of the Capitol Life Separate Account A and Capitol Life Separate Account M (the "Separate Accounts") which Separate Accounts are engaged in the business of issuing Variable Annuity Contracts and as such they are registered investment companies under the Act.

On May 11, 1971, the Commission commenced an action in the United States District Court for the Southern District of New York pursuant to Section 21 (e) and (f) of the Securities Exchange Act of 1934, Section 20(b) of the Securities Act of 1933, Section 209 of the Investment Advisers Act of 1940 and 42(e) of the Act. In the action entitled *Securities and Exchange Commission* v. *Everest Management Corporation, et al.*, C.A. No. 71–4932, Dupee was one of the 44 named defendants. The complaint alleged that the defendants engaged in acts and practices which constituted violations of various sections of the securities laws and the rules and regulations promulgated thereunder.

On November 6, 1973, Dupee executed a Consent to the entry of a Final Judgment of Permanent Injunction by the United States District Court for the Southern District of New York in connection with C.A. 71–4932, without admitting or denying any of the allegations in the complaint, without trial or adjudication of, or finding on, any issue of fact or law or any wrongdoing or liability on the part of Dupee and without the Final Judgment constituting evidence or admission with respect to any such issue. The Final Judgment, as entered on March 19, 1974, prohibits Dupee from, directly or indirectly, using the mails or any means or instrumentalities of interstate commerce, in connection with purchase or sale of securities to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person by (1) causing or attempting to cause the purchase or sale of any security by any investment adviser on behalf of any client of such investment adviser on the basis of factors other than the investment merits of such security; or (2) causing or attempting to cause the purchase or sale of any security by any investment adviser on behalf of any client of such investment adviser without first adequately investigating the investment merits of such security. The Final Judgment also prohibits Dupee from, directly or indirectly, using the mails or any means or instrumentalities of interstate commerce, while acting as an investment adviser, to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client of such investment adviser with respect to the transactions, practices and courses of business described in such Judgment of Permanent Injunction, and transactions or practices of similar purport of object. Neither the Commission's complaint nor the Final Judgment cited violations of the Act by Dupee.

Dupee was not a member of the Board of Directors of Capitol Life during the period or activities alleged in the Commission's complaint, nor was he a Director of Capitol Life as of the date the Final Judgment was entered in C.A. 71–4932.

Section 9(a) of the Act, insofar as here relevant, makes it unlawful for any person or any company with which such person is affiliated, to act in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a) as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Dupee submits that the prohibitions of Section 9(a) of the Act to the extent applicable by virtue of the entry of the Final Judgment and the execution of the Consent in C.A. 71–4932 should not apply to Dupee as they would be unduly

and disproportionately severe as applied to Dupee and his conduct has not been such as to make it against the public interest or protection of investors to grant the exemption for which application has been made. In support of the Application, Dupee represents that:

(a) The prohibitions of Section 9(a) would deprive Capitol Life of the services of Dupee as a director of Capitol Life;

(b) The allegations of the complaint in no way relate to any activities of Capitol Life or the Separate Accounts nor to any of Dupee's activities on behalf of Capitol Life or the Separate Accounts;

(c) Capitol Life has no investment responsibility for the Separate Accounts, and under the particular circumstances in which Capitol Life acts as depositor to the Separate Accounts, the type of activities mentioned in the 1971 complaint could not occur;

(d) Other than in the complaint noted hereinabove, Dupee has never been the subject of an SEC enforcement proceeding, either judicial or administrative;

(e) Depee has never been required to apply for an exemption from the provisions of Section 9(a) of the Act; and

(f) The entry of the Final Judgment did not constitute an adjudication of any liability or wrongdoing by Dupee and was entered into with his consent for purposes of the action only, without admitting or denying the allegations of the complaint.

The Application states that applicant understands that the granting of this Application would not preclude the Commission from commencing a proceeding under Section 9(b) of the Act on the basis of conduct other than the giving rise to this Application, nor would it preclude the Commission, in any such proceeding, from taking such conduct into consideration.

Notice is further given that any interested person may, not later than June 20, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-16437 Filed 5-29-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21588; 70-6450]

Middle South Utilities; Proposal to Issue Notes to Banks Pursuant to a Revolving Credit

May 22, 1980.

In the matter of Middle South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana 70112 (70–6450).

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Middle South proposes to enter into a revolving credit agreement ("Credit Agreement") providing for the issuance and sale by Middle South of up to $230,000,000 of its unsecured promissory notes to a group of commercial banks.

Under the terms of the Credit Agreement, Middle South may effect borrowings and reborrowings until December 31, 1984 by issuing to the participating banks its unsecured promissory notes payable on December 31, 1984. The names of the participating banks and the maximum amounts of their respective original participations (collectively, the "Commitments") in the proposed borrowings by Middle South are as follows:

Name of bank	Maximum principal amount to be borrowed
Manufacturers Hanover Trust Company	$40,000,000
Continental Illinois National Bank and Trust Company of Chicago	40,000,000
The First National Bank of Chicago	40,000,000
Bank of America National Trust and Savings Association	25,000,000
The First National Bank of Boston	17,000,000
Irving Trust Company	15,000,000
Morgan Guaranty Trust Company of New York	13,000,000
The Northern Trust Company	10,000,000
The Fidelity Bank	10,000,000
Crocker National	10,000,000
Chemical Bank	10,000,000
Total	$230,000,000

Each borrowing and each payment by Middle South will be made pro rata among the participating banks according to their respective original Commitments. Subject to the right of Middle South at any time on three business days' notice to terminate the Commitments or from time to time to reduce the Commitments then in effect: (1) the original Commitments will remain in effect until December 31, 1982, at which time they will be ratably reduced to an aggregate principal amount of $172,500,000 (or 75% of the original Commitments); and (2) thereafter, these reduced Commitments will remain in effect until December 31, 1983, at which time they will be further ratably reduced to an aggregate principal amount of $115,000,000 (or 50% of the original Commitments) for the remaining term of the Credit Agreement.

Any such reduction of the Commitments will be accompanied by prepayment of the Notes and accrued interest thereon to the extent that the aggregate principal amount thereof then outstanding exceeds the Commitments of the participating banks as so reduced.

The Notes issued will bear interest from the date thereof on their unpaid principal amount at a rate per annum which (a) to and including December 30, 1980, shall be a percentage equal to the sum of ½ of 1% and the product of 105% multiplied by the Base Rate (as defined below), (b) thereafter, to and including December 30, 1982, shall be a percentage equal to the sum of ¾ of 1% and the product of 105% multiplied by the Base Rate, and (c) thereafter, shall be a percentage equal to the sum of ¾ of 1% and the product of 107% multiplied by the Base Rate. As used herein, the Base Rate means, at any time of determination thereof, the greater of (i) the prime commercial loan rate of Manufacturers Hanover Trust Company (the "MHTC Rate") then in effect or (ii) the sum of ½ of 1% per annum and the latest three-week moving average of

secondary market morning-offering rates for three-month certificates of deposit of major United States money market banks ("C/D Rate").

Interest on the notes will be payable quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, or upon payment of the unpaid principal amount thereof.

Middle South will agree to pay to each participating bank a commitment fee for the period from June 27, 1980 to and including December 31, 1984 (or any earlier date of termination of the Commitments) computed at the rate of ½ of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made. Such commitment fee will be payable to each participating bank quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, and on the date upon which Middle South shall terminate the Commitments. Based upon the MHTC Rate (19.5%) and the C/D Rate (17.25%) in effect as of April 25, 1980, the effective interest cost to Middle South of the proposed borrowings as of that date would be 20.975% per annum. Middle South presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock. The notes will be prepayable at any time on two business days' notice in whole or in part without premium.

The initial borrowing under the Credit Agreement will be used for the payment of short-term notes issued by Middle South to various commercial banks under an existing credit agreement dated as of June 29, 1979, as amended. As of February 29, 1980, $145,900,000 aggregate principal amount of notes were outstanding under the existing credit agreement, and it is estimated that at the time the initial borrowing is made under the Credit Agreement the aggregate principal amount of such notes payable will amount to approximately $150,000,000. The proceeds of the borrowings under the existing agreement were or will have been, utilized by Middle South to purchase, at various times, the common stocks of certain of its subsidiary companies. Subsequent borrowings under the Credit Agreement will be used by Middle South to purchase additional common stock of its subsidiaries.

A statement of the fees, commissions and expenses to be incurred by Middle South in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 16, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-16438 Filed 5-29-80; 8:45 am]

BILLING CODE 8010-01-M

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Open Meeting

June 18, 1980.

The Select Commission on Immigration and Refugee Policy will hold its fifth meeting on:

Date: June 18, 1980.

Time: 9:00 a.m. to 10:00 a.m.

Place: The Great Hall, Department of Justice, Constitution Avenue Entrance (between 9 and 10 Streets), Constitution Avenue, Washington, D.C.

Included on the agenda will be organizational and business matters, and consideration of reform of the Immigration and Nationality Act.

The meeting is open to the public but tickets must be obtained in advance. Call: 395-5615 for reservations.

Written statements may be filed with the Commission before or after the meeting.

The Select Commission on Immigration and Refugee Policy was created by Pub. L. 95-412, signed October 5, 1978. The Commission is charged with a comprehensive review of U.S. immigration laws, policies, and procedures. Membership of the Commission includes four Cabinet members, four members of the House Committee on the Judiciary, four members of the Senate Judiciary Committee, and four members appointed by the President, including the Reverend Theodore M. Hesburgh, President, University of Notre Dame, and Chairman of the Select Commission.

Address inquiries to: Select Commission on Immmigration and Refugee Policy, New Executive Office Building, Suite 2020, 726 Jackson Place, NW., Washington, D.C. 20506, telephone: (202) 395-5615.

Dr. Lawrence H. Fuchs,

Executive Director.

[FR Doc. 80-16525 Filed 5-29-80; 8:45 am]

BILLING CODE 6820-AR-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief; Disabilities Incurred by Conviction

In Doc. No. 80-15289 in the issue of Monday, May 19, 1980, appearing on page 32825, please make the following correction:

On page 32825, at the bottom of the first column, please add the following information:

Benner, Billy V., 3 Belfast Court, Greensboro, North Carolina, convicted on May 13, 1969, in the Supreme Court of Brunswick County, North Carolina.

BILLING CODE 1505-01-M

Customs Service

[T.D. 80-141]

Customhouse Cartman License; Revocation of Customhouse Cartman's License No. 26 Issued by the District Director of Customs, New Orleans, La., to Warren G. Diaz, Sr.

Notice is hereby given that on May 12, 1980 pursuant to the provisions of section 565, Tariff Act of 1930, as amended, and section 112.30 of the Customs Regulations (19 CFR 112.30), it was decided that Customhouse

Cartman's License No. 26 issued in the District of New Orleans on June 2, 1975, to Warren G. Diaz, Sr., be revoked. This revocation is effective as of May 12, 1980.

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 80-16459 Filed 5-29-80; 8:45 am]

BILLING CODE 4810-22-M

Internal Revenue Service

Art Print Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for establishment of the Art Print Panel.

SUMMARY: It is in the public interest to establish the Art Print Panel.

FOR FURTHER INFORMATION CONTACT: Tom Hartnett, T:C:E:V, 1111 Constitution Avenue, N.W., Room 5547, Washington, D.C. 20224, Telephone No. 202-566-4427, (not a toll free number).

Title. The Art Print Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of appraisals and value allocations on art prints, related property and property rights submitted by taxpayers in support of fair market value claimed in Federal income, estate and gift taxes in accordance with sections 1012, 1011, 48, 167, 170, 2031, and 2512 of the Internal Revenue Code of 1954.

Providing this assistance requires Panel records and discussions to include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of Title 26 of the U.S. Code.

Statement of Public Interest. It is in the public interest to establish the Art Print Panel. The Secretary of Treasury, with the concurrence of the Office of Management and Budget, and the General Services Administration, has also approved establishment of the Panel.

The membership of the Panel is to be balanced by the inclusion of publishers, distributors, and retailers of art prints and related commercial exploitation of art images, and by museum print curators.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary of the Treasury for Administration and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122).

Jerome Kurtz,

Commissioner.

[FR Doc. 80-16497 Filed 5-29-80; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on June 26, 1980, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Johnson City Vocational Technical School, Johnson City, Tennessee, should be discontinued, as provided in 38 C.F.R. 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: May 23, 1980.

R. S. Bielak,

Director.

[FR Doc. 8-16445 Filed 5-29-80; 8:45 am]

BILLING CODE 8320-01-M

Health Services Research and Development Merit Review Board; Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of a meeting of the Health Services Research and Development Merit Review Board. This meeting will convene in Room 119 of the Veterans Administration Central Office Building, 810 Vermont Avenue, NW, Washington, DC, on June 2, 1980, beginning at 3:00 p.m. and on June 3, 1980, beginning at 8:30 a.m. The purpose of the meeting is to review health services research and development applications for scientific and technical merit and to make recommendations to the Director, Health Services Research and Development Service (HSR&DS) regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 2nd session in order to cover administrative matters and to discuss the general status of the program. During the closed session (beginning approximately one-half hour from the start of the June 2nd session), the Board will be reviewing research and development applications relating to the delivery and organization of health services. This review involves the reference to and discussion, examination, and oral review of site visits, staff and consultant critique of research protocols, and similar documents that necessitate the consideration of personnel qualifications and performance and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further, decisions recommended by the Board are strictly advisory in nature; other factors are considered in final funding decisions. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with provisions set forth in section 552b, subsections (c)(6) and (c)(9)(B), title 5, United States code and the determination of the Administrator of Veterans Affairs pursuant to section 10d) of Pub. L. 92-463.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Miss Linda Hudock, Staff Assistant for Merit Review (152B), Health Services Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 (phone: 202-389-5365).

The appearance of this notice at least 15 days in advance of the meeting has been hindered due to delays in administrative processing.

Dated: May 27, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80-16517 Filed 5-29-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 106
Friday, May 30, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 9:30 a.m., May 28, 1980.

PLACE: 2033 K Street, NW., Washington, D.C., Fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matter.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1061-80 Filed 5-28-80; 11:04 am]

BILLING CODE 6351-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, June 3, 1980.

PLACE: Commission Conference Room, No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. State and Local Program—Staff Policy Recommendations for EEOC's Program for State and Local Fair Employment Practice Agencies.
2. Proposed Revised Regulations of Freedom of Information Act.
3. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 27, 1980.

[S-1062-80 Filed 5-28-80; 11:21 am]

BILLING CODE 6570-06-M

3

TIME AND DATE: 9:30 a.m., Thursday, May 29, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Motion for voluntary withdrawal of a petition for reconsideration and related pleadings pertaining to a settlement agreement in the Rochester, New York, AM renewal proceeding (Docket Nos. 20791 and 20792).

General—1—Incorporation by reference of Section 67.1 of the Commission's Rules and subsequent Amendments in the Code of Federal Regulations. *Summary:* Incorporation by reference of Section 67.1 of the Commission's Rules, the 1971 Common Carrier Bureau's Separations Manual and all subsequent amendments thereto into the Code of Federal Regulations.

General—2—*Title:* Application for review of an Order issued by the Chief, Field Operations Bureau pursuant to delegated authority denying a request for rule amendment, etc. *Summary:* The Commission will consider whether to grant the request for review filed by Merrill T. See to amend Volume 1, Part O of the Commission's Rules.

Private Radio—1—*Title:* Notice of Proposed Rule Making to clarify the aeronautical enroute station rules and provide two additional frequencies for use by certain aircraft operating agencies. *Summary:* The FCC will consider whether to propose a general clarification of the rules concerning aeronautical enroute stations. It also will consider whether to propose providing two additional frequencies for use by relatively small aircraft operating companies without restriction as to the number of station licensees at a location. Aeronautical enroute stations provide air-ground communications for the operational control (flight management) of aircraft by the operating company.

Private Radio—2—*Title:* Amendment of Part 97, governing the Amateur Radio Service, to allow modification and renewal only of existing club, military recreation and RACES station licenses. *Summary* The Commission will consider whether to adopt the Third Report and Order in Docket No. 21135 which would amend the Amateur Radio rules to permit modification and renewal only of existing club, military recreation and RACES station licenses. This time was prepared by the staff in accordance with prior Commission instructions. (See Item 1, Private Radio Agenda, March 12, 1980)

Private Radio—3—*Title:* Amendment of Section 97.65(c) of the Commission's Rules and Regulations governing the Amateur Radio Service. *Summary:* The Commission will decide whether or not to remove the restriction in Section 97.65(c) which limits the allowable bandwidth of frequency modulated (FM) voice emissions in the 50-54 MHz band.

Private Radio—4—*Title:* Report and Order permitting public coast stations on the Great Lakes to broadcast weather information on Channel 17 (156.850 MHz). *Summary:* The Commission will consider permitting coast stations on the Great Lakes to broadcast weather information to ship stations on Channel 17 (156.850 MHz) by both voice and facsimile, F3 and F4 emission respectively. This Report and Order, if adopted will alleviate the problems experienced by both ship and coast stations where the lengthy weather broadcasts interfere with the public correspondence service.

Common Carrier—1—*Title:* The feasibility and need for Amendment to Section 21.118 of the Commission's Rules to require that unattended stations in the point-to-Point Microwave Radio Service be equipped with automatic alarm facilities. *Summary:* The Commission will decide whether to terminate the proposed rulemaking in this matter.

Common Carrier—2—*Title:* Application for Review of Common Carrier Bureau's authorization of St. Tammany Cablevision, Inc., to construct and operate a receive-only earth station at Slidell, Louisiana. *Summary:* The Commission will consider whether the application for review, filed by Jackson Cable TV, Inc., presents issues not properly considered by the Bureau Among the questions raised is whether the applicant's failure to disclose a *nolo contendere* plea to criminal antitrust charges, entered by its parent and sister corporations, required a denial of the application.

Common Carrier—3—*Title:* Application for Review of Common Carrier Bureau's authorization of Community Television of Utah, Inc, to construct and operate a receive-only earth station at Price, Utah. *Summary:* The Commission will consider whether the application for review, filed by Utah Satellite Company, presents issues not properly considered by the Bureau. To

be discussed is whether the petitioner's allegation of competitive ruin requires denial of the application.

Common Carrier—4—*Title:* Response to Notice of Apparent Liability issued in complaint of Mark Edwards, dba Edwards Industries, Inc., against Bell Telephone Co. of Nevada, PT&T, and AT&T, TS 7–78. *Summary:* Defendants are seeking to have the Commission not impose the forfeiture specified in a previously issued Notice of Apparent Liability for attempting to interfere with use of complainant's coupler. Defendants argue that they acted upon a reasonable belief that the coupler was not registered and took adequate measures to determine its status.

Common Carrier—5—*Title: ITT World Communications Inc.* v. *RCA Global Communications, Inc.*, File No. TS 5–80. *Summary:* On November 16, 1979, ITT Worldcom filed a complaint alleging that RCA Globcom was in violation of § 203(c) of the Communications Act by charging for service at less than the tariffed rate and requesting that RCA Globcom be ordered to cease and desist. ITT Worldcom also urged that penalties be imposed.

Common Carrier—6—*Title:* Graphnet Inc.'s Petition for Immediate Declaratory Rulings as to the Membership and Lawful Scope of Activities of the International Formula Committee, File No. E–DR–80–1. *Summary:* Graphnet, Inc. has requested that the Commission issue three declaratory rulings: first, that the International Formula Committee's functions are limited to implementing Western Union's formula distribution of outbound international message traffic; second, that discussion of Graphent's business data is beyond the Committee's authority; and third, that Graphnet is entitled to membership or participation in the Committee.

Common Carrier—7—*Title:* Larry L. Schrecongost. *Summary:* The FCC is considering the petition for reconsideration of Commission action filed by Larry L. Schrecongost, a mobile telephone subscriber of the Mid-Penn Telephone Corporation. He originally filed a "Petition for an order to Show Cause" requesting that sanctions be issued against Mid-Penn. The Chief, Common Carrier Bureau denied an "Application for Commission review" of the staff's action. This denial is the subject of the pending petition for reconsideration. The original complaint alleged that Mr. Schrecongost's mobile telephone did not work properly and that Mid-Penn used unlicensed personnel to make service adjustments.

Common Carrier—8—*Title:* Formal complaints against RCA American Communications, Inc. filed by Spanish International Network, Inc. (File No. TS–10–79), Eastern Microwave, Inc. (File No. TS 4–80), Cable News Network (File No. E 80–13) and National Christian Network (File No. E 80–15). *Summary:* The complaints raise questions concerning RCA Americom's practices in assigning transponders on its domestic satellite system to cable program suppliers. The issues include alleged violations of Sections 201–203 and 214 of the Communications Act and alleged inconsistencies with the Commission's open entry and competitive policies.

Common Carrier—9—*Title:* Petitions for rejection, and suspension and investigation, of American Telephone and Telegraph's tariff revisions filed March 3, 1980, which propose a 10.5 percent uniform across-the-board rate increase. *Summary:* The FCC will consider whether to grant petitions requesting either rejection or suspension and investigation of American Telephone and Telegraph's tariff revisions filed March 3, 1980, proposing a 10.5 percent uniform across-the-board rate increase.

Common Carrier—10—*Title:* Applications for Review and Requests for Stay of the Grant of Temporary Authority under Section 214 of the Communications Act for a Communication Channel between Atlanta, Georgia and a Douglasville, Georgia Earth Station, and Uplink at WK42 and Transponder Capacity on SATCOM F–1, (File Nos. W–P–C–3131, W–P–C–3166, W–P–C–3217). *Summary:* Before the Commission are applications to review and requests for stay of this grant filed by Spanish International Network and Eastern Microwave, Inc. Among issues raised are whether this grant of temporary authority prejudiced Commission decision of complaints concerning RCA Americom's transponder allocation practices and whether the Common Carrier Bureau exceeded its delegated authority.

Common Carrier—11—*Title:* Communications Satellite Corporation, Inc.'s revisions to its Tariff F.C.C. No. 1, contained in Transmittal No. 366. *Summary:* Before the Commission are revisions filed by Comsat to its Tariff F.C.C. No. 1, contained in Transmittal No. 366. Petitions to reject or suspend and investigate the revisions have been filed by ITT World Communications Inc., RCA Global Communications, Inc. and Western Union International, Inc. The Commission must determine whether to allow the proposed revisions to go into effect.

Cable Television—1—*Title:* Petitions for Special Relief (CSR–1455, 1456, 1457, 1458) filed January 18, by Warner Cable Corp. *Summary:* Warner Cable Corp. requests a waiver of Section 76.59 of the Commission's Rules to enable it to add one independent Station, WFFT (Ind., Channel 55) Ft. Wayne, Indiana. In support of this request, Warner has submitted an impact formula which predicts that if every cable television system within thirty-five miles of the local commercial broadcast station (WLIO) were authorized to add the signal requested, the total cumulative impact would be 4.0 percent. An analysis by the Commission's staff has estimated the cumulative impact as 3.4 percent.

Cable Television—2—*Title:* "Petition for Special Reflief" (CSR–1453) filed January 17, 1979, by H. C. Ostertag Cable Television, Inc., operator of a cable television system serving Hellam Township, Pennsylvania. *Summary:* H. C. Ostertag Cable Television requests a waiver of Section 76.63, as it relates to Section 76.61, of the Commission's Rules to enable it to continue carrying WCAU–TV (CBS, Channel 10) Philadelphia, Pennsylvania and WKBS–TV (Ind., Channel 48) Burlington, New Jersey. Ostertag contends that a cumulative analysis would impose an "undue hardship" in light of the small number of potential subscribers to its system and the large number of cable operators within the market.

Cable Television—3—*Title:* "Petition for Special Relief" (CSR–1446) filed January 9, 1979, by Monmouth Cablevision Associates. *Summary:* Monmouth Cablevision Associates requests a waiver of Section 76.61 of the Commission's Rules to enable it to add the following three network stations to its cable systems: KYW–TV (NBC, Channel 3), WCAU–TV (CBS, Channel 10), and WPVI–TV (ABC, Channel 6), Philadelphia, Pennsylvania.

Cable Television—4—*Title:* "Petition for Special Relief" (CSR–1387) filed November 14, 1978, by National CableSystems Inc. d.b.a. Leadership Cablevision Associates, Ltd. *Summary:* National CableSystems, Inc. d.b.a. Leadership Cablevision Associates, Ltd. requests a waiver of Section 76.59 of the Commission's Rules to enable it to add a distant Television Broadcast Station, WTBS (Ind., Channel 17) Atlanta, Georgia. In support of this request, Leadership has submitted an impact formula which predicts that if every cable television system within thirty-five miles of the local commercial broadcast stations (WPTV and WPEC) were authorized to add the signal requested, the total cumulative impact would be 3.81 percent on WPTV and 3.45 percent on WPEC. An analysis by the Commission's staff has estimated the cumulative impact as 0.3 percent on WPTV and 0.2 percent on WPEC.

Cable Television—5—*Title:* "Petition for Special Relief" filed November 15, 1978, by Palm Beach Cable Television Co. *Summary:* Palm Beach Cable Television Co. requests a waiver of Section 76.59 of the Commission's Rules to add Station WCIX–TV (Ind., Channel 6) Miami, Florida to various cable television systems in the West Palm Beach, Florida smaller television market (#114). In support of the request, Palm Beach submitted an impact formula which predicted that carriage of WCIX–TV by all local cable systems would result in the following total cumulative impact on the two local stations: WPTV—3.81% and WPEC—3.45%. An analysis by the Commission's staff estimates the total cumulative impact as follows: WPTV—0.9%; WPEC—0.9%.

Cable Television—6—*Title:* "Petition for Special Relief" (CSR–1253) filed by Athena Cablevision of Corpus Christi, to carry Television Broadcast Station WTBS. *Summary:* Athena Cablevision of Corpus Christi (CSR–1253) has requested a waiver of Section 76.59 of the Commission's Rules to enable it to carry Television Station WTBS (Ind., Channel 17) Atlanta, Georgia.

Renewal—1—*Title:* Petition of Community Coalition for Better Broadcasting to deny renewal of licenses to Mississippi Authority for Educational Television for Stations WMAA–TV, WMAB–TV, WMAE-

TV, WMAH-TV, WMAO-TV, WMAU-TV, WMAV-TV and WMAW-TV. *Summary:* Community Coalition for Better Broadcasting (CCBB) has filed a petition to deny the license renewal applications of Mississippi Authority for Educational Television (MAET) for Stations WMAA-TV, WMAB-TV, WMAE-TV, WMAH-TV, WMAO-TV, WMAU-TV, WMAV-TV, and WMAW-TV. The agenda item considers the allegations in the petition to deny, an opposition, an amendment to the renewal application and a reply to the opposition.

Renewal—2—*Title:* Petition of Community Coalition for Better Broadcasting for reconsideration of license renewals of Mississippi Authority for Educational Television for Stations WMAA-TV, WMAB-TV, WMAE-TV, WMAH-TV, WMAO-TV, WMAU-TV, WMAV-TV, WMAW-TV and for grant of license to operate a UHF translator at Columbia, Mississippi. *Summary:* Community Coalition for Better Broadcasting (CCBB) has filed a petition requesting reconsideration of the Commission's Order released May 18, 1979, granting renewal of licenses to Mississippi Authority for Educational Television for noncommercial stations WMAA-TV, WMAB-TV, WMAE-TV, WMAH-TV, WMAO-TV, WMAU-TV, WMAV-TV, WMAW-TV, and granting a license to operate a UHF translator at Columbia, Mississippi. The agenda item considers the allegations made by petitioner as grounds for reconsideration, the licensee's opposition and supplement to the opposition.

Renewal—3—*Title:* License Renewal Application of Campbell County Broadcasting Corporation for Station WLAF, LaFollette, Tennessee. *Summary:* Patsy E. Denney has filed a petition to deny the subject application. Petitioner raises the following issues: (1) violation of Commission rules by charging political candidates a higher rate for advertising than permitted under the lowest unit charge rule; (2) program log violations; (3) broadcast of program length commercials; and (4) general lack of concern for the public interest. The item also considers petitioner's standing as a party in interest.

Aural—1—*Title:* Memorandum Opinion and Order in re application of City College of New York, New York for a construction permit for a new Class D noncommercial educational FM broadcast station. *Summary:* The Commission considers the aforementioned application and a Petition to Deny filed by Fordham University, licensee of WFUV(FM), New York, New York dealing with the methods of computing objectionable interference.

Aural—2—*Title:* Memorandum opinion and Order in re Application of South County Community College District—Chabot College, for a construction permit for a new noncommercial educational FM broadcast station in Hayward, California. *Summary:* The Commission considers the aforementioned application and a request for waiver of the prohibition against causing interference to another station.

Aural—3—*Title:* Memorandum Opinion and Order in re application of Mariner Communications, Inc. (File No. BP-790403AD) for construction permit for AM station WITS, Boston, Massachusetts. *Summary:* The Commission considers this application and a petition to deny it filed by the licensee of AM station WNTN, Newton, Mass.

Television—1—*Subject:* Application of Liberty Television, Inc. for minor change in Station WQOW(TV), channel 18, Eau Claire, Wisconsin; request for waiver of Section 73.685[e] of the Rules. *Summary:* In order to obtain network affiliation, new UHF station proposes to use directional antenna to minimize overlap with station with same network, but will violate maximum-to-minimum ratio specified in rules. Question is whether waiver is justified.

Broadcast—1—*Title:* Report and Order in Docket 14614 concerning a 1962 Commission initiated proposal to amend Section 4.602 (now Section 74.602) of the Rules to prohibit the assignment of more than one channel to provide duplicate television STL or intercity relay circuits between the same point of origin and destination. *Summary:* The Commission will determine the reliability of the comments filed in this proceeding (in view of the passage of eighteen years since adoption of the Notice of Proposed Rule Making) and the actual or probable impact (as appropriate) of subsequently adopted or pending proposals concerning the use of the broadcast auxiliary spectrum, to determine whether or not the rules should be amended as proposed.

Broadcast—2—*Title:* Petition for rulemaking filed by Mid-Indiana Broadcasters Corporation, licensee of AM Station WHYT, Noblesville, Indiana. *Summary:* This petition requests amendment of Section 73.99 of the Rules to permit a uniform PSA sign-on time of 6:00 a.m., local time, for certain Class II stations.

Broadcast—3—Memorandum Opinion and Order in Docket 21211, regarding Commission's assignment of FM Channel 285A to LaFollette, Tennessee. *Summary:* The Commission considers a petition for reconsideration seeking the assignment of FM Channel 282 to Knoxville, Tennessee, rather than the assignment of FM Channel 285A to LaFollette, Tennessee, as well as a petition for reconsideration seeking an extension in the deadline for changing frequencies, filed by the licensee of WYSH-FM, Clinton, Tennessee.

Broadcast—4—Request for waiver of the "prime time access rule" by Station WTHR-TV, Indianapolis, to permit use of off-network "Pink Panther" program in access time on Saturdays. *Summary:* The Commission considers a Memorandum Opinion and Order deciding the matter. The prime time access rule (Section 73.658 (k)) generally limits stations in major markets to three hours of network and off-network programming during prime time each evening. It has an exemption for certain kinds of material, including programming designed for children; but this exemption specifically does not apply on Saturday evenings. The waiver request seeks permission to use the "Pink Panther" cartoon series, formerly on a network on Saturday mornings, as off-network material during "access time" on Saturday evenings.

Broadcast—5—Application for review in Docket No. 78-98 of Broadcast Bureau's assignment of FM Channel 300 to Burlington, Vermont, with a reservation for noncommercial educational use.

Broadcast—6—*Title:* Petition to reconsider the *Notice of Proposed Rule Making* in BC Docket No. 80-90. *Summary:* A petition for reconsideration of the Commission's refusal to include in its Notice of Proposed Rule Making a proposal to permit the use of directional antennas in connection with the assignment of FM channels is considered. The Notice of Proposed Rule Making proposed several changes in the FM allocation rules including additional classes of channels and the use of Class A facilities on Class B/C channels.

Broadcast—7—Reregulation and Rules Oversight of Radio and TV Broadcasting. Modification and clarification of rules pertaining to:

—Station identification: adding to the rule the FCC criteria for consideration of requests for multiple-city identification.
—Retention of logs: allowing log storage on microfilm or other data-storage systems.
—Logs and records, availability to FCC: stating station procedure if records/logs are stored on microfilm or such systems.
—Public inspection of program logs: conforming rule to newly allowed storage-of-log options.
—Contingent applications: clarifying rule to include new station applications.
—Local public inspection file: to include program exclusivity contracts and state period of retention.
—FCC Policy listing: Plugola Policy added to listings, with citations.
—FCC lists: broadcast stations' and applications' updated.

Broadcast—8—*Title:* Report and Order (Docket No. 20642) Revision of rules governing use of the 25 Class I-A AM clear channels. *Summary:* The Commission will consider proposals to authorize more unlimited-time Class II stations to operate on Class I-A AM clear channels, and the conditions for continued operation of the dominant stations on those channels.

Broadcast—9—*Title:* Public Notice of international notification of AM station assignments. *Summary:* The Commission will consider the issuance of a Public Notice concerning its current submission to the ITU International Frequency Registration Board of an inventory of U.S. AM stations in operation, authorized, applied for, and projected to result from clear channel allocation changes, together with a list of the last-mentioned projected assignments on the Class I-A clear channels.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 23, 1980.

[S-1065-80 Filed 5-28-80; 3:31 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 29, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting following the open meeting which commences at 9:30 a.m.

MATTERS TO BE CONSIDERED:

Agenda, Item Number and Subject

Hearing—1—Draft remand Order in the comparative proceeding involving Sound Radio, Inc. (Sound), Community Group for New Jersey Radio, Inc. (Community), Gilbert Broadcasting Corporation (Gilbert), and Fidelity Voices, Inc. (Fidelity) for a construction permit to operate station WNJR, Newark, New Jersey.

Hearing—2—Draft Decision in the Tucson, Arizona, Radio Station KIKX renewal proceeding (Docket No. 20287).

Hearing—3—Remand from the Court of Appeals and request for action filed by Mobilfone Service, Inc. in the Willis, Texas, DPLMRS proceeding (Docket No. 20224).

Hearing—4—Two Petitions for Reconsideration of an interlocutory Order in the Portsmouth, Virginia, Broadcast renewal proceeding (Docket Nos. 21278 and 21279).

Hearing—5—Request for instructions in the Alexander S. Kein, Jr., Media, Pennsylvania, FM radio proceeding (Docket Nos. 20567-20569).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 23, 1980.

[S-1064-80 Filed 5-28-80; 3:12 pm]

BILLING CODE 6712-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 35475, May 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., May 28, 1980.

CHANGE IN THE MEETING: The following item is being added:

Item Number, Docket Number and Company

CAM-2—GP80-70, State of Ohio, s 102 NGPA Determination, Jerry Moore, Inc., Huber A. Brenley, No. 1 Well Ohio State Docket No. 6831, FERC JD No. 80-4312.

Kennth F. Plumb,

Secretary.

[S-1060-80 Filed 5-28-80; 11:02 am]

BILLING CODE 6450-85-M

6

LEGAL SERVICES CORPORATION.

(Committee on Operations)

TIME AND DATE: 9 a.m., 3:30 p.m., Tuesday, June 12, 1980.

PLACE: Copley Plaza, State Suite A & B, 138 St. James Avenue, Copley Square, Boston, Massachusetts.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of September 6, 1979, Meeting.
3. Discussion on Regulation 1607, Selection of Recipient Board Members.
4. Discussion on Regulation 1601, Bylaws of the Corporation.
5. Discussion, Comprehensive Recipient Civil Rights Regulation.
6. Discussion on Regulation 1612.4, Legislative and Administrative Representation.
7. Short Funding, State Bar of Texas Recommendation.
8. Report on the Opinion Issuance System.
9. President's Report.
10. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Dellanor Young, Office of the President, telephone (202) 272-4040.

Date issued: May 27, 1980.

Dan J. Bradley,

President.

[S-1059-80 Filed 5-28-80; 10:44 am]

BILLING CODE 6820-35-M

7

NEIGHBORHOOD REINVESTMENT CORPORATION.

Regular meeting of the Board of Directors.

TIME AND DATE: 2:30 p.m.; June 4, 1980.

PLACE: Board room, Seventh floor, National Credit Union Administration; 1776 G Street NW., Washington, D.C.

STATUS: Open meeting; rescheduled from April 23, 1980 and May 19, 1980.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Assistant Director, Communications (202) 377-6815.

MATTERS TO BE CONSIDERED:

Agenda

I. Call to Order and Remarks of the Chairman.
II. Approval of Minutes, January 23, 1980.
III. Report of the Personnel Committee.
IV. Report of the Audit Committee.
V. Resolution: Appointment of Assistant Treasurer.
VI. Resolution: Amendment to Banking Resolutions.
VII. Treasurer's Report.
VIII. Executive Director's Report.
IX. Resolution: Allocation of Interest Earnings.

Donnie L. Bryant,

Secretary.

[S-1063-80 Filed 5-28-80; 12:23 pm]

BILLING CODE

federal register

Friday
May 30, 1980

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Divisions, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original general wage determination decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia:	
DC80–3040	May 16, 1980.
Kansas:	
KS80–4009	Apr. 4, 1980.
KS80–4010	Apr. 4, 1980.
KS80–4011	Apr. 4, 1980.
Maryland:	
DC80–3040	May 16, 1980.
MD79–3010	May 11, 1979.
MD79–3031	Nov. 30, 1979.
Mississippi	
MS80–1002	Jan. 18, 1980.
Missouri:	
MO80–4023	Apr. 11, 1980.
Montana:	
MT80–5111	Mar. 28, 1980.
MT80–5113	Apr. 18, 1980.
New York:	
NY79–3011	May 18, 1979.
NY80–3022	Apr. 4, 1980.
North Dakota:	
ND80–5102	Feb. 1, 1980.
Pennsylvania:	
PA80–3025	Apr. 11, 1980.
PA80–3026	Apr. 11, 1980.
PA80–3027	Apr. 18, 1980.
PA80–3028	Apr. 11, 1980.
PA80–3037	May 2, 1980.
Virginia:	
DC80–3040	May 16, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Minnesota:	
MN79–2021 (MN80–2033)	May 4, 1979.
Pennsylvania:	
PA78–3044 (PA80–3030)	May 12, 1978.
PA78–3066 (PA80–3032)	Sept. 22, 1978.
West Virginia:	

WV77-3083 (WV80-3016)	Sept. 30, 1977.
Wisconsin:	
WI78-2130 (WI80-2040)	Oct. 27, 1978.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. This 23rd day of May 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

[FR Doc. 80-16314 Filed 5-29-80; 8:45 am]

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. DC80-3040-Mod. #1
(45 FR 32528- May 16, 1980)
District of Columbia, Maryland-Montgomery & Prince Georges; D.C. Training School; Virginia-Independent City of Alexandria, Arlington & Fairfax Counties, Va.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Heavy construction excluding water & sewer lines:					
All Counties					
Building Construction:					
Excluding Alexandria, Va.					
Bricklayers	$13.45	1.17	.85		.15
Carpet Layers	8.30	.30			
Electricians	13.15	.75	3%+.80		.13
Ironworkers:					
Reinforcing	12.44	.87	1.15		.07
Lathers	12.21	.80	.65		.05
Painters (Excludes Fairfax County):					
Brush, Spray, Paperhanger, Tapers	12.40	.96	1.10		.08
Steel, Sandblasting, Swing stage, Power brushing	12.90	.96	1.10		.08
ADD:					
Divers	23.20	.80	.65		.05
Roofers:					
Material Handlers (only to supply materials and to prepare decks for new roofs or repairs)	8.25	.74	.50		

MODIFICATION PAGE 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. KS80-4009 MOD. #2					
(45 FR 23252, April 4, 1980)					
Shawnee County, KANSAS					
Building Construction					
Change:					
Bricklayers, stonemasons	$12.19	.40	.25		
Tile setters	12.00				
DECISION NO. KS80-4010 MOD. #2					
(45 FR 23257, April 4, 1980)					
Shawnee County, KANSAS					
Residential Construction					
Change:					
Bricklayers, stonemasons	$12.19	.40	.25		
Tile setters	12.00				
DECISION NO. KS80-4011 MOD. #2					
(45 FR 23255, April 4, 1980)					
Sedgwick County, KANSAS					
Building Construction					
Change:					
Bricklayers, stonemasons	$11.48	.60	.50		.02
Ironworkers	11.18		1.00	.53	.02

DECISION NO. MD79-3010-Mod.#4 (43FR 27873-May 11, 1979 Allegany and Garrett Counties, Maryland	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Linemen-Allegany County					
Linemen	$11.40	.80	3%+.70		
Equipment Operator	10.84	.80	3%+.70		
Truck Driver	7.42	.80	3%+.70		
Groundmen	7.42	.80	3%+.70		
Linemen-Garrett County					
Linemen	11.80	.80	3%+.70		
Equipment Operator	11.24	.80	3%+.70		
Truck Driver	7.82	.80	3%+.70		
Groundmen	7.82	.80	3%+.70		

DECISION NO. MD79-3031-Mod. #4 (44 R69110-November 30, 1979) Counties of Anne Arundel (excluding the D.C. Training School), Baltimore, Baltimore City, Maryland, and for Heavy Construction projects in Harford and Howard Counties Maryland	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers: Building					
Common Laborers	$8.45	.35	.60		.075
Powertool Operators	8.55	.35	.60		.075
Pipelayers (Concrete & Clay)	8.65	.35	.60		.075
Wagon Drill Operator, Jack hammer Operator (80# or over), Barco Tampers	8.70	.35	.60		.075
Plasterers Laborers	8.60	.35	.60		.075
Hod Carrier, Gunnite Nozzle & Gun Operator	8.85	.35	.60		.075
Burners (Demolition)	8.95	.35	.60		.075

Decision NO. MS80-1002-Mod#1 (54 FR 3863-January 18,1980 Bolivar,Carroll,Coahoma, Desoto,Grenada,Leflore, Montgomery,Panola,Quitman, Sunflower,Tallahatchie,Tate, Tunica,Washington & Yalobusha Counties, Mississippi Heavy Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Pipelayers	$3.10				

DECISION #MO80-4023 - Mod. #2 (45 FR 24997 - April 11, 1980) Statewide, Missouri	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters & Piledrivermen Zone 9	$12.30	.50	.40		.06

MODIFICATION PAGE 5

DECISION #MT80-5111-Mod. #3
(45 FR 20651-March 28, 1980)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Statewide, Montana, except Beaverhead and Silver Bow Counties:					
Carpenters	$11.43	.80	.75		.02
Millwrights	12.43	.80	.75		.02
Piledrivermen and Power Saw Operators	11.68	.80	.75		.02
Cement Masons:					
Cement Masons	10.88	.85	.40		
Grinder, Bush Hammer and Clipping Fan preparing finished surface; Epoxy	11.03	.85	.40		
Painters:					
Deer Lodge County and the southern part of Granite County from a line east-west through the southern limits of Phillipsburg:					
Painter	10.02				
Paint Mitt	10.52				
Stacks, Steeples, Brushing of steel, Spraying and Airless Spraying	12.80				
Statewide:					
Highway, parking and marking traffic surface applicator Operator; Material Mixer; Sandblaster; Stripper	10.60	.56	.40		
Truck Drivers:					
(See attached)					
Add:					
Electricians:					
Custer & Garfield Counties	9.40		3%+.50		1/2%

MODIFICATION PAGE 6

DECISION NO. MT80-5111 (Cont'd)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COMBINATION TRUCK; Concrete Mixer and Transit Mixer:					
To & including 4 cu. yds.	$11.10	.82	.84		
Over 4 cu. yds. to and including 6 cu. yds.	11.18	.82	.84		
Over 6 cu .yds. to and including 8 cu. yds.	11.26	.82	.84		
Over 8 cu. yds. to and including 10 cu. yds.	11.34	.82	.84		
Over 10 cu. yds.-additional $.08 per hour each additional 2 cu. yds. increment					
DISTRIBUTOR DRIVER	11.08	.82	.84		
DRY BATCH TRUCKS:					
3 Batch or under	10.85	.82	.84		
Over 3 Batch to and including 5 Batch	10.98	.82	.84		
Over 5 Batch to and including 10 Batch	11.14	.82	.84		
Over 10 Batch to and including 15 Batch	11.30	.82	.84		
Over 15 Batch-additional $.15 per hour each additional 5 Batch increment					
PICKUP DRIVER, HAULING MATERIALS	10.95	.82	.84		
DUMPMAN, GRAVEL SPREADER BOX OPERATOR; Pilot Car Driver, Teamsters	10.85	.82	.84		

DECISION NO. MT80-5111 (Cont'd)

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DUMP TRUCKS And SIMILAR EQUIPMENT, DW 20, DW 21, or EUCLID TRACTORS, Pulling P.R. 21 or similar Dump Wagons:					
Water Level Capacity, including Sideboards:					
7 cu. yds. or less	$10.85	.82	.84		
Over 7 cu. yds. to and including 10 cu. yds.	10.98	.82	.84		
Over 10 cu. yds. to and including 15 cu. yds.	11.14	.82	.84		
Over 15 cu. yds. to and including 20 cu. yds.	11.28	.82	.84		
Over 20 cu. yds. to and including 25 cu. yds.	11.34	.82	.84		
Over 25 cu. yds. to and including 30 cu. yds.	11.40	.82	.84		
Over 30 cu. yds. to and including 35 cu. yds.	11.46	.82	.84		
Over 35 cu. yds. to and including 40 cu. yds.	11.52	.82	.84		
Over 40 cu. yds. to and including 45 cu. yds.	11.58	.82	.84		
Over 45 cu. yds.-additional $.10 per hour each additional 5 cu. yds. increment					
DUMPSTERS	10.98	.82	.84		
POWER TRUCK DRIVER (bulk unloader type)	11.03	.82	.84		
FLAT TRUCKS:					
To and including 3 tons	11.00	.82	.84		
Over 3 tons factory rating	11.20	.82	.84		

DECISION NO. MT80-5111 (Cont'd)

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FUEL TRUCK DRIVERS; TIREMEN	$11.44	.82	.84		
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	11.20	.82	.84		
LUMBER CARRIERS, LIFT TRUCKS and FORK LIFTS	11.10	.82	.84		
POWER BOOM	10.94	.82	.84		
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:					
2,500 gallons and under	10.85	.82	.84		
Over 2,500 gallons to and including 4,500 gallons	11.14	.82	.84		
Over 4,500 gallons to and including 6,000 gallons	11.34	.82	.84		
Over 6,000 gallons to and including 8,000 gallons	11.40	.82	.84		
Over 8,000 gallons to and including 10,000 gallons	11.48	.82	.84		
Over 10,000 gallons - additional $.10 per hour each additional 2,000 gallons increment					
TRUCK MECHANIC	11.84	.82	.84		
TRUCKS with power equipment if under Teamster jurisdiction, such as: Winch, A-Frame Truck, Swedish Crane, Hydralift, Groutcrete Truck and Combination Mulching, Seeding and Fertilizing Truck	11.10	.82	.84		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

MODIFICATION PAGE 9

DECISION #MT-80-5113-Mod #2
(45 FR 26626 - April 18, 1980)

Cascade, Deer Lodge, Gallatin, Hill, Missoula Silver Bow, and Valley Counties, Montana.

Change:

Modification #2 issued in Vol. 45 FR, page 32524, on May 16, 1980 to read Modification #1.

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers:					
Gallatin County	$12.85	.90	.55		
Marble Masons:					
Gallatin County	12.85	.90	.55		
Terrazzo and Tile setters:					
Gallatin County	12.85	.90	.55		
Carpenters:					
Silver Bow County					
Carpenters	11.43			.75	
Millwrights	11.93			.75	
Piledrivermen	11.93			.75	

MODIFICATION PAGE 10

DECISION #NY79-3011 Mod. #4
(44 FR 29249 - May 18, 1979)
Bronx, Kings, Queens, New York & Richmond Counties, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers	12.00	1.48	3.98		
Tile Setters	11.725	1.15	1.10		

DECISION No.NY80-3022-Mod.#1
(45 FR 23264 - April 4,1980)
Monroe County, New York

Change:					
Asbestos Workers	13.92	1.40	1.05		.01
Carpenter, Heavy & Highway	10.39	1.23	1.06		.025
Cement Masons, Heavy & Highway	10.89	.75	.85		
Electricians	13.95	1.00	3%+1.40		.25%
Ironworkers:					
Structural, Ornamental, Reinforcing, Rodman, Stone derrickman and welder, Machinery mover, Fence erector	13.05	1.00	1.05		.10
Sheeter	13.30	1.00	1.05		.10
Sheeter, Bucker-up	13.175	1.00	1.05		.10
Laborers: Heavy Construction					
CLASS A	8.15	1.95	1.14	a	
CLASS B	8.35	1.95	1.14	a	
CLASS C	8.55	1.95	1.14	a	
CLASS D	8.75	1.95	1.14	a	
Sheet Metal Workers	13.62	.85	1.52		

DECISION #ND80-5102 - Mod. #1
(45 FR 7463-February 1, 1980)
Statewide, North Dakota

Change:					
Power Equipment Operators:					
Group 1	$10.32	.75	.60		
Group 2	10.16	.75	.60		
Group 3	10.00	.75	.60		
Group 4	9.95	.75	.60		
Group 5	9.68	.75	.60		
Group 6	9.43	.75	.60		
Group 7	8.44	.75	.60		
Group 8	8.28	.75	.60		
Group 9	8.17	.75	.60		
Group 10	7.80	.75	.60		

DECISION NO. PA80-3025
Mod. No. 1
(45 FR 25015 - April 11, 1980)

Adams and York Counties,
Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H.& W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS & STONEMASONS	$10.50	.65	.45		
CARPENTERS:					
York County	10.59	.85	.55		.03
CEMENT MASONS:					
Adams County	11.53	.70	.70		
LABORERS:					
General Laborers	7.55	.50	.67		
Operator of Jackahmmer, (etc.)	7.75	.50	.67		
Wagon Drill Operator	7.85	.50	.67		
Handling of all materials (etc.)	7.70	.50	.67		
Laborers assisting tile (etc.)	7.60	.50	.67		
Handling & using dynamite	7.88	.50	.67		
Caisson work (top men)	7.80	.50	.67		
Caisson work (bottom men)	8.00	.50	.67		
Mixer man	7.95	.50	.67		
MILLWRIGHTS:					
Adams County	13.52	.60	.70		.05
York County	11.09	.85	.55		.03
MARBLE, TILE & TERRAZZO WORKERS	9.50	.45	.45		
PLASTERERS:					
Adams County	10.31	.80	.80		.01
PLUMBERS	11.80	1.00	1.00		.12
POWER EQUIPMENT OPERATORS:					
GROUP 1	13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%
STEAMFITTERS	11.80	1.00	1.00		.12
SOFT FLOOR LAYERS:					
Adams County	9.60	.55	.65		.05
York County	11.09	.85	.55		.03

DECISION NO. PA80-3026 Mod. #1
(45 FR 25017-April 11, 1980)
Lehigh County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$11.75	.84	.72		.05
Cement Masons	11.97	1.00	.41		
Electricians	12.45	.70	3%+.80		
Millwrights	12.15	.84	.72		.05
Plasterers	11.82	1.00	.41		.01
Plumbers	13.23	.85	1.40		.14
Power Equipment Operators					
Group 1	13.19	7.9%	10.3%	a	1.8%
Group 2	12.90	7.9%	10.3%	a	1.8%
Group 3	12.03	7.9%	10.3%	a	1.8%
Group 4	11.26	7.9%	10.3%	a	1.8%
Group 5	10.79	7.9%	10.3%	a	1.8%
Group 6	9.88	7.9%	10.3%	a	1.8%
Group 7	13.44	7.9%	10.3%	a	1.8%
Group 7-A	13.69	7.9%	10.3%	a	1.8%
Group 7-B	13.93	7.9%	10.3%	a	1.8%

MODIFICATION PAGE 13

Decision No. PA80-3027

Mod. #1

(45 FR 26654 - April 18, 1980)
Schuylkill County, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS & STONEMASONS	$10.90	.70	1.35		
CEMENT MASONS	10.90	.70	1.35		
LABORERS:					
Unskilled laborers & window cleaners	7.60	.45	.50		
Operator of jackhammer, paving breaking & other pneumatic, electric & mechanical tools, laying of all clay, terra cotta, ironstone, virtified concrete or non-metallic pipe & the making of joints for same, wagon drill operators, cofferdams (below 10'), tunnel free air handling & using cutting or burning torches in the wrecking of buildings, blasters, plasterer-tenders, mason tenders, scaffold builders and removal of power buggies	7.75	.45	.50		
MARBLE SETTERS & TERRAZZO WORKERS	9.90	.70	1.35		
MILLWRIGHTS	13.52	.60	.70		.05
PAINTERS:					
Townships of North Union, East Union, Union, Mahonoy, West Mahonoy, Butler, Kline, Delano, Ryan, Rush, Rahn, West Penn., & City of Tamaqua					
Brush	10.35	.75	.60		.10
Tapers	11.61	.75	.60		.10
Hazardous	10.61	.75	.60		.10

MODIFICATION PAGE 14

Decision No. PA80-3027(Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	$13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%
PLASTERERS	10.90	.70	1.35		
ROOFERS:					
Barry Branch, Butler, Delano, East Brunswick, East Union, Eldred, Foster, Frally, Hegins, Hubley, Kline, New Castle, North Union, Porter, Hahn, Reilly, Rush, Fremont, Union, Upper Mahantango, West Penn:					
Composition	11.15	.90	.85		
Remainder of County:					
Composition, damp waterproofing	14.17	1.40	.95	e	
Roofer Assistant	7.00	1.40	.95	e	
SHEET METAL WORKERS	11.95	.75	.81		.02
TILE SETTERS	9.90	.70	1.35		

Decision No. PA80-3028
Mod. #1
(45 FR 25019 - April 11, 1980)

Berks County, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons	$10.90	.90	1.00		
Carpenters	10.83	.82	.75		
Cement Masons	10.79		1.65		
Electricians: Herford, Longswamp and Washington Townships, Portion of Maxatawney Township, east of Sacony Creek	12.45	.70	3%+.80		.02
General Laborers	8.45	.45	.50		
Operators of jackhammer, paving breaking and other pneumatic, electrical and mechanical tools coming under the jurisdiction of laborer, laying of all clay, terra cotta, iron-stone, vitrified concrete or non-metalic pipe and the making of joints for same, wagon drill operators and concrete power buggies	8.68	.45	.50		
Cofferdam, (below 10'), tunnel free air muckers	8.73	.45	.50		
Handling and using cutting or burning torches in the wrecking of buildings, plasterer tenders, scaffold builders and removal for plasterers	8.84	.45	.50		
Mason tenders, scaffold builders, removal for mason and power buggies	8.88	.45	.50		
Blasters	8.90	.45	.50		
Millwrights	11.35	.82	.75		
Lathers	11.78		.25		.01
Plasterers	10.81		1.65		.01

Decision PA80-3028(Cont'd)

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%
Plumbers	13.23	.85	1.40		.14

DECISION NO. PA80-3037 - MOD. #1 (45 FR 29522 - May 2, 1980) Sullivan County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CARPENTERS:					
Benton Air Force Base	$11.79	.60	.70		.05
LABORERS:					
Unskilled & window washers	9.87	.65	.85		
Mason tenders incl. scaffold builders	10.27	.65	.85		
Semi-skilled: Pneumatic, electrical & mechanical tool ops., under the jurisdiction of the laborers - 2" pumps-non-metallic pipelaying & making of joints clay, terra cotta, ironstone, vitrified concrete, handling of buring torches, asphalt of other hot materials, cement finishers & blaster helpers, power buggies, walk along hoist	10.07	.65	.85		
Plasterers tenders, blasters & wagon drill operators	10.19	.65	.85		
MILLWRIGHTS	13.52	.60	.70		.05
PAINTERS:					
Brush	10.35	.75	.60		.10
Tapers	11.61	.75	.60		.10
Hazardous	10.61	.75	.60		.10

DECISION NO. PA80-3037 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
POWER EQUIPMENT OPERATORS					
Group 1	13.19	7.9%	10.3%	a	1.8%
Group 2	12.90	7.9%	10.3%	a	1.8%
Group 3	12.03	7.9%	10.3%	a	1.8%
Group 4	11.26	7.9%	10.3%	a	1.8%
Group 5	10.79	7.9%	10.3%	a	1.8%
Group 6	9.88	7.9%	10.3%	a	1.8%
Group 7	13.44	7.9%	10.3%	a	1.8%
Group 7-A	13.69	7.9%	10.3%	a	1.8%
Group 7-B	13.93	7.9%	10.3%	a	1.8%
ROOFERS	11.15	.90	.85		
SHEET METAL WORKERS	11.95	.75	.81		.02

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: See Below*
DECISION NUMBER: MN80-2033 DATE: Date of Publication
Supersedes Decision No. MN79-2021 dated May 4, 1979 in 44 FR 26463
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

*COUNTIES: Anoka, Carver Hennepin, Scott, Dakota, Ramsey, & Washington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.81	.60	1.00		.14
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	11.66	.655	.93	.80	
CARPENTERS:					
Building					
S. W. Portion of Scott Co.	12.40	.42			
Remainder of Cos. & Scott Co. Carpenters, Millwrights & Piledrivermen	11.66	.70	.60	.60	.02
Soft Floor Layers	11.33	.81	.74	.65	.02
Site Preparation, Excavation & Incidental Paving	10.13	.60	.60		
CEMENT MASONS:					
Building	12.43	.60	.60		
Site Preparation, Excavation & Incidental Paving	10.13	.60	.60		
ELECTRICIANS:					
Building					
Hennepin & Scott Cos. & Twps. of Anoka & Pridley in Anoka County					
Contracts over $50,000	11.35	7%	6%	10⅓%	3/4 of 1%
Contracts less than $50,000	9.20	7%	6%	10⅓%	3/4 of 1%
Remainder of Anoka County & Remaining Counties	12.25	5 3/4%	5 7/8%	11⅛%	3/4 of 1%
Residential					
Carver, Hennepin & Scott Cos; Twps. of Anoka, Pridley, Crow & Ramsey in Anoka County: Construction of all new family dwellings up to & including 4-plexes; and to all residential remodeling, rewiring & repairing in apartment buildings up to & including a 400 ampere service. This is limited to 3 floor occupied as living quarters floors, & non-elevator apartment buildings.	8.50	.48	3%	.37	1%

DECISION No. MN80-2033

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D)					
Dakota, Ramsey, Washington Cos. & Remainder of Anoka Co., Construction of all new family dwellings up to & including 4-plexes, townhouses of 4 or less contiguous units; and to all residential remodeling, rewiring & repairing except that any single apartment project including a change of main service entrance shall not exceed 8 living units or 400 amps.	$ 9.25	.50	3%	7%	3/4 of 1%
ELEVATORS CONSTRUCTORS:					
Constructors	11.31	.745	.35	a	.02
GLAZIERS	11.30	.45	.50	.35	.01
IRONWORKERS	12.95	.85	.90		.04
LATHERS:					
Anoka, Carver & Hennepin Cos.	11.79	.50	.65		.01
Washington; Dakota & Ramsey Cos.	12.49		.50	.70	.01
MARBLE SETTERS	12.355	.655	.53		
MARBLE FINISHERS	9.35	.37	.50		
TERRAZZO WORKERS	12.82	.64	.25		
TERRAZZO FINISHERS	12.10				
TILE SETTERS	12.30	.62	.50		
TILE FINISHERS	11.45	.62	.50		
PAINTERS:					
Dakota, Ramsey & Washington Cos:					
Brush & Drywall Finisher	10.84	.55	.25		.12
Structural Steel & Spray	11.44	.55	.25		.12
Remaining Counties:					
Brush & Roller	12.01	.65	.50		.13
Structural Steel & Spray	12.61	.65	.50		.13
PLASTERERS:					
Dakota, Ramsey Washington Cos.	11.10	.70	.50	.65	.01
Remaining Counties	11.55	.50	.45		.02

DECISION No. MN80-2033

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Plumbers, Steamfitters & Pipefitters:					
Dakota, Ramsey & Washington Cos.	$11.77	.53	.50	1.52	.06
Plumbers & Steamfitters & P/F Remaining Counties:					
Plumbers	11.94	.53	.50	1.35	.05
Steamfitter & Pipefitters	11.94	.54	.50	1.25	.05
ROOFERS	12.45	.85	.50		.03
SHEET METAL WORKERS:					
Dakota, Ramsey & Washington Cos.	12.66	.79	.90		.06
Remaining Counties	13.02	.52	.81		.06
SPRINKLER FITTERS	12.83	.75	1.05		.02
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Day After Thanksgiving

FOOTNOTE:

a. Employer contributes 8% Basic Hourly Rate for over 5 years service, 6% Basic Hourly Rate for under 5 years as Vacation Pay; 7 Paid Holidays A through G

DECISION No. MN80-2033

MINN-27-LAB-1

LABORERS:
BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$10.05	.60	.45	.40	
CLASS 2	10.10	.60	.45	.40	
CLASS 3	10.15	.60	.45	.40	
CLASS 4	10.20	.60	.45	.40	
CLASS 5	10.30	.60	.45	.40	
CLASS 6	10.35	.60	.45	.40	
CLASS 7	10.45	.60	.45	.40	
CLASS 8	10.45	.60	.45	.40	
CLASS 9	10.755	.60	.45	.40	

CLASS 1 - Common Laborer, Steel hoist handler (erection); Power Buggy Opr., Carpenter Tender, Earth Dumpman, Flagman
CLASS 2 - Reinforced Steel Handler
CLASS 3 - Men handling cement 2 hours per day (Bulk or Sack, excluding Mortar Mixer; Mason Tender; Concrete Joint Saw Opr., Demolition & Wrecking Laborer
CLASS 4 - Hot tar caulker & corker; Laborers on swing stage line scaffold (excl. "patent" scaffolding); Automatic Tamper Opr., Chipping Hammer Setter & Driver on Heavy Building, Excavation, Jackhammer Men
CLASS 5 - Underground work
CLASS 6 - Pipelayer
CLASS 7 - Caisson work, Underpinning
CLASS 8 - Nozzlemen
CLASS 9 - Dynamite Men, Power for Blasting purposes

DECISION No. MN80-2033

MINN-9-LAB

SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$10.00	.60	.45	.40	
CLASS 2	10.10	.60	.45	.40	
CLASS 3	10.15	.60	.45	.40	
CLASS 4	10.25	.60	.45	.40	
CLASS 5	10.30	.60	.45	.40	
CLASS 6	10.35	.60	.45	.40	
CLASS 7	10.40	.60	.45	.40	
CLASS 8	10.43	.60	.45	.40	
CLASS 9	10.45	.60	.45	.40	
CLASS 10	10.63	.60	.45	.40	
CLASS 11	10.68	.60	.45	.40	

CLASS 1 Unskilled Laborer, Drill Runner Helper, Landscape Gardener, Sod Layer & Nurseryman, Powder Monkey, Rein. Steel Lab.; Rein Steel Setter Salamander Heater & Blower Tender Carpenter Tender; Winch Handler

CLASS 2 Laborer, wrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch trucks); Compaction Equip. Shoveler, Batchermen Conc., Conc. Vibrator Tamper & Puddler (Paving) Conc. Longitudinal Floatmen; Conduit Layer (w.o. wiring); Chipping Hammer, Curb Setter (Stone or Precast Conc.) Kettleman (BIT. or lead); Service connection maker; Power Buggy; Joint Sawer; Squeeze man (Bit. Brick or Block); Stabilizing Batchermen (Stationary Plant); Stonemasons Tender; Drill Runner (Heavy, incl. Churn Drill)

CLASS 3 Chainsaw Man. Conc. Mixer (1 bag); Jackhammer Man & Paving Buster; Mortar Mixer' Pipe Handler; Pipe Derrickman (Triped, manual)

CLASS 4 Bottom Man (Sewer, Water or Gas Trench, more than 8' below starting level of manual work); Tunnel Laborer (Atmospheric Pressure) Underpinning Work, Caisson Work, other work more than 8' below level of manual work Open ditch work

DECISION No. MN80-2033

LABORERS: (CONT'D)

CLASS 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - Bituminous Raker, Floater & Utility Man
CLASS 10 - Tunnel Man (Air pressure); Tunnel Miner
CLASS 11 - Powderman

DECISION No. MN80-2033

MINN-62-TD

TRUCK DRIVERS: BUILDING, SITE PREPARATION EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$10.90	.65	.65		
GROUP 2	10.45	.65	.65		
GROUP 3	10.35	.65	.65		
GROUP 4	10.15	.65	.65		

GROUP 1 - Driver (Hauling machinery for employer's own use, including opr., of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GRUOP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Opr.,), Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman,Tractor Opr., (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Opr., Single Axle Trucks.

DECISION No. MN80-2033

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.70	.75	.60		.05
CLASS 2	14.05	.75	.60		.05
CLASS 3	13.80	.75	.60		.05
CLASS 4	13.20	.75	.60		.05
CLASS 5	12.85	.75	.60		.05
CLASS 6	12.75	.75	.60		.05
CLASS 7	12.50	.75	.60		.05
CLASS 8	12.38	.75	.60		.05
CLASS 9	12.30	.75	.60		.05
CLASS 10	12.03	.75	.60		.05
CLASS 11	11.15	.75	.60		.05
CLASS 12	10.70	.75	.60		.05

CLASS 1 - Helicopter Opr.,
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, incl., jib
CLASS 3 - Truck & Crawler Cranes with 200' of Boom, up to and not inc., 300' of Boom, incl. jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not incl., 200' of Boom, incl. jib
CLASS 5 - Traveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Opr.,
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, incl., jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Opr., Overhead Crane Opr., (Inside Building Perimeter); Tower Cranes-Stationary Tractor Opr., with Boom; All Terrain Vehicle Cranes; Fireman, Chief License
CLASS 8 - Air Compressor Opr., 375 CFM or over; Pump Opr., and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Opr., Forklift
CLASS 9 - Boom Truck Opr., Concrete Mixer Opr., Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Opr., Hoist Engineer (one drum); Straddle Carrier Opr., Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Opr., over D2; Well Point Pump Opr.,
CLASS 10 - Concrete Batch Plant Opr., Fireman, First Class License; Gunite Opr., Tractor Opr., D-2 or similar size; Front End Loader Opr., up to 1 cu. yd.
CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr., Fireman, Temporary Heat; Brakeman, Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr., (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach).
CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Opr.,

DECISION No. MN80-2033

SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING

MINN-7M-PEO-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.99	.75	.60		.05
GROUP 2	12.66	.75	.60		.05
GROUP 3	12.25	.75	.60		.05
GROUP 4	12.12	.75	.60		.05
GROUP 5	12.03	.75	.60		.05
GROUP 6	11.05	.75	.60		.05
GROUP 7	10.45	.75	.60		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu.yds. & over Mfg. rates capacity
GROUP 3 - Cableway Opr., Concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu.yds. Mfg. rates capacity, Dredge Opr., or Engineer, Dredge Opr., (power) & yds. & over, Grader or Motor Patrol Finishing Earth & Bituminous, Locomotive Crane Opr., Master Mechanic, Mixer (paving) Concrete Paving Opr., Road Mole Opr., incl. power supply, Mucking Machine., incl. Mucking Operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Opr., (Boom Type), Truck Crane Opr., Tugboat Opr., 100 HP & over
GROUP 4 - Dual Tractor Opr., Elevating Grader Opr., Pumpcrete Opr., Scraper Opr., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer
GROUP 5 - Air Track Rock Drill, Asphalt Bituminous Stabilizer Plant Opr., Crushing Plant Opr., or Gravel Washing, Crushing and Screening Plant Opr., Dope Machine Opr., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Opr., Loader Opr., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or Welder, Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps or Crane Oilers, Paving Breaker or Tamping Machines Opr., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or Bending Machine Opr., Power Plant Engineer., Power Actuated Horizontal Boring Machine, over 6" Opr., Pugmill Opr., Roller., 8 tons or over, Rubber Tired Farm Tractor, Backhoe Att., Sheep Foot Opr., Tie Tamper & Ballast Machine Opr., Tractor Opr., over D2, TD6 or similar HP with power take-off, Tractor Opr., over 50 HP wihtout power take-off, Trenching Machine Opr., (sewer, water, gas) Turnapull Opr., (or similar type) well point installation, dismantling or repair mechanic

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POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 6 - Air Compressor Opr., 375 CFR or over, Bituminous Spreader and Bituminous Finishing Machine Opr., Concrete Dist. & Spreader Opr., Finishing Machine Longitudinal Opr., Joint Mach. Opr., Spray Concrete Mixer Opr., 14S and under, Concrete Opr., (Mult. Blade), Curb Machine Opr., Fine Grade Opr., Form Trench Digger, Front End Loader Opr., (up to & incl. 1 cu. yd), Grader Opr., (Motar Patrol), Gunnite Opr., Gunall, Lead Greader, on truck on rack, Loader Opr., Power Actuated Augars and Boring Machine Opr., Power Actuated Jacks Opr., Pump Opr., Roller Opr., Self-Propelled Chip Spreader, Shouldering Machine Opr., Stump Chipper Opr., Tractor Opr., (D2, TD6 or similar HP with power take-off)
GROUP 7 - Brakeman, Switchman, Conveyor Opr. Deckhand, Fireman, Tank Car Heater Opr., Gravel Screening Plant Opr., Greaser Leverman, Mechanic Helper, Mechanic Space Heater, Oiler, Self-Propeller Vibrator Packer Opr., Sheep Foot Roller, Tractor Opr., 50 HP or less w/o Power take-off, Truck Crane Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Luzerne
DECISION NUMBER: PA80-3030 DATE: Date of Publication
Supersedes Decision No. PA78-3044 dated May 12, 1978, in 43 FR 20711
DESCRIPTION OF WORK: Building Construction, including single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.875	.80	.60		.01
BOILERMAKERS	14.64	1.175	1.00		.02
BRICKLAYERS: Stonemasons:					
Nescopeck, Hollenback and Salem Townships	10.55	.55	.70		.01
Remainder of County	11.75	.85	.75		
CARPENTERS:					
Hazleton, Freeland, Black Creek, Butler, Dennison, Foster, Hazle, Hollenback, Nescopeck, Sugarloaf and lower part of Salem Twps.	10.92	.55	.65		.05
Remainder of County	11.79	.60	.70		.05
CEMENT MASONS:					
Pittston, Yatesville, Laflin, Exeter Wyoming, Deryea and Avoca	12.05				
All North of Hazleton, extending half-way between Wilkes-Barre and Hazleton, Harleigh, Jeddo, Cranberry; Foster Twps., Butler Twps., Dennison Twps., Sugarloaf Twps., Conyngham, Drums, S.Johns, Borough of Freeland & White Haven, Banks Twps; Beaver Meadows, Tresckow, Jeansville & Audenried	12.25				.01
Remainder of County	12.78				
ELECTRICIANS:					
That portion east of a line following the Susquehanna River south to the City of Pittston, east & south on the limits of Pittston but excluding it, to U. S. Highway 11, east on 11 to Dupont Borough & Highway 215, and southeast on 215. Also that portion of Luzerne County south and					

Decision No. PA80-3030(Cont'd) Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (Cont'd)					
east of a line following the Thornhurst Road, southwest to State Highway 115 and southeast on 115 to the Monroe County line.					
Zone A - From 20 to 30 miles from zero milestone marker	11.35	.75	3%+.50	1.00	.10
Zone B - All distance beyond 30 miles	11.85	.75	3%+.50	1.00	.10
Hazleton:					
Commercial	11.87	.65	3%+.30	a	b
Remainder of County	12.54	.65	3%+1.05		.03
ELEVATOR CONSTRUCTORS	11.27	.895	.89	c+d	.03
ELEVATOR CONSTRUCTORS' HELPERS	70% JR	.895	.89	c+d	.03
ELEVATOR CONSTRUCTORS' (PROB.)	50% JR				
GLAZIERS	10.50	.65	.85		
IRONWORKERS:					
Structural & Ornamental	12.80	e			.10
Reinforcing	12.70	e			.10
LABORERS:					
Hazleton:					
Laborers	7.84	.65	.85		
Mason tenders including scaffold builders	8.24	.65	.85		
Pneumatic, electric and mechanical tool operators 2" pumps - non-metallic pipelaying and making joint clay, terra cotta, ironstone vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers & blasters' helpers, Power buggies, walk along hoist	7.94	.65	.85		
Plasterers' tenders, blasters, and wagon drill operators	8.09	.65	.85		
Remainder of County:					
Unskilled Laborers	9.87	.65	.85		
Semi skilled laborers, pneumatic and other mechanical tool operators;					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Cont'd)					
2" pump or under, handling and mixing of all material used by masons from stock pile to mason; non-metallic pipelayer & making of joints, clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot material, cement finishers and blasters' helpers	10.07	.65	.85		
Plasterers' tenders, blaster, wagon drill operators	10.19	.65	.85		
Mason tenders and scaffold builders	10.27	.65	.85		
LATHERS:					
Pittston, Avoca, Dupont & Duryea	11.54		.10		.01
Remainder of County	11.43		.35		.01
LEADBURNERS	10.75	.40	.25	f	.01
LINE CONSTRUCTION:					
Linemen, Dynamitemen, Heavy equipment operator	12.37	.55	3%		3/8%of 1%
Groundman	8.30	.55	3%		3/8%of 1%
Winch truck driver	8.68	.55	3%		3/8%of 1%
MARBLE SETTERS:					
Pittston	10.85	.50	.50		
Hazleton	9.20	.35	.50		
Remainder of County	10.75		.75		
MILLWRIGHTS	13.52	.60	.70		.05
PAINTERS:					
Pittston:					
Brush and Roller	9.50		1.20		
Structural Steel	10.50		1.20		
Remainder of County:					
Brush	10.35	.75	.60		.10
Tapers	11.61	.75	.60		.10
Hazardous	10.61	.75	.60		.10
PILEDRIVERMEN	11.52	2.48	1.40	g	.13
PLASTERERS:					
Hazleton	12.25				.01
Pittston, Yatesville, Laflin, Exeter, Wyoming, Duryea and Avoca	12.13				
Remainder of County	12.78				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS	11.89	.80	1.25		.05
POWER EQUIPMENT OPERATORS:					
GROUP 1	13.14	7.9%	10.3%	a	1.8%
GROUP 2	12.85	7.9%	10.3%	a	1.8%
GROUP 3	11.97	7.9%	10.3%	a	1.8%
GROUP 4	11.20	7.9%	10.3%	a	1.8%
GROUP 5	10.72	7.9%	10.3%	a	1.8%
GROUP 6	9.80	7.9%	10.3%	a	1.8%
GROUP 7	13.39	7.9%	10.3%	a	1.8%
GROUP 7-A	13.64	7.9%	10.3%	a	1.8%
GROUP 7-B	13.89	7.9%	10.3%	a	1.8%

POWER EQUIPMENT OPERATORS - CLASSIFICATIONS

GROUP 1 - Machines doing hook work; any machine handling machinery; Cable spinning machines; Helicopters; Machines similar to above

GROUP 2 - All types of Cranes & backhoes; Cableways; Draglines; Keystones; All types of shovels; Derricks; Trench Shovels; Trenching machines; Hoists with two towers; Pavers, 21E & over; All types of overhead cranes; Building hoists (double drum); Gradalls; Mucking machines in tunnel; All front end loaders, 3½ cu. yds. & over; Tandem scrapers; Pippin type backhoes; Boat captains; Batch plant operators (concrete); Drills; Self-contained rotary drills; Fork lifts, 20 ft. lift & over; Machines similar to above

GROUP 3 - Conveyors; Building hoists (single drum); Scrapers & Tournapulls; Spreaders; High or low pressure boilers; Concrete pumps; Well drillers; Bulldozers & tractors; Asphalt plant engineers; Roller (high grade finishing); Ditch witch type trencher; All loaders under 3½ cu. yds.; Mechanic-welder; Motor patrols; Drill helper-self contained rotary drills; Core drill operator; Forklift trucks, under 20 ft. lift; Machines similar to above.

GROUP 4 - Welding machines; Well points; Compressors; Pumps; Heaters; Farm tractors; Form line graders; Fine grade machines; Road finishing machines; Concrete breaking machines; Rollers; Seaman pulverizer mixer; Power broom; Seeding spreaders; Tireman (for power equipment); Machines similar to above

GROUP 5 - Fireman, Grease truck

GROUP 6 - Oilers & deck hands (personnel boats); Core drill helper

GROUP 7 - All machines with booms (including jib, masts, leads, etc.); 100 ft and over

GROUP 7-A - 150 ft and over

GROUP 7-B - 200 ft and over

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Roofers, Composition and Kettlemen	11.15	.90	.85		
SHEET METAL WORKERS	11.95	.75	.80		.02
SOFT FLOOR LAYER	9.60	.55	.65		.05
STEAMFITTERS	12.34	.65	.95		.05
SPRINKLER FITTERS	13.55	.75	1.05		.08
TRUCK DRIVERS:					
Pittston:					
Class 1	9.52				
Class 2	9.59				
Class 3	10.08				
Remainder of County:					
Pickup, service dump and flat including Z license	8.07	h	j		
All trucks over Z license	8.12	h	j		
Fork lifts; Tow motors; Front and pneumatic tired loaders	8.08	h	j		
WELDERS: Receive rate for Craft					

TRUCK DRIVER CLASSIFICATIONS
PITTSTON

Class 1: Helper; Stake body truck (single axle dumpster)

Class 2: Dump trucks; Tandem and batch trucks; Semi-trailers; Agitator mixer trucks; Ready mix and dumpcrete type vehicles asphalt distributors; Farm tractor when used for transportation; Stake body truck (tandem)

Class 3: Euclids type; Off-highway equipment - back or belly dump trucks and double-hitched equipment; Straddle (Ross Carrier); Low-bed trailers

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: C and D

b. Employer shall contribute $0.12 per day per employee

c. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

d. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

e. Employer contributes $2.60 per hour to Health and Welfare and Pension Fund.

f. Paid Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the days preceding and following the holiday.

g. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day and Thanksgiving Day

h. $41.00 per month for employees who have worked 60 hours or more during the month

j. $25.00 per month to employees employed for over 13 weeks.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(i)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Columbia, Montour & Snyder

DECISION NO.: PA80-3032 DATE: Date of Publication

Supersedes Decision No.PA78-3066 dated September 22, 1978, in 43 FR 43228.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation, does not include single family homes or apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS					
ZONE 1	11.875	.80	.60		.01
ZONE II	11.61	1.12	.90		.01

AREA COVERED BY ASBESTOS WORKERS

ZONE I - Columbia & Montour Counties

ZONE II - Snyder County

BOILERMAKERS	14.64	1.175	1.00		.02
BRICKLAYERS & STONEMASONS					
ZONE I	11.00	.55	.65		
ZONE II	11.35	.55	.70		.01

AREA COVERED BY BRICKLAYERS & STONEMASONS ZONES

ZONE I - Montour & Synder Counties

ZONE II - Columbia County

CARPENTERS	10.92	.55	.65		.05
CEMENT MASONS					
ZONE I	10.95				.01
ZONE II	10.95	.55	.70		.01

AREA COVERED BY CEMENT MASONS ZONES

ZONE I - Montour & Snyder Counties

ZONE II - Columbia County

DECISION NO. PA80-3032

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS					
ZONE I	11.95	.50	3%+.20		.05
ZONE II	11.87	.65	3%+.30	a	.12
ZONE III	11.36	.65	3%+.67		1%

AREA COVERED ELECTRICIANS ZONES

ZONE I - Montour County; North of U.S. Highway #522 and Selesgrove Township in Snyder County and Remainder of Columbia County

ZONE II - Berwick Borough in Columbia County

ZONE III - South of U.S. Highway #522 in Snyder County

GLAZIERS					
ZONE I	10.00	.65	.85		.01
ZONE II	10.14	.55	.60		.01
ZONE III	10.50	.65	.85		

AREA COVERED BY GLAZIERS ZONES

ZONE I - Roaring Creek, Locust, Cleveland, Cunningham, Mt. Carmel Townships in Columbia County, Montour County

ZONE III - Snyder County

ZONE III - Remainder of Columbia County

IRONWORKERS					
ZONE I	12.505	1.24	1.36		.03
ZONE II					
Structural and Ornamental	12.80	b			.10
Reinforcing	12.70	b			.10

AREA COVERED BY IRONWORKERS ZONES

ZONE I - Montour & Synder Counties

ZONE II - Columbia County

DECISION NO. PA80-3032

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
ZONE I					
CLASS I	$7.84	.65	.85		
CLASS II	8.24	.65	.85		
CLASS III	7.94	.65	.85		
CLASS IV	8.09	.65	.85		
ZONE II					
CLASS I	7.95	.65	.55		
CLASS II	8.10	.65	.55		
ZONE III					
CLASS I	8.65	.55	.65		
CLASS II	9.12	.55	.65		
CLASS III	8.05	.55	.65		
CLASS IV	9.01	.55	.65		

AREA COVERED BY LABORERS ZONES AND CLASSIFICATIONS

ZONE I - Columbia County

CLASS I - Unskilled laborers and window washers

CLASS II - Mason tenders and scaffold buliders

CLASS III - Pnuematic electrical tool operator under the jurisdiction of laborers 2' pump-non-metallic pipe laying and making joints clay terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot material; cement finishers and blasters helpers, power buggies, and walk along hoist

CLASS IV - Plasterers tenders, blasters and wagon drill operator

ZONE II - Montour County

CLASS I - Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition

AREA COVERED BY LABORERS ZONES AND CLASSIFICATIONS (CONT'D)

ZONE II (CONT'D)

CLASS II - Operators of jackhammers, paving breakers, vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12') nonmetallic pipe layers, plasterers tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings, masons tenders

ZONE III - Synder County

CLASS 1 General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blow-pipe and vacuum cleaners. Cassion workers (top men), Pipelayers for all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same. Power-buggy, precast slab placers & signal men, Blaster helper, Excavation of all foundation, digging of trenches, piers and manholes. Wrecking and moving of all structures. Under pinning & shoring. Stripping, dismantling, oiling & moving of concrete forms, loading, and carring of reinforcing steel, handling & distribution of lumber, and all other building material to stock piles, unloading, carring, distribution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuge, debris and all scrap material(s), vibrator operator (concrete placing - whose power is supplied by compressed air, electric, gasoline & any other means):

CLASS 2 Semi-Skilled: Cassion worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny. Plaster & cement mason tenders, machine mixers, plater pump and scaffold builders (excluding masonry scaffolding Sand Blasting (nozzle men):

CLASS 3 Nursery Workers, window washers, floor scrubbers, and watchmen. Tenders of propane gas burners, salamander(s), smudge pots, toolroom workers. Fire watch:

CLASS 4 Mason tenders, machine mixers, Motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sandblasting for masonry and masonry equipment

DECISION NO. PA80-3032	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS					
Zone I	11.43		.35		.01
Zone II	10.71	.40	.25		.01
Zone III	11.53		.20		.01
LEADBURNERS	10.75	.40	.25	c	.01
LINE CONSTRUCTION					
Lineman, dynamite man, heavy equipment operator	12.37	.55	3%		3/8 of 1%
Winch truck operator	8.68	.55	3%		3/8 of 1%
Groundman	8.30	.55	3%		3/8 of1%
MARBLE SETTERS	10.00		.50		
MILWRIGHTS	13.52	.60	.70		.05
PAINTERS					
Brush	10.35	.75	.60		.10
Tapers	11.61	.75	.60		.10
Hazardous	10.61	.75	.60		.10
PILEDRIVERMEN	11.52	2.48	1.40	d	.12
PLASTERERS					
ZONE I	10.95	.55	.70		.01
ZONE II	10.20				

AREA COVERED BY LATHERS ZONES

ZONE I - Columbia County

ZONE II- Montour County

ZONE III- Snyder County

AREA COVERED BY PLASTERERS ZOMES

ZONE I - Columbia County

ZONE II - Snyder & Montour

DECISION NO. PA80-3032	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & STEAMFITTERS	$11.80	1.00	1.00		.12
ROOFERS					
ZONE I	11.15	.90	.85		
ZONE II	10.76	.80	.55		
SHEET METAL WORKERS	11.95	.75	.81		.02
SOFT FLOOR LAYERS	9.60	.55	.65		.05
SPRINKLER FITTERS	13.55	.75	1.05		.08
TRUCK DRIVERS					
ZONE I	7.20				
ZONE II					
CLASS I	8.07	a	b		
CLASS II	8.12	a	b		
CLASS III	8.08	a	b		

AREA COVERED BY ROOFERS ZONES

ZONE I - Columbia & Montour Counties

ZONE II - Snyder County

TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS

ZONE I - Montour County

ZONE II - Columbia & Snyder Counties

CLASS I - Pick-ups and service dump and flat including "Z" license

CLASS II - All trucks over "Z" license

CLASS III - Fork lifts tow motors, front and pneumatic tired loaders

FOOTNOTES:

a. Employer contributes $41.00 per month to employees who have worked 60 hours or more for the employer during the preceding month.

b. Employer contributes $25.00 per month to employees who have been employed over 13 weeks.

WELDERS - Rate of craft

FOOTNOTES:

a. Paid Holidays: July 4th, Labor Day, Thanksgiving Day Good Friday.

b. Employer contributes $2.60 to a combined Health and Welfare and Pension Fund.

c. Paid Holidays: New Year's Day; Memorial Day; Indenpendence Day; Labor Day; Thanksgiving Day; Christmas Day; Washington's Birthday; Good Friday and Christmas Eve provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceding and following the holidays.

d. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day and Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. PA80-3032 POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%

CLASSIFICATIONS DEFINITIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist wirh two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type bachoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt palnt engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc): 100 ft. and over

GROUP 7-A: 150 ft. and over
GROUP 7-B: 200 ft. and over

FOOTNOTES:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

SUPERSEDEAS DECISION

STATE: West Virginia COUNTY: Statewide
DECISION NO.: WV80-3016 DATE: Date of Publication
Supersedes Decision No. WV77-3083, dated September 30, 1977, in 42 FR 53172
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS & STONEMASONS:					
AREA 1	11.52	.65	.75		
AREA 2	13.58	.55	.50		.05
AREA 3	11.96	.65	.67		.02
AREA 4	12.53	.65			.03
AREA 5	14.46	.75	.40		
AREA 6	13.30	.80			
AREA 7	11.19	.65	.40		
AREA 8	10.70				

AREAS COVERED BY BRICKLAYERS & STONEMASONS

AREA 1 - Boone, Braxton, Clay, Fayette, Greenbrier, Kanawha, Putnam, Raleigh & Summers Counties.
AREA 2 - Barbour, Doddridge, Gilmer, Grant, Hardy, Harrison, Lewis, Marion, Monongalia, Pendleton, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur & Webster Counties.
AREA 3 - Marshall, Ohio, Tyler & Wetzel Counties.
AREA 4 - Brooke & Hancock Counties.
AREA 5 - Cabell, Lincoln, Mason, Mingo & Wayne Counties.
AREA 6 - Calhoun, Jackson, Pleasants, Ritchie, Roane, Wirt & Wood Counties.
AREA 7 - Berkeley, Hampshire, Jefferson, Mineral & Morgan Counties.
AREA 8 - McDowell, Mercer, Monroe & Wyoming Counties.

CARPENTERS:					
Heavy Construction	10.44	.80	.50		.05
Highway Construction	10.24	.80	.50		.05
CEMENT MASONS:					
Heavy Construction	11.42	.50			
Highway Construction	11.21	.50			

DECISION NO. WV80-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
AREA 1					
Wiremen	13.50	.50	3%+.75		.04
Cable splicers	14.85	.50	3%+.75		.04
AREA 2					
Contracts $15,000 or less:					
Wiremen	9.17	.50	3%+.67	.77	.06
Cable splicers	9.47	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	12.07	.50	3%+.67	.77	.06
Cable splicers	12.37	.50	3%+.67	.77	.06
Area 3					
Wiremen	10.95	.50	3%+.50	2.00	.03
Cable splicers	12.045	.50	3%+.50	2.00	.03
AREA 4					
Wiremen	12.60	.50	3%+.35	1.00	.04
Cable splicers	12.85	.50	3%+.35	1.00	.04
AREA 5					
Wiremen	13.50	7%	10%	10%	½ of 1%
AREA 6					
Contracts under $12,000:					
Wiremen	6.15	.50	3%+.50	2.00	.02
Contracts $12,000 or more:					
Wiremen	11.35	.50	3%+.50	2.00	.02
Cable splicers	11.50	.50	3%+.50	2.00	.02
AREA 7					
Wiremen	11.75	.50	3%+1.25	1.50	.04
Cable splicers	12.00	.50	3%+1.25	1.50	.04
AREA 8					
Wiremen	12.52	.50	3%+1.02	1.02	.04
Cable splicers	13.15	.50	3%+1.02	1.02	.04
AREA 9					
Wiremen	12.97	.50	3%+1.02	1.02	.04
Cable splicers	13.62	.50	3%+1.02	1.02	.04
AREA 10					
Wiremen	12.72	.50	3%+1.02	1.02	.04
Cable splicers	13.36	.50	3%+1.02	1.02	.04

DECISION NO. WV80-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D):					
AREA 11					
Wiremen	11.40	.80	3%+.70		1%
AREA 12					
Wiremen	11.40	.80	3%+.70		1%
AREA 13					
Wiremen	12.00	.80	3%+.70		1%
AREA 14					
Wiremen	8.51	.30	3%		½ of 1%
Cable splicers	8.91	.30	3%		½ of 1%
AREA 15					
Contracts $15,000 or less:					
Wiremen	9.47	.50	3%+.67	.77	.06
Cable splicers	9.77	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	12.37	.50	3%+.67	.77	.06
Cable splicers	12.67	.50	3%+.67	.77	.06
AREA 16					
Contracts $15,000 or less:					
Wiremen	9.67	.50	3%+.67	.77	.06
Cable splicers	9.97	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	12.57	.50	3%+.67	.77	.06
Cable splicers	12.87	.50	3%+.67	.77	.06
AREA 17					
Contracts under $30,000:					
Wiremen	6.45	.50	3%		3/4 of1%
Contracts $30,000 or more:					
Wiremen	10.20	.50	3%		3/4 of1%
AREA 18					
Wiremen	10.26	8%	6⅓%	8%	1%
Cable splicers	10.66	8%	6⅓%	8%	1%

DECISION NO. WV80-3016

AREAS COVERED BY ELECTRICIANS

AREA 1 - Boone, Braxton, Calhoun, Clay, Fayette (Falls & Kanawha Townships only), Gilmer, Kanawha, Nicholas, Putnam, Raleigh (Clear Fork & Marsh Fork Townships only), Roane & Webster Counties.
AREA 2 - Raleigh (remainder of county) County.
AREA 3 - Barbour, Doddridge, Harrison, Lewis, Randolph & Upshur Counties.
AREA 4 - Brooke (Buffalo Twp Only), Marshall, Ohio & Wetzel Counties
AREA 5 - Brooke (except Buffalo Twp) & Hancock (except Grant Twp.) Counties.
AREA 6 - Marion, Monongalia, Preston, Taylor & Tucker Counties.
AREA 7 - Jackson, Pleasants, Ritchie, Tyler, Wirt & Wood Counties.
AREA 8 - Cabell & Wayne Counties.
AREA 9 - Logan, Mason & Mingo Counties.
AREA 10 - Lincoln County.
AREA 11 - Mineral County.
AREA 12 - Berkeley, Hampshire & Morgan Counties.
AREA 13 - Grant County.
AREA 14 - Greenbrier, McDowell, Mercer, Monroe & Pocahontas Counties.
AREA 15 - Fayette (remainder of county) County.
AREA 16 - Summers & Wyoming Counties.
AREA 17 - Hardy, Jefferson & Pendleton Counties.
AREA 18 - Hancock County - Grant Twp. only

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
AREA 1	12.25	1.00	1.45		.09
AREA 2	12.60	.90	1.75		.05
AREA 3	11.95	1.00	1.45		.03
AREA 4					
Zone 1 - 10 miles from Union Hall	12.07	.90	1.05		.01
Zone 2 - 10 to 15 miles from Union Hall	12.22	.90	1.05		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS (CONT'D)					
Zone 3 - 15 to 20 miles from Union Hall	12.32	.90	1.05		.01
Zone 4 - over 20 miles from Union Hall	12.42	.90	1.05		.01
AREA 5	10.44	.60	.90		
AREA 6	10.55	.60	.85		.03

AREAS COVERED BY IRONWORKERS

AREA 1 - Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Nicholas, Putnam, Raleigh, Webster & Wyoming Counties.
AREA 2 - Barbour, Brooke, Hancock, Harrison, Marion, Marshall, Monongalia, Ohio, Taylor, Tyler & Wetzel Counties.
AREA 3 - Calhoun, Doddridge, Gilmer, Jackson, Lewis, Mason, Pleasants, Ritchie, Roane, Upshur, Wirt & Wood Counties.
AREA 4 - Cabell, Mingo & Wayne Counties.
AREA 5 - Berkeley, Grant, Hampshire, Hardy, Mineral, Morgan, Pendleton, Preston, Randolph & Tucker Counties.
AREA 6 - Greenbrier, Mercer, Monroe, Pocahontas & Summers Counties.

LABORERS:					
Heavy Construction:					
Group 1	10.04	.60	.60		.05
Group 2	9.62	.60	.60		.05
Group 3	9.32	.60	.60		.05
Group 4	8.99	.60	.60		.05
Group 5	8.75	.60	.60		.05
Group 6	8.25	.60	.60		.05
Highway Construction:					
Group 1	9.86	.60	.60		.05
Group 2	9.45	.60	.60		.05
Group 3	9.13	.60	.60		.05
Group 4	8.81	.60	.60		.05
Group 5	8.51	.60	.60		.05
Group 6	8.05	.60	.60		.05

All classifications who are required to work in open vertical ditches and manholes that are 6' or more in depth shall receive 15¢ per hour above their regular rate of pay.

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LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Blacksmith, Tunnel Driller, Tunnel Miner and Powderman.
GROUP 2 - Mucker-Chucker.
GROUP 3 - Caison bottom man, Pipe Layer (including Laser Beam Set-up), Form setter (road), Drill Operator and Inside Laborer.
GROUP 4 - Airtool Operator, Vibrator Man, Whacker, Chainsaw Operator, Mortarman, Mason Tender, Blacksmith Helper, Cement Finisher Helper, Drill Helper, Powderman Helper, Waterproofer, Sheeter and Shorer, Pipelayers Helper, Bullfloat Man, Pavement Reinforcing Placer, Handyman, Signal Man, Asphalt Raker, Greencutter, Georgia Power Buggie, Burner, Grade Checker, Concrete Blower Man.
GROUP 5 - Laborer, Deckhand, Mulcher and Seeder (hand or machine), Trees Trimmer, Flagman.
GROUP 6 - Watchman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
AREA 1					
Linemen	13.68	.60	3%+.50	.90	1/2%
Cable Splicer and Linemen Welder	15.05	.60	3%+.50	.90	1/2%
Mechanized Equipment Operators	10.94	.60	3%+.50	.90	1/2%
Groundmen	8.89	.60	3%+.50	.90	1/2%
AREA 2					
Linemen and operators (all mechanized equipment)	11.97	.70	3%+.67	.77	1/2%
Cable Splicers	12.27	.70	3%+.67	.77	1/2%
Groundmen	9.58	.70	3%+.67	.77	1/2%
AREA 3					
Linemen and Equipment Operators	11.65	.60	3%+1.25	1.50	1/2%
Cable Splicers	12.82	.60	3%+1.25	1.50	1/2%
Groundmen	9.32	.60	3%+1.25	1.50	1/2%
AREA 4					
Linemen and Equipment Operators	10.95	.50	3%+.50	2.00	1/2%
Cable Splicers	12.045	.50	3%+.50	2.00	1/2%
Groundmen and Truck Drivers	8.76	.50	3%+.50	2.00	1/2%

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LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 5					
Linemen & operators (all mechanized equipment)	12.60	.50	3%+.35	1.00	½ of 1%
Cable splicers	12.85	.50	3%+.35	1.00	½ of 1%
Groundmen	10.08	.50	3%+.35	1.00	½ of 1%
AREA 6					
Linemen & operators (all mechanized equipment)	13.50	7%	10%	10%	
Cable splicers	14.00	7%	10%	10%	
Groundmen	8.78	7%	10%	10%	
AREA 7					
Linemen & operators (all mechanized equipment)	11.35	.50	3%+1.02	1.52	½ of 1%
Cable splicers	12.485	.50	3%+1.02	1.52	½ of 1%
Groundmen & Truck Drivers	9.08	.50	3%+1.02	1.52	½ of 1%
AREA 8					
Linemen	10.15	.50	3%+.25		½ of 1%
Equipment operators	9.64	.50	3%+.25		½ of 1%
Truck drivers & groundmen	6.60	.50	3%+.25		½ of 1%
AREA 9					
Linemen	10.35	.50	3%+.25		½ of 1%
Equipment operators	9.84	.50	3%+.25		½ of 1%
Truck drivers & groundmen	6.80	.50	3%+.25		½ of 1%
AREA 10					
Linemen	10.55	.50	3%+.25		½ of 1%
Equipment operators	10.04	.50	3%+.25		½ of 1%
Truck drivers & groundmen	7.00	.50	3%+.25		½ of 1%
AREA 11					
Linemen, cable splicers & equipment operators	12.11	.45	3%		½ of 1%
Truck with winch, pole or steel handling	7.43	.45	3%		½ of 1%
Groundmen	7.17	.45	3%		½ of 1%
AREA 12					
Linemen and operators (all mechanized equipment)	12.27	.70	3%+.67	.77	1/2%
Cable Splicers	12.57	.70	3%+.67	.77	1/2%
Groundmen	9.82	.70	3%+.67	.77	1/2%

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LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 13					
Linemen and operators (all mechanized equipment)	12.47	.70	3%+.67	.77	1/2%
Cable Splicers	12.77	.70	3%+.67	.77	1/2%
Groundmen	9.98	.70	3%+.67	.77	1/2%
AREA 14					
Linemen	8.66	.35	3%		½ of 1%
Cable splicers	9.06	.35	3%		½ of 1%
Equipment operators	7.45	.35	3%		½ of 1%
Trucks with earth boring auger	6.06	.35	3%		½ of 1%
Trucks with winch, groundmen	4.76	.35	3%		½ of 1%
AREA 15					
Linemen & Equipment Operators	10.26	8%	6½%	8%	1%
Cable splicers	10.66	8%	6½%	8%	1%
Truck drivers & Groundmen	9.36	8%	6½%	8%	1%

AREAS COVERED BY LINE CONSTRUCTION

AREA 1 - Boone, Braxton, Cabell, Calhoun, Clay, Fayette (Falls and Kanawha Twps.), Gilmer, Kanawha, Lincoln, Logan, Mason, Mingo, Nicholas, Putnam, Raleigh (Clear Fork and Marsh Fork Twps.), Roane, Wayne & Webster Counties.
AREA 2 - Raleigh County (excluding Clear Fork and Marsh Fork Twps.)
AREA 3 - Jackson, Pleasants, Ritchie, Tyler, Wirt & Wood Counties.
AREA 4 - Barbour, Doddridge, Harrison, Lewis, Randolph & Upshur Counties.
AREA 5 - Brooke (Buffalo Twp. only), Marshall, Ohio & Wetzel Counties.
AREA 6 - Brooke (except Buffalo Twp.) & Hancock (except Grant Twp.) Counties.
AREA 7 - Marion, Monongalia, Preston, Taylor & Tucker Counties.
AREA 8 - Mineral County.
AREA 9 - Berkeley, Hampshire & Morgan Counties.
AREA 10 - Grant County.
AREA 11 - Hardy, Jefferson & Pendleton Counties.
AREA 12 - Fayette County (excluding Falls and Kanawha Twps.)

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AREAS COVERED BY LINE CONSTRUCTION (CONT'D)

AREA 13 - Summers & Wyoming Counties
AREA 14 - Greenbrier, McDowell, Mercer, Monroe & Pocahontas Counties.
AREA 15 - Hancock County - Grant Twp. only.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
AREA 1					
Painters					
An area within 50 miles of Huntington, W.V.	9.73	.45	.35		.02
An area 50 miles and beyond of Huntington, W.V.	11.08	.45	.35		.02
Bridge & Hazardous Work (includes towers, smoke stacks, flag poles & tanks)					
An area within 50 miles of Huntington, W.V.	11.69	.45	.35		.02
An area 50 miles and beyond of Huntington, W.V.	13.04	.45	.35		.02
AREA 2					
Brush, roller, and spray	9.35	.30			
Industrial structural steel	12.65	.30			
Power cleaning tools and lining machine work - 50¢ over appropriate scale					
Material emitting toxic vapors-$1.00 over appropriate scale					
Height clause - additional $1.00 per hour per 100'					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 3					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		
AREA 4					
New Construction:					
Brush	10.76		.30		.01
Roller	11.02		.30		.01
Spray & Blast, Pot-Men	11.78		.30		.01
Repaint Work					
Brush	9.34		.30		.01
Roller	9.62		.30		.01
Spray & Pot-Men	11.78		.30		.01
Bridge					
Brush	11.46		.30		.01
Roller	11.71		.30		.01
Spray, Blast, glove	12.46		.30		.01
Open structural steel	11.11		.30		.01
Stacks, vent pipes, flag poles, electrical, radio & T.V. towers & tanks over 30 feet high	11.71		.30		.01

DECISION NO. WV80-3016	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):						
AREA 5						
Brush	9.96	9.07	.55			
Air Compressor Operator	9.96	9.07	.55			
Roller, Spray, Dipping & Mitten Work	10.36	9.46	.55			
Water blasters, Steam jenny nozzle men, swinging scaffold & Boatswain chair, window belt & window jack work	10.88	10.27	.55			
Brush painters on bridges needle beam, cable work, power tool work, brush & flame cleaning	11.29	10.74	.55			
Sand blaster	11.64	11.09	.55			
All stacks, vent pipes, flag poles in excess of 30' high, all towers, elevated tanks, electrical switch yards, transformer banks, television towers	12.67	12.21	.55			
Spray painter or sandblaster on bridges needle beam cable work	11.64	11.02	.55			

DECISION NO. WV80-3016	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 6:					
Brush & roller	9.87	.65	.50		.02
Glove	10.12	.65	.50		.02
Spray, sandblast & steam-cleaning	10.87	.65	.50		.02
Height over 40' - Brush	10.37	.65	.50		.02
Locks and Dams - Brush	10.95	.65	.50		.02
Towers - Brush	12.19	.65	.50		.02
Elevated Tanks over 35' - Brush and Roller	12.19	.65	.50		.02
Standpipe tanks over 35'-Brush and Roller, Power-line towers-Brush, Flag-poles over 40'-Brush, and Substations-Brush	12.19	.65	.50		.02
Railroad and Highway Bridges:					
Spray and Sandblast	12.19	.65	.50		.02
Brush	11.19	.65	.50		.02
Glove and Roller	11.44	.65	.50		.02
AREA 7					
Brush & roller	6.20	.50	.40		
Spray	7.20	.50	.40		
AREA 8					
Light Work					
Brush, rollers, sign painting	9.35		.50		
Brush & roller (toxic materials)	9.85		.50		
Spray, sandblasting & use of flame burning & power tools	10.35		.50		
Spray (toxic materials)	10.85		.50		
Heavy & Hazardous Work:					
Brush & sign painting	10.35		.50		
Brush (toxic materials)	10.85		.50		
Spray, rollers, sandblasting, & use of flame burning & power tools	11.35		.50		
Spray & roller (toxic materials)	11.85		.50		

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AREAS COVERED BY PAINTERS

AREA 1 - Cabell, Lincoln, Logan, Mason, Mingo & Wayne Counties.
AREA 2 - Monongalia & Preston Counties.
AREA 3 - Barbour, Doddridge, Gilmer, Harrison, Lewis, Marion, Randolph, Taylor, Tucker, Upshur & Webster Counties.
AREA 4 - Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler, Wirt & Wood Counties.
AREA 5 - Boone, Braxton, Clay, Fayette, Greenbrier, Kanawha, McDowell, Mercer, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Summers & Wyoming Counties.
AREA 6 - Brooke (south of Buffalo Creek), Marshall, Ohio & Wetzel Counties.
AREA 7 - Brooke (remainder of county), & Hancock Counties.
AREA 8 - Grant, Hampshire, Hardy, Mineral, Morgan & Pendleton Counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN - HEAVY CONSTRUCTION:					
AREA 1	10.60	5%	10%		1%
AREA 2	10.77	.80	.50		.05

AREAS COVERED BY PILEDRIVERMEN
HEAVY CONSTRUCTION

AREA 1 - Brooke, Hancock, Marshall, Monongalia, Ohio, and Wetzel Counties.
AREA 2 - All remaining Counties.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN - HIGHWAY CONSTRUCTION:					
AREA 1	10.60	5%	10%		1%
AREA 2	10.56	.80	.50		.05

AREAS COVERED BY PILEDRIVERMEN
HIGHWAY CONSTRUCTION

AREA 1 - Brooke, Hancock, Marshall, Monongalia, Ohio, & Wetzel Counties.
AREA 2 - All remaining counties

PLUMBERS AND PIPEFITTERS:					
AREA 1 Harrison, Marion, and Monongolia Counties	11.57	.65	1.00	1.157	.04
AREA 2 Barbour, Doddridge, Lewis, Preston, Taylor, and Upshur Counties	11.82	.65	1.00	1.182	.04
AREA 3 Braxton, Gilmer, Randolph, and Tucker Counties	12.07	.65	1.00	1.207	.04
AREA 4 Grant, Hampshire, Hardy, Mineral, and Pendleton Counties	12.32	.65	1.00	1.232	.04
AREA 5 Brooke (south of Buffalo Creek), Marshall, Ohio, and Wetzel Counties	11.79	.75	1.06	1.18	.05
AREA 6 Brooke (remainder of County) and Hancock Counties	12.61	.50	8%	8%	.12
AREA 7 Calhoun, Jackson, Pleasants, Ritchie, Tyler, Wirt, and Wood Counties	12.63	.50	.80		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS AND PIPEFITTERS: (CONT'D):					
AREA 8					
Cabell, Lincoln, Logan, Mason, Mingo, and Wayne Counties:					
Zone 1 - Within 8 mile radius of Cabell County Courthouse	10.88	.60	1.40		.02
Zone 2 - 8 to 15 miles from the Courthouse	11.00	.60	1.40		.02
Zone 3 - 15 to 25 miles from the Courthouse	11.28	.60	1.40		.02
Zone 4 - Over 25 miles from the Courthouse	11.53	.60	1.40		.02
AREA 9					
McDowell, Mercer, Monroe, Raleigh, Summers, and Wyoming Counties:					
Contracts $75,000 or less	8.55	.55	.60		.09
Contracts over $75,000	12.33	.55	.60		.09
AREA 10					
Boone, Clay, Fayette, Greenbrier, Kanawha, Nicholas, Pocohontas, Putnam, Roane and Webster Counties	12.95	.65	.80		.05
AREA 11					
Berkeley, Jefferson, and Morgan Counties	7.82	.60	.80	a	
POWER EQUIPMENT OPERATORS:					
Heavy Construction:					
Group 1	11.29	1.00	.60		.11
Group 2	10.49	1.00	.60		.11
Group 3	9.75	1.00	.60		.11
Group 4	9.51	1.00	.60		.11
Group 5	9.18	1.00	.60		.11
Group 6	8.86	1.00	.60		.11
Group 7	10.07	1.00	.60		.11

All classifications performing tunneling and underground work shall Receive an additional 25¢ per hour

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Highway Construction:					
Group 1	11.13	1.00	.60		.11
Group 2	10.30	1.00	.60		.11
Group 3	9.56	1.00	.60		.11
Group 4	9.32	1.00	.60		.11
Group 5	8.99	1.00	.60		.11
Group 6	8.67	1.00	.60		.11
Group 7	9.89	1.00	.60		.11

All classifications performing tunneling and underground work shall receive an additional 25¢ per hour.

CLASSSIFICATION DEFINITION FOR POWER EQUIPMENT OPERATORS ON HEAVY AND HIGHWAY CONSTRUCTION

Group 1 - Cranes, derricks, tower cranes, all shovels, draglines, clamshells, backhoes, cableways, derricks (2 drums or more), dredge, sideboom tractors and similar equipment having a reach from the top of the boom to the ground of 150 feet, or a capacity of 3 cubic yards and/or a lift capacity of 50 tons. Endloaders and concrete mixing plants of 4 cubic yards capacity or over. Hoist with 18,000 pound line pull or over, tug, tow or work boat above 25 horsepower engine. Transloader. Capacities to be based on manufacturer's specifications. Master Mechanic.

Group 2 - Crane, derrick boat, dragline, grade-all, hoist (two drums or more), mechanic (heavy), mixer plant (two or more mixers including batch control), paver (dual drums), pile driver, shovel, coredrill operator, trencher (20" or over), truck crane, backhoe, hi-lift (1-1/2 cubic yards or over), dozer with ripper (when dozer is D-8 class or larger), double hitched equipment, bulldozer with roller, standard gauge locomotive, concrete pump, controlled fine grade machine, slip form paver operator, dozer with sloper and log loader.

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CLASSIFICATION DEFINITION FOR POWER EQUIPMENT OPERATORS ON HEAVY AND HIGHWAY CONSTRUCTION (CONT'D)

Group 3 - Fork lift, self-propelled concrete spreader, concrete finishing machine, Bulldozer, derrick (single drum), hi-lift (under 1-1/2 cubic yards), hoist (single drum), single drum paver, trencher (under 20"), motor grader, air tugger, rubbertired scraper, self-loading tractor pan, Ross Carrier, "A" Frame, multiple concrete saw, asphalt paver, hydraulic post driver, base paver, rotary drill, lead greaser on grease truck or service island, snake or push tractor, horizontal road boring machine, conductor of locomotive, tie distributor, track lining machine ballast tamper, anchor application machine, ribbon rail puller, ballast regulator, auto sled, turn table.

Group 4 - Concrete mixer (single drum) one cubic yard or over, tireman, asphalt batch plant, concrete batch plant, crushing plant, screening and washing plant, form subgrader, power form handling equipment, burlap and curing machine, form grader, bull float, portable concrete saw roller and compactor, bar and joint installing machine and power broom.

Group 5 - High pressure fireman.

Group 6 - Air compressor, concrete mixer (under one cubic yard), conveyor-belt or bucket, light plant, narrow gauge locomotive, welding machine, low pressure fireman, mechanic's helper, oiler, deckhand, screed man, spreader box man, farm tractor, joint sealer and pump, steam jenny and brakeman of locomotive.

Group 7 - Group 6 operators when operating on (1) or more 600 CFM compressors or one (1) or more pumps 4" or larger, or more than one (1) air compressor, conveyor-belt or bucket, light plant, welding machine, and pumps.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
TRUCK DRIVERS:					
Heavy Construction					
Area 1: All counties except Grant, Hampshire, Hardy, Mineral, Morgan and Pendleton					
Group 1	9.04	b	c		
Group 2	9.21	b	c		
Group 3	9.45	b	c		
Group 4	9.79	b	c		
Group 5	9.87	b	c		
Group 6	10.05	b	c		
Group 7	10.25	b	c		
Group 8	10.29	b	c		
Area 2: Grant, Hardy, Hampshire, Mineral, Morgan, and Pendleton Counties:					
Group 1	9.04	1.00	.77		
Group 2	9.21	1.00	.77		
Group 3	9.45	1.00	.77		
Group 4	9.79	1.00	.77		
Group 5	9.87	1.00	.77		
Group 6	10.05	1.00	.77		
Group 7	10.25	1.00	.77		
Group 8	10.29	1.00	.77		
TRUCK DRIVERS:					
Highway Construction:					
Area 1: All counties except Grant, Hampshire, Hardy, Mineral, Morgan, & Pendleton					
Group 1	8.84	b	c		
Group 2	9.00	b	c		
Group 3	9.24	b	c		
Group 4	9.60	b	c		
Group 5	9.66	b	c		
Group 6	9.84	b	c		
Group 7	9.99	b	c		
Group 8	10.08	b	c		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: (CONT'D)					
Area 2: Grant, Hampshire, Hardy, Mineral, Morgan & Pendleton Counties:					
Group 1	8.84	1.00	.77		
Group 2	9.00	1.00	.77		
Group 3	9.24	1.00	.77		
Group 4	9.60	1.00	.77		
Group 5	9.66	1.00	.77		
Group 6	9.84	1.00	.77		
Group 7	9.99	1.00	.77		
Group 8	10.08	1.00	.77		

All truck driver classifications performing tunneling and underground work shall receivean additional 25¢ per hour

CLASSIFICATION DEFINITIONS FOR TRUCK DRIVERS ON HIGHWAY & HEAVY CONSTRUCTION

Group 1 - Warehouse, yardmen, truck helper, pick-ups, station wagons, panel trucks, team 2-up

Group 2 - Single axle trucks used as dump, supply, fuel, water, van, flatbody, monorail, distributor, (Other than bituminous distributors) and including towed single units - material checkers, material receivers, team 4-up, greasers, tiremen and mechanic helpers (trucks).

Group 3 - Tandem axle trucks used as dump, supply, fuel, water, van, flatbody, monorail and including towed single units, truck tractors used in combination with dump, van, tank, flatbed, low platform, or pole trailers, bituminous distributors, agitator or mixer trucks (up to and including 5 c.y.).

Group 4 - Agitator or mixer trucks over 5 c.y. and less than 12 c.y., rubbertired tractors (towing or pushing), drag drivers, and tag alongs.

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CLASSIFICATION DEFINITIONS FOR TRUCK DRIVERS ON HIGHWAY & HEAVY CONSTSUCTION CON'T

Group 5 - Tri-axle trucks used as dump, supply, fuel, water, van, flatbed, monorail and including towed single units, agitator or mixer trucks (over 12 c.y. to 20 c.y.)

Group 6 - Mobile metered mixer, agitator or mixer trucks (over 20 c.y.), off highway rear dump trucks to 75 tons.

Group 7 - "A" frame operator

Group 8 - Off highway rear dump - over 75 tons.

FOOTNOTES:

a. Holiday: Christmas Day

b. Employer contributes $110.00 per month per employee

c. Employer contributes $84.50 per month per employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: WISCONSIN COUNTY: Green & Rock
DECISION NUMBER: WI80-2040 DATE: Date of Publication
Supersedes Decision No. WI78-2130 dated October 27, 1978 in 43 FR 50362
DESCRIPTION OF WORK: Building construction (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	12.55	.95	1.00	1.25	.09
BOILERMAKERS	12.87	1.275	1.00		.05
BRICKLAYERS & STONEMASONS	11.58	.75	.70	.25	.02
CARPENTERS & SOFT FLOOR LAYER	11.83	.60	.70		.12
Millwrights	12.40	.60	.70		.12
Piledrivermen	11.98	.60	.70		.12
CEMENT MASONS	10.55	.75	1.00		
ELECTRICIANS	12.85	.55	5%	7%	½%
ELEVATOR CONSTRUCTORS:					
Southern portion of County	13.00	1.045	.69	a+b	.03
Northern portion of County	12.04	1.045	.82	a+b	.03
Elevator constructors' helpers:					
Southern portion of County	9.10	1.045	.69	a+b	.03
Northern portion of County	8.43	1.045	.82	a+b	.03
GLAZIERS:					
Northern 2/3 of County	11.93	.70			.03
Southern 1/3 of County	10.08	.47	.35	1.50	.02
IRONWORKERS (all):					
Vic. Edgerton, Milton, Poolville, & Evansville	12.04	.75	.75		.07
Vic. of Janesville, Shopier	13.25	.75	.375		.10
LABORERS:					
General, Mason Tenders, Plaster tenders	9.47	.55	.45		.03
Mortar Mixers, Jackhammer & Air Hammer Operator	9.62	.55	.45		.03
LATHERS:					
Eastern ½	11.44	.55	.45		.01
Southerwestern portion	12.05	.55	.85		.04
Remainder of County	10.30	.55	.20	.50	.01
LINE CONSTRUCTION:					
Linemen	11.82	.62	7%		½%
Heavy Equipment Operator	10.64	.62	7%		½%
Light Equipment Operator	9.46	.62	7%		½%
Heavy Groundman - Truck Driver	8.27	.62	7%		½%
Light Groundman - Truck Driver	7.68	.62	7%		½%
Groundman	6.50	.62	7%		½%
PAINTERS:					
Brush	10.46	.80	.30	.40	
Structural Steel (brush)	10.46	.80	.30	.40	
Spray	11.21	.80	.30	.40	
Swing Stage	10.71	.80	.30	.40	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS	10.65	.75	1.00		
PLUMBERS & STEAMFITTERS	13.71	.65	.80		.06
ROOFERS	13.35	.55			
SHEET METAL WORKERS	13.21	.85	.72		.04
TILE SETTERS	11.30	.75	.70	.25	.02

Welders - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day;C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Six Paid holidays: A through F.

b. Employer contributes 8% of regular hourly rate for vacation pay credit for employee who has worked in business more than 5 years's and 6% for employee who has worked in the business less than 5 years

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	12.02	1.05	.90		.05
GROUP II	11.77	1.05	.90		.05
GROUP III	11.47	1.05	.90		.05
GROUP IV	11.37	1.05	.90		.05
GROUP V	10.96	1.05	.90		.05
GROUP VI	10.62	1.05	.90		.05

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 Tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket)

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and launch)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150KW Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, forklift (12' and under)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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May 30, 1980

Part III

Department of Energy

Fixed Net Profit Share Bidding System for Outer Continental Shelf Oil and Gas Leases and Accounting Procedures for Determining Net Profit Share Payments; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 376, 390

Final Rulemaking Regarding a Fixed Net Profit Share Bidding System for Outer Continental Shelf Oil and Gas Leases and Accounting Procedures for Determining Net Profit Share Payments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: These regulations establish a "fixed net profit share" bidding system for use in lease sales of Outer Continental Shelf oil and gas tracts. The bidding system uses cash bonus as the bid variable and requires net profit share payments at a rate that is constant for the duration of the lease and a fixed annual rental payment. These regulations also establish accounting procedures that oil and gas firms are required to use in order to calculate net profit share payments due the United States for the right to produce oil and gas from Outer Continental Shelf leases issued under net profit share bidding systems. The most significant changes from the proposed regulation include a modification of the definition of the capital recovery period and changes to the accounting procedures, most notably those dealing with required inventories, audits, and records retention. This regulation implements rulemaking responsibilities under section 8(a) of the Outer Continental Shelf Lands Act, as amended by Pub. L. 95–372, that were transferred to the Department of Energy under sections 302(b) and 303(c) of the Department of Energy Organization Act.

EFFECTIVE DATES: The amendment to Part 376 contained in this regulation and Part 390 shall be effective May 14, 1980.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

Sections 302 and 303 of the Department of Energy Organization Act (DOE Act, Pub. L. 95–91, 91 Stat. 578–580 (42 U.S.C. 7152, 7153)) transferred to the Secretary of Energy certain authorities previously held by the Secretary of the Interior under the Outer Continental Shelf Lands Act (OCSLA), the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act. Specifically, with respect to Federal leases issued under these statutes, section 302(b) of the DOE Act authorizes the Secretary of Energy to promulgate regulations which relate to the: (1) Fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures); (2) implementation of alternative bidding systems authorized for the award of Federal leases; (3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements); (4) setting rates of production for Federal leases; and (5) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.

The Secretary of Energy is specifically authorized to promulgate regulations under the OCSLA as they relate to the implementation of alternative bidding systems authorized for the award of Federal Outer Continental Shelf (OCS) leases (section 302(b)(2) of the DOE Act) and to disapprove any term or condition of a Federal OCS lease which relates to the authority to promulgate regulations under section 302(b) (§ 303(c)(1) of the DOE Act).

On November 30, 1979, the Department of Energy (DOE) issued a proposed regulation (44 FR 70390, December 6, 1979) to establish a fixed net profit share bidding system for use in OCS lease sales. The proposed bidding system differed in significant respects from the traditional bidding system used for OCS lease sales under which leases were issued on the basis of a cash bonus bid with subsequent payments to the government based on a fixed royalty and a fixed annual rental. The proposed bidding system retained cash bonus as the bid variable, but replaced the royalty payment as the basis on which the Federal Government would receive further payments for its resources with payment of a fixed share of the net profits. The regulation as proposed also established accounting procedures for allocating expenditures incurred by lessees during exploration, development and production of net profit share leases and for calculating net profit share payments. To the extent feasible, DOE based the accounting procedures in the proposed regulation on those generally used within industry. In addition, the proposed regulation established procedures for auditing by the Federal Government of lessees' accounting practices and net profit share calculations and prescribed the process whereby a lessee might challenge any adjustment to its calculations resulting from such auditing. The proposal incorporated a fixed capital recovery system as the means through which lessees would recover costs of exploration and development from production revenues, as well as a reasonable return on investment.

Implementation of a fixed net profit share bidding system satisfies a primary intention of Congress in enacting the OCSLA Amendments of 1978 (Amendments, Pub. L. 95–372, 92 Stat. 629) that there be experimentation with various bidding systems. Explicit in the Amendments is Congress' conclusion that terms and conditions under which leases are awarded, i.e., the bidding and leasing process, have an important effect on orderly and efficient resource development. In particular, "with the present shortage of investment capital that will prevail for many years, increasing risk of uncertainty, and the increasing integration and concentration of energy industries, there is some doubt whether cash bonus bidding remains the

best system for the future." (Report of the House Ad Hoc Select Committee on the Outer Continental Shelf, H.R. Rep. No. 95–590 to accompany H.R. 1614, 95th Congress, 1st Session (1977), p. 54). Thus, Congress directed through the Amendments that bidding arrangements other than the cash bonus-fixed royalty system be developed and used on an experimental basis, so as to "strike a proper balance between securing a fair market return to the Federal Government for the lease of its lands, increasing competition in exploitation of resources, and providing the incentive of a fair profit to the oil companies, which must risk their investment capital" (House Report, p. 54).

A review of the Amendment's legislative history indicates that Congress was particularly interested in profit share bidding systems. Congress's perception was that large cash bonus payments may inhibit competition for OCS leases by preventing smaller independent firms from participating in OCS development.

By design, use of a net profit share system places greater emphasis on contingency payments for generating fair returns to the government, and thereby less reliance on the initial cash bonus. Reduction of cash bonus bids constitutes a primary effect intended under the proposal. The proposal was also intended to result in increased production of oil and gas from the OCS, foster development of marginal oil and gas fields, increase effective competition for OCS leases, and free more funds for exploration in addition to increasing total revenue to the public.

DOE has determined that initial experimentation with a net profit share bidding system should retain cash bonus as the bid variable. This determination is based upon the belief that profit share rate bidding will exhibit the same problems experienced with royalty rate bidding, *i.e.*, a tendency to overbid the profit share rate, speculative bidding, and inefficient resource development.

Since the administration of this regulation is the responsibility of the U.S. Geological Survey (USGS) within the Department of the Interior (DOI), utilization of this bidding system will result in greater administrative responsibilities for the USGS, relating to determination of proper rates for certain costs, concern for inventory, and performance of periodic audits. USGS regulations are not superseded by this action but must be followed in conjunction with this regulation, as appropriate.

Pursuant to § 204 of the Amendments, a copy of the proposed regulation was transmitted to the Attorney General for his views on any matters contained herein that may affect competition. No comments have been received. DOE consulted with DOI in the preparation of this regulation and its views have been carefully considered in the development of the final regulation.

II. Analysis of Public Comments

A. General

The proposed regulation was published in the **Federal Register** on December 6, 1979 (44 FR 70390) and public comment was invited over a period of three months; the comment period closed on March 7, 1980. During the comment period, DOE held public hearings on the proposed regulation in Washington, D.C. and Houston, Texas. In response to the proposal, comments were received from 27 private firms (all actively engaged in the offshore oil and gas industry), 2 State agencies, and 2 Federal agencies.

The comments divided logically along several lines. Most of the comments received from industry, for example, expressed some degree of opposition to the concept of a net profit share system. For a variety of reasons, however, the degree of opposition ranged from strong objection to mild disapproval of the concept. Some disagreed with the underlying rationales of the regulation, asserting that sufficient competition already exists for OCS leases or that the present cash bonus—fixed royalty bidding system has served optimally to facilitate recovery of oil and gas from the OCS. Others felt that the proposed regulation would fail to achieve its goals, except for increasing revenue to the public. Few comments wholeheartedly endorsed the proposal.

A second area of concern focused on the proper structure of a net profit share system. Nearly all the comments perceived conceptual difficulties in the proposal. Among the considerations raised as presenting difficulties were the choice of a fixed capital recovery system, with the inherent difficulties posed by the selection of a fixed capital recovery factor and the selection of a point for termination of the preproduction period; the increased administrative requirements for both Government and industry, including the perceived problems associated with lowered incentives to early exploration or to formation of joint ventures; unitization of net profit share leases with fixed royalty leases; use of the proposed system in frontier areas, and frequency of its use; and the augmented role of the USGS in the administration of the fixed net profit share system. Other comments expressed a preference for a fundamentally different system of profit sharing, the investment account system, instead of the fixed capital recovery system proposed in the regulation. For reasons detailed below, DOE has chosen to adopt in this final regulation the proposed fixed capital recovery system with certain modifications, as the most efficacious and least burdensome means of implementing profit share leasing.

The third major portion of the comments addressed technical issues, most notably perceived shortcomings in the accounting procedures contained in the proposal. Several sets of comments contained detailed recommendations to remedy perceived flaws in the proposal, several from those respondents expressing greatest disapproval of the net profit share concept. The major shortcomings of the proposed regulation discussed in the comments centered on exclusion of various costs from the profit share accounts, and allocation of certain operating costs to overhead. DOE intends this regulation to provide lessees with incentives to early exploration and development. Insofar as possible, the final regulation defers to industry accounting practices as set out in procedures of the Council of Petroleum Accounting Societies of North America (COPAS). Deviations from COPAS procedures are basically due to the different purpose of this regulation from that of usual joint venture accounting because COPAS leaves allocation of certain contract factors (e.g. overhead rates) to negotiation by the joint venturers.

DOE has carefully reviewed all of the comments and considered them in redrafting this regulation. The discussion of the major comments which follows is divided into three sections: the foundation of the regulation, the structure of the fixed net profit share system, and the accounting procedures. The comments provided considerable assistance in the redrafting of the regulation, particularly with respect to many technical aspects of the accounting procedures.

B. Foundations of the Regulation

Most comments received from industry expressed some degree of opposition to the concept of leasing with a net profit share term in OCS leases. The degree of opposition varied, but appeared to stem from a general apprehension among firms engaged in OCS operations that introduction of a net profit share system might lead to decreased reliance upon the cash bonus-fixed royalty system at present in dominant use, and that the perceived burdens associated with any net profit

share system might outweigh its beneficial aspects. Others questioned the existence of any beneficial aspects to the proposal, as compared with the traditional cash bonus—fixed royalty system. The comments also raised issues with regard to the foundations of the proposal, in theory and practice, and the assumptions used by DOE in formulating the proposal. The causal nexus between the proposed regulation and its intended effects was seriously doubted.

DOE appreciates the reservations of industry with regard to the introduction of a new bidding system. Nevertheless, DOE believes that rational objections to the concept of net profit share are answerable. Relatively few comments were received taking serious issue with the conclusions reached in DOE's regulatory analysis although there were comments which criticized some of the assumptions of the regulatory analysis. Several comments stated that other analyses arrived at conclusions comparable to those in the DOE regulatory analysis. Other objections, unfortunately, were merely speculative assertions, unsupported by argument or data. As to these, DOE's analysis leads to different conclusions.

The regulatory analysis prepared by DOE for this regulation indicates that use of the proposed fixed net profit share system should result in a reduction of cash bonus bids for OCS leases. Several firms, however, took issue with this point, asserting that major oil and gas companies, due to their size, access to capital, and presumed economies of scale, can tolerate a lower return on investment. Therefore, these firms can afford not to discount cash bonus bids as much as smaller firms, to the detriment of these smaller firms in competing for OCS leases.

In response, DOE notes that this situation would represent perverse bidding behavior on the part of major companies. In their comments, companies have stressed the wholly rational process used in the formulation of bids for OCS leases, a process which generates a point bid or narrow range of bids and is based upon resource estimates for the tract, expected costs of exploration and development, and the value of subsequent payments to the Federal government for the lease. Companies have ascribed non-rational bidding behavior to other firms, but never to themselves. Nothing in the record, regulatory analysis, or bidding history has come to light to support the contention that net profit share leasing systems will lead to less rational bidding behavior on the part of firms than would occur under other bidding systems for OCS leases. The possibility of irrational bidding exists under present bidding systems, but while acknowledging the possibility, DOE doubts that such behavior is likely, or that such behavior is more likely when profit share systems are employed.

The general idea of competition for OCS leases, and especially its relation to the fixed net profit share system, received a good deal of discussion in the comments. Several comments asserted that competition for leases on the OCS is sufficient at present and, moreover, that no qualified company is presently precluded from participation, at least through joint ventures. Other comments questioned the necessary relationship of use of the fixed net profit share system and increased competition for OCS leases, instead citing such inhibiting factors as aversion to risk, inability to meet overall capital requirements, and lack of technical capability, as the major limitations on participation by firms in OCS lease sales.

DOE has never maintained that large front-end cash bonuses are the sole inhibiting factor to participation in OCS lease sales; however, large bonuses do figure importantly in a company's decision whether to participate in an OCS lease sale, as the comments also make clear. To the extent that a firm's decision to participate, either alone or as a part of a joint venture, depends on the initial cash bonus, use of fixed net profit share can operate to increase competition for OCS leases by reducing cash bonus amounts. The regulation makes no pretense of presenting a final solution to all problems associated with participation in OCS exploration and development, such as access to all necessary capital or technical competence. It should be noted, however, that under a net profit share system, a lessee is able to recover expenses of exploration and development, plus a reasonable return on that investment, from production revenues prior to payment of any net profit share to the government. This differs significantly from a fixed royalty system, where contingent payments to the government begin with the first barrel of production.

Several additional assumptions used in the regulatory analysis were criticized in the comments as being erroneous or unwarranted. Major among them were sizes of average reservoir and bonus, timing of investment development costs, and constant capital recovery factors. A majority of comments pointed out that not all investment in development facilities takes place prior to commencement of production from a lease. The assumption in the regulatory analysis as to the timing of development investment costs was made for purposes of computer simulation, but in no way invalidates the conclusions reached in the regulatory analysis. In addition, as discussed more fully below, DOE has not assumed that no development costs are incurred after the onset of production, but merely that those costs bear a different relationship to the goals sought to be achieved by the regulation.

Neither do the results of the regulatory analysis depend for their validity on the assumptions made with regard to reservoir size, bonus, or constant capital recovery factor in a given OCS lease sale. The regulatory analysis examined a range of reserve sizes, from small (30 million barrels) to large (one billion barrels), to determine the impact of reservoir size on production incentives created by the various systems.

Similarly, no *a priori* selection of system parameters (capital recovery factor and profit share rate) was assumed; rather, the whole range of these factors was examined to determine the combination most suitable for each system, given varying cost and resource size conditions. In theory, tailoring capital recovery factors to individual tracts operates to serve the purposes of the regulation more closely, to the extent that resource and cost estimates are more accurately reflected in the combination of parameters applied to each tract.

C. Structure of the Fixed Net Profit Share System

A number of comments questioned whether the fixed net profit share system would achieve its intended objectives, but approached the question from the perspective of structuring a fixed net profit share system, rather than the concept of net profit share itself. Comments from both industry and government admonished that adoption of a fixed net profit share system would not necessarily increase competition for OCS leases, maximize production, or foster development of marginal oil and gas fields, due to the manner in which DOE might choose to structure the concept of fixed net profit share. In general, the comments appeared to group around the choice of the fixed capital recovery system, the perceived administrative burden to industry and government associated with any form of net profit share, and the increased role of the USGS in the administration of the regulation.

Many related issues are subsumed within this characterization, but are either minor variations, or permutations, of these broader concerns.

1. *Fixed capital recovery system.* In the final regulation, as in the proposal, DOE has chosen to employ a fixed capital recovery system. This choice generated some approval and a good deal of criticism in the public comments. No attention was focused on an annuity accounts system; instead, there was much discussion of the relative merits and drawbacks of the fixed capital recovery system, as contrasted with an investment account system.

Stated briefly, the fixed capital recovery system as originally proposed accumulates costs incurred during OCS operations, without distinction as to whether they are capital or noncapital in nature, depending on when the expenses are incurred. After commercial production begins, exploration and development costs are recovered from production revenues.

As proposed, exploration and development expenses, those incurred prior to the onset of commercial production, receive a return designed to compensate for the capital at risk during the preproduction period. Costs that qualify for the allowance for capital recovery are charged against the NPSL accounts at a value equal to the amount of expenses increased by application of the capital recovery factor.

The capital recovery factor is unique to each lease and selected on the basis of cost and resource expectations. Recovery of costs incurred after the end of the preproduction period takes place on a dollar-for-dollar basis.

Evaluations of the fixed capital recovery system were divided, although even some supporters of this system recommended changes. Other comments found the proposal sufficiently deficient to suggest adoption of an investment account system instead. Criticisms of fixed capital recovery appeared to focus predominantly on two features of the system: difficulty in selection of the capital recovery factor and determination of the end of the period for which the capital recovery is allowed.

The fixed capital recovery procedure, which incorporates a capital recovery factor, is fundamental to the fixed net profit share system promulgated by this regulation. It is a mechanism for providing the lessee a return on the investment risk incurred to explore and develop a tract. A number of comments pointed out the difficulty inherent in determining a capital recovery factor that allows the lessee a return adequate to induce necessary investment, yet discourages uneconomic or wasteful investment resulting from a capital recovery factor set too high. Other comments questioned the feasibility of basing the capital recovery factor on cost and resource estimates made prior to the lease term, since both components are very uncertain until well into exploration and development. Wide discrepancies between USGS pre-sale estimates of minimum tract worth and high bids were cited as evidence of erroneous valuations by USGS; one comment frankly doubted the capacity of USGS to conduct this analysis. Several comments suggested that an investment account system would obviate need for a capital recovery factor. Also, these comments added that using a current market rate of interest, such as the prime rate, would suffice to establish the interest rate to apply to the investment account, variously defined. Such an interest rate would float in response to economic forces, and perhaps be more accurate than a capital recovery factor fixed in advance of a lease site.

Most of the comments endorsing the investment account system recommended its use on the basis of simplicitly and minimized administrative burden. However, the DOE regulatory analysis demonstrates that the investment account system suffers from intrinsic shortcomings that render it less efficacious than the fixed capital recovery system. In essence, an investment account approach permits application of an interest rate to expenses incurred, with interest being charged to the account even when no work is performed on the lease, as during periods of inactivity. With respect to its putative simplicity, while the investment account approach eliminates the need to determine at what point to terminate the period for which capital recovery is allowed, the auditing difficulties associated with administration of an investment account system are substantial. The requirement to track each expense, and assign each to a discrete time period for the duration of the lease, represents a major undertaking and an auditing burden. Since the present value of any expense is "worth more" when incurred or booked one period earlier, there exists a major inducement to "front-end" development expenses, the very criticism leveled at the fixed capital recovery system. Due to compounding of interest, an investment account approach tends to provide more encouragement to such "front-end" loading of investment than a fixed capital recovery approach.

Moreover, selection of a proper interest rate for the investment account system poses no less a problem than selecting a capital recovery factor. Solving this dilemma by adoption of the prime interest rate, most often recommended in the comments, would institutionalize in the regulation a truly floating variable whose derivation is unrelated to the context of risk incurred by lessees on the OCS. The prime rate, in essence, represents a short-term cost of money to preferred customers, and floats continually in response to factors exogenous to OCS exploration and development, which constitute long-term investments.

In addition, several comments complained of including two variables in the fixed net profit share system, the capital recovery factor as well as the profit share rate. The investment account sytem has the same problem, since both an interest rate and a profit share rate must be selected. Use of any floating interest rate would introduce another real variable into profit share determinations. Calculations of bid amounts, taking future interest rates into account, might prove somewhat more difficult than at present. The comments were unable to demonstrate that an investment account approach could offer benefits exceeding those provided by a fixed capital system.

Rather than contend with the difficulties of the investment account system, despite its superficial attractiveness, DOE has chosen to retain the fixed capital recovery system in the final regulation, with modifications, recognizing that establishment of proper capital recovery factors is based on uncertainties and may be somewhat problematic. Capital recovery factors and net profit share rates will derive from many of the same estimates now employed to determine royalty terms and minimum acceptable bids for OCS leases. To the extent that the capital recovery factor is set inaccurately, undesirable consequences, such as overinvestment or impeded exploration, are possible. Capital recovery factors must be published in the **Federal Register**, and DOE anticipates that bidders will discount or increase bids as their estimates of costs and resources vary from those reflected in the capital recovery factor. As a truly fixed term in each lease, use of the capital recovery factor removes some uncertainty from planning bids or operations. The expected practice of discounting or increasing bids in response to net profit share rates and capital recovery factors is analogous to the same practice done in response to varying royalty rates.

Perhaps more than any other aspect of the proposed fixed net profit share system, the provision relating to the end of the preproduction period, that period during which expenses incurred would qualify for the allowance for capital recovery, engendered critical reaction in the comments.

Several comments reflected a mispreception that the preproduction period in the proposed regulation terminated at the onset of any production, regardless of volume or value, and expressed the consequent concern that major development expenses would be excluded from application of the capital recovery factor as a result of relatively insignificant amounts of production. This was never the intent of the proposed regulation. As defined in the proposal, production meant "commercial production", that is, the production of oil or gas in commercial quantities.

Many comments reflected the view that even the onset of commercial production would exclude too many legitimate development costs from eligibility for capital recovery, as it is possible that commercial production would begin from some wells on a platform prior to completion of all wells planned for the platform. The comments differed in their perception of the severity of this problem, as well as in their assessment of the likelihood of commercial production prior to the completion of all wells. The comments also reflected a concern that there would be an incentive to delay production in order to include more costs in the preproduction account, particularly where costs yet to be incurred were significant.

Most comments indicated a preference for commencing production as early as possible, to obtain a flow of revenue. As a consequence of this policy to go on-stream early on, considerable development and even some exploration activities may take place after commencement of commercial production, and the comments suggested that it was inequitable to treat post-production expenses differently from preproduction costs solely on that basis. Moreover, a number of comments pointed out that this treatment raised the prospect of front-end loading of investment, and distortion of accustomed development patterns.

Front-end loading would involve a lessee in funding as much exploration, development, and production activitiy as possible prior to the onset of commercial production, in order to qualify for inclusion in the allowance for capital recovery. However, to the extent that the regulation as originally proposed induces lessees to incur exploration and development expenses sooner, DOE views this incentive as consistent with Congress's intent to induce timely and efficient production, as expressed in the Amendments.

In contrast to the concerns expressed with respect to the acceleration of exploration or development activities, some comments suggested that the regulation as proposed created an incentive to delay production in order for additional development expenses to gain preferred treatment in the allowance for capital recovery. DOE agrees that this potential existed under the proposal, but the degree or severity of any delay rests entirely on the relative magnitude of the expenses already incurred by the lessee, the duration of the production delay, and the loss in value represented by the reduced present value of revenues from production initiated at a later time. It is difficult to construct scenarios where, given the magnitude of the development expenses likely to have been booked prior to the time any commercial production could commence *and* the potential loss in present value of gross revenues from production delayed, any substantial delay could be advantageous to a lessee. Also, USGS enforcement of development and production plans, which note the planned onset of commercial production and which are approved in advance of any development activity, provides additional insurance against protracted production delays.

The primary reason for implementing the fixed capital recovery system is that it creates incentives for prompt exploration and development. These incentives result largely from the application of the capital recovery factor to capital invested for exploration and development. Under the proposed regulation, the lessee would be denied this incentive on certain expenditures if "commercial" quantities of production were realized before the completion of development. Bypassing, without dismissing their importance, questions such as how much production might occur prior to the completion of platform development, or (proportionately) the magnitude of originally intended development costs that might be incurred subsequent to producing "commercial" quantities, it seems imprudent to deny the capital recovery incentive to a lessee on the basis of minor amounts of production. Conversely, it is equally imprudent to provide unnecessary incentives. Under the original proposal, once a lease has achieved commercial production, additional incentives are logically unneeded, absent special circumstances. Normal incentives for profit will motivate subsequent development activity.

It should be emphasized that the purpose of the capital recovery factor is to provide an incentive for early and expeditious exploration and development of a lease and to provide for a sharing of the risks of exploration by the government. As exploration and development expenses are recovered from production revenues, the original justification no longer obtains to the same degree. Whatever impact the incentive is going to have has been provided, and the risks attendant upon exploration and development have decreased significantly. Therefore, a dollar-for-dollar balancing of revenues against costs is appropriate after production has come on-line.

To the extent that current income is being employed for development, the government should not be required to give a premium for that investment. To argue that every dollar invested deserves a premium recovery is to ignore the different purposes served by the allowance for capital recovery and the simple recovery of costs from current income. When current income covers current costs, the premium intended to compensate for the costs of carrying the investment over an extended period of time is no longer warranted.

In order to accommodate certain of the concerns expressed, DOE has made several changes in definitions and nomenclature, which accord more closely with DOE's perception of how the final regulation will operate in practice. The "preproduction period" of the proposed regulation has become the "capital recovery period" in the final regulation. This shift in name has been made because the period during which the lessee may recover its expenses incurred in exploration and development of the NPSL tract is no longer restricted to the onset of commercial production, but may extend beyond that point, in part at the discretion of the lessee. The term "production period" has been dropped from the final regulation as its utility has been obviated through the adoption of somewhat different accounting procedures from those contained in the proposed regulation.

DOE has also altered the concepts of the "allowance for capital recovery" and the "capital recovery factor" from the proposed regulation. As originally proposed, the allowance for capital recovery, computed by multiplying the capital recovery factor by eligible costs,

included both the amount of investment at risk and the premium allowed such investment, and the capital recovery factor was therefore expressed as a number equal to or greater than 1.0. To accommodate the revised accounting procedures adopted in the final regulation, DOE has elected to define the allowance for capital recovery as including only the premium allowed investment at risk, and not the amount of investment itself. It should be noted, as one consequence, that the capital recovery factor only needs to be a number greater than zero.

DOE has analysed many different options for termination of the capital recovery period and has determined that some degree of flexibility should be provided in the regulation. In addition, for reasons of administrative convenience and to provide an objective, predetermined standard, DOE has determined to tie the end of the capital recovery period to the provisions of the approved development and production plan for an NPSL.

As a consequence of the foregoing considerations, the final regulation provides that the capital recovery period ends not later than the time when the last well on the first platform specified in the development plan is completed and wellhead equipment installed, but may be terminated at such earlier time as the lessee may elect. In the event that the last well on the first platform proves dry, the capital recovery period will be deemed to end with the determination that the last well is nonproductive. In the event the development plan is not completed, the capital recovery period will end with the last activity completed on the first platform pursuant to the development plan. A further change has been made to the accounting system to provide that production revenue attributable to the capital recovery period will be entered as a credit in that period, and that revenues in excess of incremental costs will operate to reduce the debit balance outstanding in the NPSL capital account as described in more detail in the discussion of the changes to § 390.020.

The purpose of the above changes is to provide a certain degree of flexibility in the regulation without distorting the underlying objectives of the regulations. This flexibility will not necessarily result in a reduction in those accrued costs already eligible for favorable treatment or even in the loss of favorable treatment for those post-production development costs in excess of revenues accrued during the capital recovery period. The regulation permits the lessee to receive an allowance for capital recovery on accrued costs in the NPSL capital account until such time as the lessee determines that it is no longer economically sound to do so, that is, in most cases, at the point when incremental revenues equal and then exceed incremental costs. It is possible that an individual lessee, if projected future costs significantly exceed projected revenues for the same period, might choose not to terminate the capital recovery period. The flexibility in the final regulation will permit a lessee to include those significant post-production costs to the extent that they exceed revenues.

2. *Administrative burden.* Many comments expressed the view that the proposal would not increase competition, or attain its other objectives, due to the administrative burden placed upon lessees. DOE recognizes that any net profit share system represents a dramatic departure from bidding systems used in the past. Industry's evaluative and operational procedures will have to be adapted to the profit share system; this adjustment may require several lease sales employing the fixed net profit share system and experience implementing the accounting procedures before this adaptation is completed. The procedures incorporated into the final regulation attempt to minimize administrative, compliance, and auditing costs. DOE's efforts to minimize administrative costs begin with adoption of as many COPAS procedures as possible. Ultimately, however, the success of this regulation rests with the industry, whose negative predisposition with respect to the fixed net profit share system could be transformed into a disastrous self-fulfilling prophecy.

DOE does not dispute that some increased administrative costs will result from implementation of the fixed net profit share system, although it maintains reservations as to the apparent magnitude of the burden claimed to be associated with implementation. Most of the comments generally complained of the administrative costs to be shouldered by both industry and government, and highlighted undesirable effects that might flow from these added costs, without specifying the magnitude of the costs.

Paramount among the concerns expressed was the disproportionate effect that raising administrative costs would have on smaller firms, which might well be unequipped to handle the increase in workload without additional staff or other resources. It was asserted that smaller firms are therefore placed at a relative disadvantage with respect to major oil and gas producers, and net profit share tracts would become relatively less attractive to these firms. As a consequence, smaller firms might withdraw from competition for net profit share leases as sole bidders, if not as part of joint ventures. Provision of data to USGS was cited as a major cost factor, especially early in the implementation of the fixed net profit share system, until both industry and USGS gain experience in administration. Certain accounting procedures, notably record retention, yearly inventories, allocation of employee time, and audits, were also cited as unduly burdensome. DOE has attempted to minimize the magnitude of the administrative burden in the final regulation, and will review closely the performance of the regulation in light of actual experience.

DOE must concede, however, that the actual costs of administration to both industry and government remain largely indeterminate. In the interests of minimizing these costs, the final regulation contains a number of revisions in the accounting procedures from the original proposal, to align them more closely to COPAS practice and other industry standards. Requirements for record retention, for example, now approximate standards set by IRS for income tax purposes. Audit provisions have been revised to allow for audit of accounts for a period of three years, absent fraud or misrepresentation, which more closely accords with industry practice; and the regulation no longer requires yearly inventories. In this fashion, the administrative burden should be reduced to little more than already exists in joint venture accounting.

Several comments predicted that the fixed net profit share system would lower incentives to formation of joint ventures, due to increased administrative workloads inherent in the accounting procedures. It was asserted that net profit share leases tend to inhibit formation of joint ventures relative to leases issued on a cash bonus-fixed royalty basis.

It is difficult to understand why implementation of the fixed net profit share system would act as an impediment to formation of joint ventures, in view of the accounting procedures incorporated into the regulation. The COPAS procedures were devised originally to allocate costs among partners in joint ventures, a use very similar to that made in the regulation. Although the accounting procedures deviate from COPAS guidelines in some respects, DOE feels

that the overall structure of the accounting procedures in the final regulation should not constitute an impediment to joint ventures.

A corollary concern expressed in the comments is that a net profit share system will impede unitization, particularly where the proposed unit includes net profit share leases and fixed royalty leases. DOE is persuaded that such a situation would not render unitization difficult. The contention appears to make little sense, particularly since USGS will either require or approve a unit agreement before it is effective. Voluntary unitization among net profit share and royalty leases would seem to involve no more difficulty than among leases with different fixed royalties or among leases with sliding scale royalty and fixed royalty. Unitization is not directly addressed in the final regulation, except in the provision for allocation of joint costs and credits (§ 390.014(d)). Again, with regard to unitization, USGS represents the interests of the public, and will approve a unitization plan which comports with the objectives of the OCSLA, as amended, and this regulation.

Increased competition for OCS leases is an intended objective of the fixed net profit share system, and DOE remains sensitive to any aspect of the regulation that may operate to reduce competition, through increased costs of administration or lowered incentives to formation of joint ventures. Despite repeated assertions that the proposal seriously underestimated the costs involved in administration, no attempt to quantify the level of added costs is evident in the comments. Industry comments in the main disagreed with DOE's estimate of $50,000 to $150,000 for accounting system modification and $25,000 to $30,000 in annual administration costs, but offered little in its place. Ultimately DOE sees no reasons to alter its estimate of administrative costs to lessees, particularly in view of modifications from the proposal to the final regulation.

3. *Role of the USGS.* The fixed net profit share system necessarily calls for a somewhat greater involvement on the part of government, as a sharer in net profits, in the administration of this system, in contrast to the cash bonus-fixed royalty system. This aspect of the regulation received a significant amount of comment, most of it negative. Several comments characterized the role of the USGS in this regulation as unwarranted intrusion by the government into corporate business decisions, while one comment stated that the role of the USGS reduced the lessee to the status of a general contractor

Under the final regulation, which replaces the Supervisor by the Director of USGS or delegate, the authority of the USGS to regulate substantive economic decisions has not been increased over its present level However it is necessary to recognize that, in a very real sense, the USGS represents the interests of the public in the exploration and development of its resources and already has an active role in OCS decisions. As future sharer in net profits, USGS must ensure that any sharing arrangement make provision for monitoring expenses incurred during exploration, development, and production, in order to ensure an equitable division of net profits. As the agency most directly connected with operations on OCS leases, the USGS is the logical choice to perform such monitoring.

In the proposed regulation, responsibility was vested in the USGS to make determinations on the allowability of certain costs, inventory, and performance of periodic audits. In addition, resource information provided by the USGS will be used in determining proper capital recovery factors and profit share rates.

Most of the criticisms directed at the role of the USGS in administering the fixed net profit share system seemed to center on provisions which authorize the USGS to approve certain investment and operating decisions of the lessee. Specifically, the proposed regulation would have permitted the USGS to interpret and implement guidelines for inventory, purchasing, and control of materiel; to recalculate net profit share payments based on determinations that expenses were improperly claimed or classified; to determine the point at which production in commercial quantities begins; to establish maximum rental rates for equipment and facilities supplied by the lessee; to approve pricing of transferred or disposed materiel valued in excess of $100,000, on a current market basis; to establish charges for loading and unloading of tubulars; and to approve other costs not treated in the proposed regulation.

The criticisms considered these authorities unwarranted and unprecedented, and an intrusion by government into the daily business decisions of lessees. It was felt that approval by the USGS of certain expenditures might lead to disputes and operational delays, with consequent deferrals of exploration and development. Several comments pointed out that the USGS must already approve plans for exploration, and for development and production, prior to actual operations. Also, operators must obtain a permit to drill each well on a lease. These plans and permits were suggested as means of obtaining general approval of expenses. Other comments stated that these plans and permits allow the government adequate control over OCS operations, and that audits provided the proper means for resolution of financial disputes. DOE has incorporated a modification of this approach into the final regulation.

DOE acknowledges that the responsibilities vested in the Director of USGS or delegate under the fixed net profit share system will probably affect certain operational decisions, although to an uncertain degree, and has made several changes in the regulation to reduce the Director's involvement to the minimum needed for effective administration. DOE has attempted to eliminate the potential for delay of exploration and development through administrative snarls. The time period between audits and inventories has been lengthened, more in accordance with industry practice. DOE recognizes that review of exploration and development and production plans, as well as permits, can afford the Director at least a detailed overview of anticipated expenses to be incurred by the lessee.

Many comments doubted the capacity of the USGS to perform the tasks assigned it under the proposed regulation, at least without a massive infusion of new personnel and funding. Several comments stated that the new personnel required by USGS to administer this regulation are precisely those with skills now scarce and most in demand by industry. Interestingly, the Department of the Interior in its formal comments only noted that the administrative role of the USGS warranted further delineation prior to promulgation. During the consultation process, DOI indicated the adequacy of its personnel to administer this regulation as promulgated.

The efficiency of USGS approvals and audit procedures to resolve disputes is a point well taken. However, DOE expects administrative snarls to be the exception rather than the rule. Particularly in comparison with other agencies, USGS has compiled a record of relative promptness in permit issuance and plan approval on the OCS. USGS staff have demonstrated considerable expertise and familiarity with OCS operations. The approval provisions that remain in the final regulation reflect a concern on the part of DOE that lessees understand, as early

as possible, treatment of costs by the USGS, in order to ameliorate disputes well in advance of audits, particularly in view of the lengthened period between audits. And, with respect to considerations of delay, it should be emphasized as well that the regulation requires approval of expenses by the Director only for purposes of inclusion in the NPSL capital account, and therefore chargeable in determining net profit share payments. The lessee retains absolute discretion to incur such additional costs as appear warranted. Also, no provision in the regulation requires approval of costs before they are incurred. Requests for approval after the fact are expected to be very common.

4. *Other issues.* A number of relatively tangential issues deserve mention. Several comments were critical of the fixed net profit share system for its anticipated impact on farmins and farmouts, expressing apprehension that smaller firms in the market would not be able to handle both the increased administrative workload and the profit share rate on top of the interest retained by the lessee; one comment predicted that no market for farmouts would exist on net profit share leases. DOE discounts this possibility, inasmuch as the situation in a prospective farmout arrangement under a net profit share lease differs only marginally from that under a lease with fixed royalty. In fact, a net profit share lease might make a more attractive farmin candidate, due to the ability of the lessee to recover accumulated costs. However, cognizant of the relative increase in administrative costs caused by the regulation, DOE has attempted to make clear that responsibility for recordkeeping and administration rests with the lessee, and not on the party taking the farmout (§ 390.030(a)).

There appeared often in the comments a statement that return to the public for its OCS resources has already proven more than fair during the 25 years of OCS operations; usually the assertion was made in connection with a suggested ceiling for profit share rates near the minimum, or a recommendation to establish a constant profit share rate for each OCS lease sale. Behind this statement, and underlying industry criticisms of risk-sharing by government, is an implicit conclusion that a net profit share system reduces the possibility of tapping a "bonanza" field, the reserves of which far exceed pre-sale estimates. Lessees may then apply revenues from "bonanza" fields to recoup costs of acquisition and operations on unsuccessful leases.

It has been suggested that with net profit share, because the government shares in each dollar of net revenue gained from production, the return to industry for tapping a "bonanza" field may be substantially reduced. This perception seems to provide a basis for recommendations that the fixed net profit share system allow the lessee to include expenses incurred in unsuccessful operations on other leases in the allowance for capital recovery on producing leases. DOE has chosen not to adopt this suggestion, although it acknowledges the diminished relative value of a "bonanza" field under a net profit share lease. Risk-sharing by government carries with it the concomitant opportunity to share increased returns (to the public) realized from the large fields. Also, risk-sharing by government should reduce the impact of nonproductive leases, thereby reducing the need for substantial offsetting revenues.

D. Accounting Procedures

Nearly every facet of the accounting procedures devised to administer the proposed fixed net profit share system received scrutiny in the comments. DOE obtained a good deal of information and suggestions from the comments with regard to modification of the accounting procedures in the final regulation. The comments proved especially useful in recommending changes in audit and recordkeeping requirements, by providing insight to operational joint venture accounting practices.

In its proposed form, the fixed net profit share system was structured to comport with industry accounting practice to the extent consistent with the rationale and purposes underlying the regulation. Alignment with standard industry accounting practice was seen by DOE as a way to minimize confusion in accounting for expenses and revenues resulting from OCS operations, thereby helping to reduce administrative costs to the lessee. Departures from industry practice in the main involved situations not covered under COPAS guidelines, or where the industry standards invited a negotiated, arms-length agreement by the parties, absent in this regulatory context. In these situations, USGS approval has been required.

On the basis of the comments, DOE has decided to implement a number of changes in the accounting procedures. Some of these changes became necessary due to the shift in the definition of the end of the capital recovery period, while other changes seemed reasonable and useful from the comments.

Some items raised in the comments on the accounting procedures have not been adopted for the reasons set out immediately below. A more complete discussion of changes incorporated into the accounting procedures follows in Section IV of this preamble.

1. *Direct costs.* Several recommendations were made in the comments for DOE to allow as direct costs certain items which the proposed regulation specifically disallowed from the NPSL capital account. The rationale offered for such inclusion seemed based on the contention that lessees should be able to charge the NPSL capital account for all expenses incurred during exploration and development, regardless of the difficulty in ascertaining their amounts or in ensuring that they were attributable to NPSL operations in the amounts claimed, or delays in exploration and production might result.

These claims remain unpersuasive to DOE. None of the comments challenged the reasoning that underlay exclusion of various costs. Exclusion of the cash bonus tends to reduce the level of cash bonus bids without distortion of production economics, as it represents a sunk cost. Interest is unallowable because the fixed capital recovery system will provide a return on investment at risk, without regard to the source of the capital employed.

Other costs were not allowed because they were considered inappropriate, not customary, or very difficult to allocate directly to a net profit share lease. Construction costs of onshore facilities and acquisition of real property, certain employee relocation costs, and fines and penalties levied by Federal agencies for regulatory violations are disallowed for these reasons; while the costs of maintaining a legal staff, taking of inventory, research costs (including in-house), and administration of employee benefit plans are intended to be covered by overhead. For reasons discussed in Section IV of the preamble, abandonment costs are allowable as a direct charge to an NPSL to the extent incurred before cessation of production and that there are offsetting production revenues. It should be noted that, in the case of research and development, personnel expenses may be allowable under § 390.011(b).

2. *Legal expenses.* Several comments noted an apparent discrepancy between the disallowance of the cost of a lessee's legal staff or outside attorneys, and the allowance for the legal expenses of handling, investigating, and settling litigation and claims, lien discharge, and payment of judgments or settlements, in connection with NPSL operations. The

latter situation almost assuredly will involve the services of a legal staff, whether in-house or outside counsel. DOE considers the distinction one of allocability, fully analogous to the situation with regard to wages and salaries. Insofar as the services of a legal staff relate directly to NPSL operations, or are necessary to protect or recover NPSL property, such costs directly benefit or are incurred in support of an NPSL, and are therefore chargeable to the NPSL account. In the opposite circumstance, where the services of attorneys do not relate specifically to an NPSL, costs associated with such services are properly charged as overhead, and disallowed from the NPSL account. Moreover, in connection with costs of litigation against the Federal government, it is inappropriate for the government to pay a share of the costs through the NPSL profit share. If it so determines, it is within the discretion of the trial court to award attorney's fees and court costs in appropriate cases. Clarifications have been added to the final regulations to reflect these decisions.

3. *Cash versus accrual accounting.* DOE has declined to adopt the recommendations which took issue with DOE's determination not to allow lessees to keep NPSL accounts on a cash basis. DOE believes that there is clear evidence that the industry operates on an accrual basis almost exclusively.

4. *Monthly reporting requirement.* Other comments faulted the proposed fixed net profit share system for requiring monthly reports during the production period, asserting that the provisions represent an unduly onerous burden on lessees. DOE is receptive to means of minimizing reporting requirements in order to reduce administrative costs to lessees. However, in this instance, DOE has chosen to retain monthly reports after production revenues begin to accrue in the NPSL capital account, in the interests of providing a flow of information to the Director. Normal accounting practice results in a monthly balancing of accounts, and therefore merely requiring that this information be provided to USGS does not represent a significant burden. Review of monthly reports should assist in avoiding disputes, or in their resolution prior to audit. Reports are required only yearly prior to the onset of production, the period during which most costs will be accrued; however once revenues from production begin to accrue in the NPSL capital account, the final regulation provides for reports on a monthly basis, regardless of whether the capital recovery period has terminated. Except in the case of inventory, where 90 days had already been provided in which to file the report, DOE has lengthened the filing period from 45 days to 60 days after the end of each month. Monthly reports of production are similar to reporting provisions in USGS regulations and DOE expects that it may be possible to blend the various requirements into a single report.

5. *Replacement costs.* A small number of comments requested modification of the provision that excludes costs to repair or replace NPSL property, lost or damaged through willful misconduct or negligence on the part of the lessee, as allowable direct costs. These comments recommended insertion of the term "gross", before "negligence" so that costs incurred due to lessee's ordinary negligence might be allowable. DOE has elected not to adopt this suggestion, as the incentive to avoid negligent actions would be diminished.

6. *Contract services.* The proposed regulation allowed costs of contract services as a direct charge to the NPSL account to the extent that such services constituted necessary and proper NPSL operations or support for NPSL operations, and were performed in the NPSL project area. Contract services performed outside the NPSL project area were allowed only if the contract dealt exclusively with services benefitting the NPSL tract or NPSL operations. Several comments indicated that it is common industry practice to contract for routine services covering more than one tract, and therefore separate contracts for NPSL tracts are unnecessary and burdensome.

DOE is sensitive to assertions that aspects of this regulation might contribute to increasing administrative costs to lessees, and DOE acknowledges that contract services performed outside the NPSL project area may play an important role in exploration and development of the NPSL tract. The difficulty in this instance becomes one of allocating those costs incurred in order to benefit the NPSL tract, under the contract. Therefore, DOE has determined to modify this provision to permit a charge to the NPSL capital account for the costs of contract services which are applicable to NPSL operations and which are separately and specifically identified in the contract. Services not so identified and performed off the tract may not be included as a direct charge.

7. *Rental charges.* Rental charges for equipment and facilities owned by the lessee for use in NPSL operations received much discussion. The proposed regulation established a rental allowance for lessee-owned equipment and facilities, the charge to be based upon actual costs of acquisition, construction, and operation. This provision follows COPAS procedures very closely. DOE has chosen not to adopt a suggestion that rental rates be standard for all NPSL tracts, preferring instead to base rental charges on actual costs incurred by the lessee, subject to the ceiling of average commercial rates for similar equipment and facilities prevailing in the vicinity of the NPSL project area.

Despite assertions to the contrary, the proposed regulation did recognize depreciation as an element in establishing rental charges, and gave due consideration to shore-based facilities that might be built solely in support of NPSL operations. DOE does not see a reason for treating such facilities differently from those servicing both NPSL and non-NPSL operations, which are allowed as a rental charge. DOE also disagrees with the recommendation in several comments to apply the prime interest rate annually to the remaining undepreciated basis of such equipment and facilities, on the strength of the assertion that 8% is too low. Application of the prime rate presents difficulties of measurement; moreover, it does not comport with COPAS procedures in this situation. As a short-term money market rate, it would be inappropriate to employ it in a context of relatively long-term depreciation of assets. However, the final regulation does provide that the USGS Director is authorized to revise this rate in appropriate circumstances.

8. *Insurance.* The provision in the proposed regulation relating to allowance of insurance premiums and reimbursements is unchanged in the final regulation, although some criticism was directed towards procedures for crediting reimbursements to the proper NPSL accounts. In particular, the credit procedure covering reimbursement of damaged NPSL property was considered inequitable in the comments. In cases where a charge is incurred for lost or damaged NPSL property and that charge receives the allowance for capital recovery, DOE finds nothing inequitable in applying the capital recovery factor to the reimbursement, before crediting the NPSL capital account.

9. *Relocation costs.* For purposes of administrative convenience to both industry and government, DOE has elected to retain the provisions in the proposed regulation concerning employee relocation costs as more in accord with COPAS procedures than the suggestion, contained in several

comments, to allow as direct costs all expenses associated with employee relocation that are the normal practice of the lessee. DOE believes that there may be considerable variance from lessee to lessee in the treatment of such costs, and therefore feels that a uniform standard should be established by the regulation to ensure equal treatment for purposes of the NPSL accounts.

10. *Transportation costs.* Several comments took issue with the limited allowance for transportation costs as a direct charge. There is no doubt that the provision in the proposed regulation is more restrictive than COPAS procedures on this point, in that COPAS limits such costs only with respect to movements between the NPSL project area and storage facilities which the lessee owns or controls. The final regulation retains the more restrictive version, and the limitation covers all movements of materiel between the NPSL project area and any storage facility, regardless of location or connection with the lessee. The comments received on this issue suggested allowance of all transportation costs related to movement of materiel, and removal of USGS from approving exceptions to the general rule. However, in the interest of certainty in allocating transportation costs that directly benefit NPSL operations, DOE has left this provision unchanged from the proposed regulation. Since all actual transportation costs are not allowed as direct charges to the NPSL account, retention of the Director is needed, for approval of exceptional cases.

11. *Communications.* According to many of the comments received, it is common practice within the industry to apportion communications facilities among operations because the expense and capacity of these facilities makes it uneconomical to maintain a separate system for each operation. The proposed regulation allowed as a direct charge the costs of acquiring, installing, operating, repairing, and maintaining communication systems between the NPSL tract and the lessee's nearest shore base facility. Suggestions appeared in the comments to allow *pro rata* apportioning of costs associated with communications systems that serve several leases, rather than applying a rental charge, as in the proposed regulation. DOE considers the application of a rental charge as, effectively, a *pro rata* share of costs incurred in communications systems in support of NPSL operations. In arriving at rates for communications systems, the lessee may include any of the factors available in determining rental rates for equipment and facilities owned by the lessee, such as actual costs of acquisition and operation, labor, maintenance, repair, and depreciation. A separate provision for *pro rata* apportionment of costs incurred in communications systems is thus unnecessary. The regulation has been modified to include as a direct cost the cost of leasing communications facilities, as the comments indicated that this was common practice.

12. *Environmental costs.* In its proposed form, the fixed net profit share system allowed as a direct cost to the NPSL account expenses incurred in environmental or ecological surveys required by Federal or state agencies. This allowance is retained in the final regulation. DOE also proposed allowance of costs associated with pollution containment and removal equipment, as well as costs of actual control, cleanup, and consequent responsibilities of oil spills, and requested specific comment from the public on this issue.

Comment on inclusion of costs for control and cleanup of oil spills revealed a significant difference of opinion. Industry comments expressed the view that such costs are part of normal business expenses and thus should be allowed as a direct charge. A contrary view was expressed by government agencies like the Department of the Interior, which argued that such allowance would be inequitable. Other concerns focused on the propriety of the Federal government sharing in the cost of repairing damage to the NPSL tract caused by the negligence of the lessee.

In the final regulation, DOE has opted to allow control and cleanup costs as a direct charge to the NPSL capital account, in the belief that such allowance is not inequitable, except where the costs are incurred because of the negligence or willful misconduct of the lessee. DOE notes the existence of remedies such as the Offshore Oil Spill Contingency Fund to recompense injured parties for damages and penalties; assessments made on a per barrel basis in support of such Funds are also allowable as a direct charge to the NPSL capital account.

DOE notes in this connection that spilled oil falls within the definition of "production", and shall be taken into account in determining production revenues and net profit share payments due the Federal government.

13. *Overhead.* In the proposed fixed net profit share system, overhead was calculated at the rate of 4 percent applied to the preproduction account, and 10 percent of the balance of the production account. DOE specifically requested comment on the accuracy of these rates. In the absence of alternatives demonstrably more useful, the final regulation incorporates these same rates.

Several comments from industry recommended application of the capital recovery factor to the overhead allowance, on the theory that overhead substitutes generally for costs incurred during exploration and development. Overhead, includible as a charge to the NPSL capital account is intended to cover interstitial components of expenses that, although very real are difficult to measure directly, and it estimates their magnitude at some percentage of applicable, identifiable costs.

Because overhead represents actual costs incurred, DOE has determined that it is appropriate that the capital recovery factor be applied to overhead.

Several issues regarding overhead were mentioned repeatedly in the comments. The first was that the regulations should provide for some recoupment of costs during periods of operational inactivity. Several comments indicated that operationally inactive periods may actually be times of intense analytical and preparatory work. Rather than a defect in the proposed regulation, DOE views this case as illustrative of the workings of the fixed net profit share system. Costs associated with analysis and preparation may be charged as direct to the NPSL capital account, or be reflected in the charge for overhead, depending on specific items. But no recoupment of such costs can take place until production begins.

A second issue associated with overhead maintained that the percentage allowance should allow for increased administrative burden to the lessee. Administrative costs form a component of overhead, and are included in the percentage allowance already established.

A number of comments called for a higher overhead percentage in frontier areas than in mature operating areas, like the Gulf of Mexico. DOE feels that application of a higher overhead rate in such areas is inappropriate, since the higher operating expenses of frontier regions will result in higher absolute dollar amounts of overhead. Direct costs are not more difficult to identify in frontier areas and, therefore, there is no reason that unidentifiable costs represent a higher percentage of direct costs in frontier areas than elsewhere.

IV. Changes in the Final Regulation

The final regulation differs from the proposed fixed net profit share system

in significant respects, many of which have been discussed above. Due both to the comments received, and further analysis, DOE has been persuaded that the changes discussed in this section should serve the purposes of the regulation. Among the changes are a revised definition of production and a more precise means of measuring the end of the capital recovery period. The five NPSL accounts have been consolidated into a single NPSL capital account to ease administration, and accounting of expenses and calculation of the allowance for capital recovery have been shifted to a monthly basis. Changes have been made to the audit provisions and inventory requirements to bring them more into line with industry practice, and record retention provisions have been somewhat relaxed.

The discussion below follows changes in the regulation on a section-by-section basis.

§ *390.002 Definitions.*

The definition of "Compensated personal absence" has been deleted, and replaced with "Lessee's cost of allowed employee absence", which comports more closely with COPAS Bulletin #15.

The definition of "cost" has been expanded to include accruals incurred in the conduct or in support of NPSL operations. This expansion came about in response to comments pointing out that NPSL accounts are required to be kept on an accrual basis, yet accruals had been omitted from the definition.

The definition of "cost pool" has been clarified through language making certain that the pool of costs, prior to allocation under § 390.014, may include costs from other leases, including non-NPSL leases.

The definition of "credit" has been amended, in order to accord more closely with the revised accounting procedures in the final regulation.

The definition of "G & G" has been modified to include "geochemical" and other similar investigations in response to recommendations from the comments.

The definition of "NPSL operations" now includes "final abandonment" costs, to reflect allowance of certain abandonment costs incurred while the lease is still producing as direct charges to the NPSL account.

The definition of "preproduction period" has been deleted, and replaced with "capital recovery period." It retains its conceptual meaning as the period from lease issuance until the time when the allowance for capital recovery will no longer be given to further costs incurred, but the end of the capital recovery period has become somewhat variable, and a matter left to the discretion of the lessee, within stated limits. See the discussion of § 390.020 for a detailed explanation of how the capital recovery period will now be terminated. DOE has undertaken this revision in response to criticisms in the comments regarding the perceived arbitrariness in the proposed regulation of closing the preproduction account at the onset of commercial production, and to reflect the revamping of accounting procedures.

The definition of "production" has been revised, as suggested in the comments, to follow the DOI definition of the term.

The definition "production period" has been deleted.

The definition of "production revenue" has been changed to reflect the amended definition of "production."

A definition of "Director" has been added.

The definition of "tract" has been modified to agree more closely with an extant DOE definition of the term, in 10 CFR Part 375.

§ *390.010 NPSL capital account.*

There was a considerable amount of comment received suggesting elimination or consolidation of the five accounts proposed for NPSL operations. In particular, the net profit share payment account and the lessee's net profit share account attracted a good deal of criticism as cumbersome and unnecessary. It was asserted that establishment of these accounts might conflict with the lessee's usual accounting practices as well.

To simplify the required accounting procedures, DOE has decided to eliminate the five accounts enumerated in the proposed regulation and substitute a single NPSL capital account in their place. Debits and credits would be applied directly to the NPSL capital account, as incurred, along with the allowance for capital recovery and the overhead allowance. This change is intended to reduce the administrative burden associated with an NPSL, and reduce the costs of regulatory compliance, particularly for smaller companies.

§ *390.011 Schedule of allowable direct and allocable joint costs and credits.*

1. *Labor.* A good deal of confusion was manifested in the comments on whether employees need be assigned permanently to NPSL operations for allowance as labor costs. Many comments were severely critical of the proposed regulation for its seeming disallowance of wages and salaries paid to employees not assigned permanently to an NPSL operation.

DOE never intended that employees had to be assigned permanently to an NPSL in order for the costs of their wages and salaries to be includible. As a general case, employees need be engaged in NPSL operations continually only for a specific period of time, such as month, week, or pay period. Their wages and salaries as well as other enumerated personnel costs are then includible.

A paragraph has been added to state a special case, where costs of wages and salaries for other than full-time NPSL employees may be charged to the NPSL capital account, to the extent that the lessee can substantiate such costs through time records. The general rule, however, appears to offer greater administrative ease to the lessee, and to reduce costs associated with administration of this regulation. In addition, the regulation does not permit inclusion of any associated personnel costs for employees not employed full time on NPSL operations.

In paragraph (b)(2), the term, "lessee's cost of allowed employee absence", has been substituted for "compensated personal absence", as more in keeping with COPAS provisions.

The percentage limitation on labor benefits in paragraph (b)(5) occasioned a good deal of criticism in the comments. Many comments pointed out that COPAS guidelines currently allow actual costs of labor benefits not to exceed 23% of wages and salaries. DOE has raised this percentage from the proposed 20% to the 23% figure, and added a provision to allow the USGS to revise this percentage from time to time. DOE fully expects that the USGS will rely on the percentage most recently recommended by COPAS in revising this rate.

2. *Materiel.* Paragraph (c) has been amended to make clear that only an amount of materiel sufficient for economical operations may be charged to the NPSL capital account.

3. *Contract services.* In paragraph (e), DOE has determined to modify the costs that may be charged to the NPSL capital account to include those costs of contract services performed at sites outside the NPSL project area that benefit the NPSL operations exclusively, and that are separately and specifically identified in the contract. One problem with including costs for services performed outside the project area under a contract covering more than the NPSL operations was the difficulty inherent in quantifying what portion of the cost of the contract was associated with the NPSL operations. Therefore, as

an accommodation between the interests of including all legitimate costs and of certainty in the charging of costs, the final regulation only permits costs to be charged to the extent that the contract is sufficiently precise in distinguishing them.

4. *Legal expenses.* In paragraph (f), DOE has added language to clarify the alleged discrepancy between those legal expenses allowed as charges to the NPSL capital account, and those disallowed under § 390.013. Briefly, legal expenses directly attributable to NPSL operations may be charged to the NPSL capital account, while expenses not so attributable, such as having in-house or outside legal services available, may not be charged to the NPSL capital account. DOE considers these expenses to be appropriately compensated by the overhead allowance.

5. *Rental of lessee-owned equipment and facilities.* The charge for depreciation permitted to be included in establishing a rental charge for lessee-owned equipment and facilities in paragraph (g)(1) has been modified in two respects. Depreciation may be calculated according to any generally accepted accounting method and the interest rate on undepreciated assets may be modified by the Director.

With regard to rate charges for automotive equipment under paragraph (g)(2), several comments recommended linking these rates to those established by the Petroleum Motor Transportation Association (PMTA), and not involving USGS in rate determination. While DOE has not adopted this recommendation, it does anticipate that the Director will take PMTA rates into consideration, with appropriate adjustments for areas to which those rates do not apply.

6. *Damages and losses.* Paragraph (h) has been modified to delete the requirement that the lessee notify the Director of all damages and losses. It appears that this represented an unusually burdensome requirement that did not provide a significant benefit beyond that which would be provided by periodic audits. In addition, it is assumed that the Director will be made aware of major damages and losses to the NPSL property and that, therefore, the requirement was unnecessary.

7. *Taxes.* Paragraph (i) now illustrates the types of taxes chargeable to the NPSL capital account. These taxes include severence, excise, ad valorem, and mineral taxes. As a form of excise tax, "windfall profits" taxes imposed pursuant to Pub. L. 96–223, are chargeable.

8. *Communications.* Paragraph (k) has been modified to permit the charging of the costs of leasing communications equipment and the list of covered communications systems has been expanded to include explicitly computer production controls for the NPSL operations.

9. *Ecological and environmental.* Paragraph (l) has been amended to include explicitly, as chargeable, assessments to funds and organizations which provide assistance in the event of oil spills or other environmental damage.

10. *Audits.* The original paragraph (m), relating to audit costs, has been deleted, since DOE has determined, as a result of comment, that it is appropriate for the government to conduct audits of NPSL operations.

11. *Dry or bottom hole contributions.* A new paragraph (m) has been inserted, to allow explicitly as chargeable, costs of dry or bottom hole contributions. A number of comments expressed the view that this allowance was desirable and measurable, but the proposed regulation did not mention these costs specifically. This paragraph has been added to remove any doubt.

12. *Abandonment costs.* DOE has added a new paragraph (n), to allow actual abandonment costs, those incurred on other than an accrual basis. The industry comments received were nearly unanimous in their recommendation that DOE provide some explicit allowance for abandonment costs. In the proposed fixed net profit share system, DOE disallowed abandonment costs, as difficult to estimate accurately. Instead, bidders were anticipated to incorporate estimates of abandonment costs in arriving at bonus bids for OCS leases. DOE continues to believe that estimated abandonment costs should not be permitted to accrue in the NPSL capital account.

The comments indicated that some abandonment costs are incurred prior to actual lease abandonment. Therefore, the approach taken in the final regulation permits charging of actual costs, to the extent incurred before the cessation of production, and to the extent that there are offsetting revenues. DOE recognizes that this will not permit the charging of all abandonment costs and still anticipates that bidders will discount bids based upon their estimates of the magnitude of abandonment costs not offset by revenues.

13. *Other costs.* Paragraph (n) in the proposed regulation has been re-numbered (o) in the final regulation. A new provision has been inserted to deem as approved by the Director other costs to the extent they are separately identified in an approved development and production plan. This provision is expected to reduce administrative costs for both USGS and the lessee by not requiring approval by the Director for costs incurred in normal operations on a lease.

§ 390.012 Overhead allowance.

The exclusions from overhead charges contained in paragraph (c) of this section have been modified by deleting legal expenses incurred under § 390.011(f) and rental costs incurred under § 390.011(g) and by limiting the exclusion from the overhead allowance of injected substances to those reinjected substances originally produced on the lease.

§ 390.013 Unallowable costs.

Paragraph (j), disallowing abandonment costs, has been deleted, to reflect their allowance as charges to the NPSL capital account.

A new paragraph (j) has been added, to make clear that rentals on facilities, for which the lessee has charged investment costs to the NPSL capital account, are not allowable.

A new paragraph (k) has been added, to specify that costs incurred by the lessee prior to issuance of the NPSL, are not allowable.

§ 390.014 Allocation of joint costs and credits.

Paragraph (b)(2) has been amended to change the basis of allocation of wages and salaries from a well basis to a "reasonable and equitable" basis, since these costs may not be related to wells in many cases.

A new paragraph (d) has been added, to account for the allocation of costs and credits where NPSL tracts are unitized with other tracts.

§ 390.015 Pricing of materiel purchases, transfers, and dispositions.

Paragraph (a)(3), the requirement for USGS approval of pricing on a current market basis for items costing in excess of $100,000, has been deleted.

Several comments indicated that no limit should be placed on this materiel, particularly since the $100,000 limit is rather low and exceeded often. Administratively, the USGS would be swamped and pricing decisions postponed for no pressing reason. The paragraph has been deleted to eliminate both the $100,000 limit and the need for the USGS approval and the final regulation relies instead on audits to remedy discrepancies.

§ 390.020 Calculation of the allowance for capital recovery.

The calculations described in this section have been modified to reflect the adoption, in the final regulation, of a single NPSL account, the NPSL capital account, instead of the system of five NPSL accounts used in the proposed regulation. This switch to a single account responds directly to the many comments that suggested that a five account scheme was unnecessarily complicated and cumbersome.

More importantly, the calculations described in this section have been modified to reflect the new approach adopted in the final regulation regarding the allowance for capital recovery. As noted earlier in this preamble, the termination of the preproduction period received the most negative comment. The comments were concerned that the proposed system would preclude favorable capital recovery treatment for any expense, development or otherwise, incurred after first commercial production. Unfortunately, little factual information was provided to illustrate the relative proportion of total development expenses typically incurred following first commercial production.

However, in an attempt to expand the opportunity for development expenses to receive favorable capital recovery treatment, the proposed preproduction period has been extended beyond the onset of first commercial production. Because the period for capital recovery treatment is no longer exclusively "preproduction", it has been renamed the "capital recovery period." In the final regulation, the lessee may at his discretion extend the capital recovery period beyond the onset of first commercial production until the sooner of two events occurs: (1) When the balance in his NPSL capital account changes from a debit balance to a credit balance, marking the point at which all expenses have been recovered through production revenues; or (2) when the last development well from the first platform specified in the development plan is completed and wellhead equipment installed. In the event that the last well proves dry, the end of the capital recovery period will be deemed to end at the date of determination that the last well is non-productive. Prior to either of these two events, the lessee may choose to terminate the capital recovery period by making this election in writing to the USGS; this election is irreversible.

Thus, the lessee may choose to initiate production while keeping the capital recovery period open. Revenue from production during the capital recovery period would be credited to the NPSL capital account until the end of the capital recovery period. To the extent that production revenues in a month during the capital recovery period exceed expenses incurred during the month, the excess revenues will offset previously accumulated expenses and reduce proportionately the previously "earned" capital recovery premium. The accounting mechanism for accomplishing this proportionate reduction, given the fact that under the single account system the allowance for capital recovery will already have been calculated for previously incurred costs, is to enter, in addition to the credit entry for the production revenues, a negative allowance for capital recovery which shall be the amount by which monthly revenues exceed monthly costs multiplied by the capital recovery factor.

These new provisions allow the lessee to end the capital recovery period at the point he believes most advantageous. More development expenses will receive capital recovery treatment, and as such there should be little if any incentive to delay production as expressed in the public comments. However, the requirement to credit production revenues against current expenses and to compute a negative allowance for capital recovery for any month in which revenues exceed allowable costs, provides some insurance that the capital recovery period will not be extended indefinitely.

§ 390.021 Determination of net profit share base.

This section describes the "accounting cycle" for an NPSL lease. It specifies accounting procedures and entries required to maintain the NPSL capital account. Because it relies on previous sections for such calculations as the allowance for capital recovery and the overhead allowances, it has been altered extensively to conform with the changes made to those sections.

Three changes partially discussed in earlier sections of the preamble, but which interrelate and which influence the structure of this section, are described here. First, the regulation now requires monthly entries in the NPSL capital account throughout the life of the lease. At the end of each month, the appropriate allowance for overhead and the allowance for capital recovery (during the capital recovery period) must be calculated and entered, and the account balance determined. Also, when required during the capital recovery period, a negative allowance for capital recovery must be entered, if revenues and credits for a month exceed allowable expenses.

Second, the capital recovery factor has itself been changed from a number greater than 1.0 to a number greater than zero. This does not alter the original concept of providing a premium on all allowable expenses made during the capital recovery period. Rather, the change makes possible additional simplification in the accounting procedures. Now, the capital recovery factor represents the actual capital recovery premium that is debited to the NPSL capital account, which is made in addition to the debit for actual expenses.

Third, this section has been modified to reflect the additional inclusions permitted to the cost base for calculating the allowance for capital recovery. The regulation now provides for captial recovery treatment of the allowance for overhead during the capital recovery period.

§ 390.022 Calculation of net profit share payment.

Elements of this section have been altered to conform to the NPSL capital account specified in § 390.010.

§ 390.030 Maintenance of records.

Many comments objected to the requirement in proposed paragraph (b) to retain records from the issuance of the NPSL until five years after abandonment, arguing that the requirement imposed an additional administrative burden and that it did not comport with normal company practice. Several comments provided recommendations that DOE link record retention to audits to ameliorate the perceived burden in increased administrative costs. DOE has modified paragraph (b) to allow closing of books for audit adjustment purposes upon agreement by the auditor that there are no required adjustments or upon the lapse of thirty-six months from the due date or mailing date of the statement of account on an NPSL. Paragraph (b) of this section has been changed to require the maintenance of records for the same period as the account remains open for audit. However, ledger cards showing charges and credits to the NPSL accounts are to be maintained until thirty-six months after abandonment of the field.

§ 390.031 Reporting and payment requirements.

The deadlines for filing reports required in paragraphs (a), (b), and (e) of this section have been extended from 45 to 60 days after the end of the period covered in the report, in response to

comments that the filing deadline was too short in the proposed regulation and imposed an unwarranted administrative cost on the lessee; the filing deadline for inventory reports in paragraph (d) remains at 90 days.

The interest on unpaid net profit share payments due the United States has been changed to the prevailing rates as published quarterly in the bulletin to the Department of the Treasury Fiscal Requirements Manual (TFRM). The interest charge provides compensation for the delay in receipt of the original amount due. Because of the volatility of interest rates, DOE has decided to adopt the quarterly interest rate of the Department of the Treasury, for applying interest charges to delinquent accounts. The rate will be published in a Treasury Bulletin to the TFRM issued prior to the first day of each calendar quarter, beginning in June 1980, for the quarter beginning July 1, 1980.

§ *390.032 Inventories.*

Complaints in the comments regarding this section focused on the requirement for lessees to take inventory each year. This provision was considered unduly burdensome on the lessee as it departed from accepted industry practice.

DOE was sufficiently convinced of the validity of this contention to extend the period separating inventories to a maximum of three years, in paragraph (b). A caveat has also been added to this paragraph, in order not to bind the Director to an inventory taken in his absence, where clear indication of willful misrepresentation or fraud exists.

Paragraph (d) has been changed to delete the requirement that a list of overages and shortages be provided the Director and to require merely that it be available to the Director for the audit period.

§ *390.033 Audits.*

The audit provisions in the proposed regulation attracted a good deal of comment and criticism, much of it well-founded. Industry comments were critical of the requirement to audit each NPSL every two years, and to hold the lessee liable for the costs of auditing. Industry practice in joint venture operations indicates that non-operating parties assume the cost of an audit deemed necessary from time to time. Audit costs are borne in the normal course of business by the parties requesting the audit; an additional benefit of this practice lies in the avoidance of a possible conflict of interest arising from payment of the auditor by the company audited.

DOE agrees that the auditor should be employed, directly or indirectly, by the Federal government, which should bear the costs of the audit. The time requirement of paragraph (a) has been amended for greater flexibility to the Director and reduced administrative costs to the lessee; this paragraph now allows the government to initiate an audit within thirty-six months of the date of the statement to be audited, but not more often than annually, absent fraud or willful misrepresentation. Language has been added to paragraphs (a) and (b) to encourage cooperation between the government and non-operators in the calling and conduct of the audit, in order to reduce administrative costs.

Procedures for exceptions and adjustments in accordance with COPAS guidelines, except for cases in which such an exception or adjustment would result in a change in any net profit share payment, are outlined in new paragraph (c), and subsequent paragraphs of this section have been re-numbered.

§ *390.034 Redetermination and appeals.*

Criticism of this section focused on the interest charged to redetermined net profit share payments. There were several requests for clarification as to the time from which the interest charge would be applied. Interest charges will be applied from the date on which the amount redetermined originally fell due. While DOE considers this part of paragraph (b) to be clear, it perhaps needs emphasis that this charge is not a penalty, but rather compensation for the delay in receipt of the original amount due. The interest rate has been changed to the prevailing rates as published quarterly in the bulletin to the Department of the Treasury Fiscal Requirements Manual.

V. NPSL Accounting Example

An example of the entries to the NPSL capital account together with the related computations of the overhead allowances and the allowance for capital recovery (ACR) is provided in this section. For illustrative purposes, the account is presented on a collapsed time basis with five monthly periods designed to illustrate the recording of transactions in various stages of the development and production cycle. DOE does not assume that the development and production cycle would occur in such a short time period.

The NPSL capital account as shown provides for three separate categories of costs. "ACR & Overhead Qualifying" costs are those costs that qualify for both the allowance for capital recovery and the overhead allowance. "ACR-only Qualifying" costs are those costs that qualify for the allowance for capital recovery but not for the overhead allowance. There are two cost elements that fall into this category: (1) Costs of contract services, and (2) the overhead allowance. The third column of the account includes the "Non-qualifying" costs. A column is provided for the total debits to the account. The credit side of the account includes the NPSL production revenues as well as other credits together with the appropriate allowances thereon.

In the first account, the first line entry represents the direct costs and the allocable joint costs which are properly chargeable to the NPSL capital account. Of the total $16,200 in costs, $11,400 qualify for both the allowance for capital recovery and the overhead allowance; $4,600 qualify for the capital recovery allowance but not for the overhead allowance (e.g., contract services); and $200 do not qualify for either allowance even though they are chargeable to the account (e.g., lease rental).

The first step in the end-of-month accounting procedure is to compute the overhead allowance. This is done by multiplying the qualifying expenditures by the 4% overhead allowance applicable to the capital recovery period. The resulting $456 is added to the column of costs that qualify for the ACR only, as well as to the total debit column. The allowance for capital recovery is computed by adding the fully qualifying costs to the ACR-only qualifying costs and multiplying the results by the capital recovery factor. The capital recovery factor is assumed to equal 0.30 for the example. The computation is then:

$$\text{ACR} = (\$11,400 + \$4,600 + \$456) \times .30 = \$4,937$$

This amount is added to the non-qualifying costs column as well as to the total debit column.

The debits resulting from the overhead allowance and the allowance for capital recovery are added to the end-of-month account balance before computation of the monthly balance. The result is the total debits to the account. Any credits would be subtracted and the account balance would be obtained. Since there are no credits and no revenues, the end of month balance is now $21,593. This debit balance is carried forward to the next monthly accounting period.

Month 1.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Direct and allocable joint costs	$11,400	$4,600	$200	$16,200	
Overhead allowance (4% × $11,400)		456		456	
Allowable for capital recovery: ($11,400 + $4,600 + $456) × 0.30			4,937	4,937	
Totals	11,400	5,056	5,137	21,593	
Balance forward				21,593	

In Month 2, the $21,593 balance is carried forward. The debits for the direct costs and allocable joint costs are made to the account as in Month 1. Of the $17,800 in current month costs, $10,100 qualify for both allowances, $7,400 qualify only for the capital recovery allowance, and $300 do not qualify for either allowance. The overhead allowance is computed by multiplying the $10,100 in qualifying costs by the 4 percent allowance. The resulting $404 is added to the ACR-only qualifying costs column and as a debit to the account in the total debits column.

The allowance for capital recovery in Month 2 is computed by taking the sum of the qualifying debits ($10,100 + $7,400 + $404, which equals $17,904) and subtracting the revenue credit ($4,200). The result $13,704 = ($17,904 − $4.200) is mutiplied by the capital recovery factor (0.30) to obtain the allowance of $4,111 (i.e., 0.30 times $13,704 + $4,111).

The computed allowance is then debited to the account. The sums of the debits and credits are computed as is the account balance. Since the balance is a debit, it is carried forward to the next month (Month 3).

Month 2.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Balance forward				$21,593	
Direct and allocable joint costs	$10,100	$7,400	$300	17,800	$4,200
Overhead allowance (4% × $10,100)		404		404	
Allowance for capital recovery: ($10,100 + $7,400 + $404 − $4,200) × 0.30			4,111	4,111	
Totals	10,100	7,804	4,411	43,908	4,200
Balance forward				39,708	

In Month 3, the total costs are $9,900, of which $6,700 are fully qualifying, $3,100 are ACR-only qualifying, and $100 are non-qualifying. The current month revenues exceed the current debits and therefore, if the lessee has determined to leave the capital recovery period open, would result in a negative ACR. This is calculated by taking the fully qualifying costs ($6,700), multiplying by the overhead allowance (4%) and obtaining the overhead allowance that would apply if the month were to be included in the capital recovery period. The resulting allowance is $268. The sum of the debits that would qualify for the ACR is $10,068 (i.e. $6,700+$268+$3,100). The revenue credit is $17,200. When the revenue is subtracted from the total debits, the base for the allowance for capital recovery becomes $—7,132 and the resulting allowance would be $—2,140 (i.e. $—7,132 times .30). To avoid taking a negative ACR, the lessee may elect to close the capital recovery period. For example purposes, it is assumed that the lessee has elected to close the capital recovery period as of the start of Month 3.

Therefore, the computations for Month 3 will include the overhead allowance at the post-capital recovery period rate of 10%. The accounting would proceed as follows. The direct costs and the allocable joint costs have been debited to the account as for Months 1 and 2. The revenue is credited as for Month 2. The costs that qualify for the overhead allowance amount to $6,700. The overhead allowance is computed by multiplying the $6,700 cost base by the overhead rate of 10%. The resulting $670 is debited to the NPSL capital account. Since the allowance for capital recovery no longer is applicable, totals can be taken immediately after computation of the overhead allowance. Total debits now amount to the sum of the $39,708 balance forward plus the current period allowable costs ($9,900) plus the 10% overhead allowance ($670). The total credits amount to $17,200. The account balance is a debit of $33,078 (i.e. $50,278 debits minus $17,200). Since the balance is a debit, it is carried forward to the next period (Month 4).

Month 3.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Balance forward				$39,708	
Direct costs and allocable joint costs	$6,700		[1]$3,200	9,900	$17,200
Overhead allowance: (10% × $6,700)			670	670	
Totals	6,700		3,870	50,278	17,200
Balance forward				33,078	

[1]Since this month is the month when the election to close the capital recovery period takes place, there is no need for a separate column for ACR-only costs, since there is no ACR. Although for reasons of consistency the original column headings are retained in this example, the account could at this point have only "Overhead Qualifying" and "Non-Qualifying" debit columns. The $3,200 represents the sum of the $3,100 of costs that would qualify for the ACR but not the overhead allowance had the month stayed within the capital recovery period plus the $100 in costs that would not qualify regardless of the election.

NOTE.—For illustration, the following entries demonstrate the accounting entries required for Month 3 if the lessee decided *not* to terminate the capital recovery period.

Month 3.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Balance forward				$39,708	
Direct costs and allocable joint costs	$6,700	$3,100	$100	9,900	$17,200
Overhead allowance (6,700 × .04)		268		268	
Allowance for capital recovery: ($6,700 + $3,100 + $268 − $17,200) × .3			(2,140)	(2,140)	
Totals	6,700	3,368	(2,040)	47,736	17,200
Balance forward				30,536	

Month 4.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Balance forward				$33,078	
Direct and allocable joint costs	$3,850		$200	4,050	$42,100
Overhead allowance ($3,850 × 10%)			385	385	
Totals	3,850		585	37,513	42,100
Balance before profit share					4,587
Profit share:					
U.S. Government (40%)				1,835	
Lessee (60%)				2,752	
Totals				4,587	4,587
Balance forward				0	

Month 5.—*NPSL Capital Account*

	Debits				Credits
	ACR and overhead qualifying	ACR-only qualifying	Nonqualifying	Total debits	Revenues and other credits
Balance forward				0	
Direct costs and allocable joint costs	$7,100		$50	$7,150	$47,600
Overhead allowance (10% × $7,100)			710	710	
Totals	7,100		760	7,860	47,600
Balance before profit share					39,740
Profit shares:					
United States (40%)				15,896	
Lessee (60%)				23,844	
Totals				39,740	39,740
Balance forward					0

In Month 4, the NPSL capital account achieves payout. The $3,850 of overhead qualifying costs are charged to the account together with the $200 of non-qualifying costs. The overhead allowance of 10 percent is computed based on the $3,850 of qualifying costs and the overhead allowance is debited to the NPSL capital account. The total debits in the account now amount to the sum of the balance forward ($33,078) plus the current period costs ($4,050) plus the overhead allowance ($385). From this $37,513 total the revenues of $42,100 are subtracted. The result is the account balance of $4,587 credit.

Since the balance in the account is now a credit, profit share payments are due the United States. The profit share payment is computed by taking the profit share base (i.e. the credit balance in the NPSL capital account after all entries and allowances for the month) and multiplying that balance by the profit share rate. Assuming a profit share rate of 40 percent, the profit share due the United States in Month 4 would be $1,835 (i.e., $4,587 times 40 percent). The profit share due the lessee would be the difference between the profit share base and the profit share due the United States or $2,752 (i.e. $4,587 less $1,835). The profit shares are debited to the NPSL capital account. As a result, the NPSL capital account balance is zero. The zero balance is carried forward to the next month, Month 5.

In Month 5, there are $7,150 in new costs which are charged to the NPSL capital account. The overhead allowance of 10% is computed based on the costs that qualify for that allowance ($7,100). The resulting allowance of $710 is debited to the NPSL capital account. The total debits and total credits are computed and a balance obtained. If the balance were a debit, that debit balance would be carried forward to the next month. However, in this example, the balance is a credit ($47,600 revenues less $7,860 costs equals the credit balance of $39,740). The United States' profit share is computed by multiplying the $39,740 profit share base by the 40% profit share rate. The resulting $15,896 is debited to the account. The lessee's share is computed as the $23,844 difference between the profit share base and the United States' profit share. The account is debited for the amount of the lessee's profit share. As a result of these entries, the balance in the NPSL capital account is reduced to zero. The zero balance is carried forward to the next month.

VI. Environmental Review

After reviewing this regulation pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4321)), DOE has determined that

the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, DOE has determined that no environmental impact statement is required for this regulation.

Environmental impacts resulting from the use of the fixed net profit share bidding system are expected to be minimal. There are two sources of potential environmental impact. First, since the fixed net profit share system is expected to improve economic incentives for expeditious exploration and development of tracts, there could be an increase of this activity on profit share tracts in the sale area. Second, the fixed net profit share bidding system will improve economic conditions and incentives for developing and producing smaller oil and gas deposits. Thus, the use of this bidding system could result in increased levels of production from the sale area.

In either case, however, the use of the bidding system is expected to result in cumulative incremental increases in activity or production, but not major individual increases. Absolute rates of activity or ultimate levels of production are not expected to fall outside the ranges that should be considered during an environmental impact analysis for lease sales conducted with conventional leasing systems. Environmental impacts associated with using the fixed net profit share bidding system will, of course, be examined prior to each lease sale. Moreover, potential environmental impacts resulting from the use of this system will be considered prior to the selection of a leasing system for tracts in each sale.

Thus, to summarize, DOE believes that any environmental impacts attributed directly to the use of the fixed net profit share bidding system are minimal and inconsequential. Moreover, the rates of activity and levels of production that could result from the use of the fixed net profit share bidding system are well within the ranges that must be considered by the environmental impact analysis for each specific sale.

VII. Effective Date

Section 8 of the OCSLA requires that the rules governing the calculation of net profits under the fixed net profit share bidding system implemented by this regulation be established at least ninety days prior to any notice of lease sale. Section 8 also requires that the notice of lease sale be published not later than thirty days prior to a lease sale. Therefore, in order to be available for use in any lease sale, the procedures contained in this regulation must be established at least one hundred twenty days prior to the sale. DOI has scheduled an OCS lease sale for the second half of September 1980. In order that the fixed net profit share bidding system be available for use in that sale, DOE finds in accordance with 5 U.S.C. 553(d)(3) that there is good cause to make this regulation effective immediately. DOE further finds that there is good cause to make this regulation effective immediately in that there will be no impact from this regulation until after the thirty-day period otherwise required.

(Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et. seq.*, 1953), as amended by Pub. L. 95–372; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et. seq.*, 1977), E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., May 14, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications, Department of Energy.

PART 376—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. Part 376 of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a new paragraph (4) to § 376.110(a) to read as follows:

§ 376.110 Bidding systems.

(a) * * *

(4) *Cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area and a fixed annual rental*—(i) *Net profit share payment calculation.* The amount of the net profit share payment to the United States by the person awarded the lease shall be determined for each month by multiplying the net profit share base times the net profit share rate, in accordance with § 390.022.

(A) *Net profit share base. (1)* The net profit share base shall be calculated in accordance with § 390.021.

(2) The capital recovery factor needed to calculate the allowance for capital recovery, in accordance with § 390.020, shall be specified in the notice of OCS lease sale published in the **Federal Register** and may vary from tract to tract.

(B) *Net profit share rate.* The net profit share rate, which determines the fixed share of the net profits owed to the United States, shall be a percentage that is specified in the notice of OCS lease sale published in the **Federal Register**. Such net profit share rate shall not be less than 30 percent of the net profit share base and may vary from tract to tract.

(ii) The amount of cash bonus to be paid is determined by the person submitting the bid. Any deferment and the schedule of payments shall be included in the notice of OCS lease sale published in the **Federal Register**.

(iii) The annual rental to be paid by the person awarded the lease shall be the amount specified in the notice of OCS lease sale published in the **Federal Register**.

2. Chapter II of Title 10, Code of Federal Regulations, is amended by adding a new Part 390 to read as follows:

PART 390—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Sec.

390.001 Purpose and scope.
390.002 Definitions.
390.010 NPSL capital account.
390.011 Schedule of allowable direct and allocable joint costs and credits.
390.012 Overhead allowance.
390.013 Unallowable costs.
390.014 Allocation of joint costs and credits.
390.015 Pricing of materiel purchases, transfers, and dispositions.
390.020 Calculation of the allowance for capital recovery.
390.021 Determination of net profit share base.
390.022 Calculation of net profit share payment.
390.030 Maintenance of records.
390.031 Reporting and payment requirements.
390.032 Inventories.
390.033 Audits.
390.034 Redetermination and appeals.

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337); sec 302(b), Pub. L. 95–91, 91 Stat. 578–79 (42 U.S.C. 7152(b)).

§ 390.001 Purpose and scope.

(a) This Part 390 establishes accounting procedures for determining the net profit share base and calculating net profit share payments due the United States for the production of oil and gas from OCS leases.

(b) The procedures established by this Part 390 apply to any OCS lease issued by the Department of the Interior under a net profit share bidding system established by § 376.110(a)(4) of this chapter.

§ 390.002 Definitions.

For purposes of this Part 390:

"Allowance for capital recovery" means the amount calculated according

to procedures specified in § 390.020. This amount allows a premium for risk initially undertaken by the lessee and a return on investment made during the capital recovery period. It is provided in lieu of interest on equipment and materiel charged to the NPSL capital account.

"Capital recovery period" means the period of time that begins on the date of issuance of the NPSL and ends on the last day of the month during which the sooner of the following occurs:

(1) The lessee completes the last well on the first platform specified in the development and production plan originally approved by the USGS, with any approved amendments thereto, and installation of wellhead equipment. In the event the last well is dry, then the capital recovery period shall be deemed to have ended with the determination that the last well is non-productive;

(2) The balance in the NPSL capital account changes from a debit balance to a credit balance; or

(3) The lessee, at his election, chooses to terminate the capital recovery period. A decision to terminate the capital recovery period prior to the events specified in paragraphs (a) (1) and (2) of this definition shall be communicated in writing to the Director and shall be irrevocable.

"Controllable materiel" means materiel which at the time is so classified in the Materiel Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies of North America.

"Cost" means an expenditure or an accrual incurred by a lessee in conducting NPSL operations.

"Cost pool" means a grouping of costs identified with more than one OCS lease, whether the leases are NPSLs or other types of leases.

"Credit" means a payment, rebate, reimbursement to a lessee, or other reduction in cost or increase in revenue attributable to NPSL operations.

"Direct cost" means any cost listed in § 390.011 that benefits only NPSL operations.

"Director" means the Director of USGS, Washington, D.C., or his delegate.

"Field employee" means an employee below a first level supervisor who is directly employed in the NPSL project area.

"First level supervisor" means an employee whose primary function in NPSL operations is the direct supervision of other employees and/or contract labor directly employed on the NPSL project area in a field operating capacity.

"G & G" means geological, geophysical, geochemical and other similar investigations carried out on the NPSL tract.

"Joint cost" means any cost listed in § 390.011 that benefits NPSL operations and one or more other operations of the lessee or an outside party.

"Lessee" means a person authorized by an OCS lease, or an approved assignment thereof, to develop and produce oil and gas, including all parties holding such authority by or through the lessee, and the person designated to conduct NPSL operations.

"Lessee's cost of allowed employee absence" means the lessee's cost of holiday, vacation, sickness, disability benefits, jury duty and other customary excused allowances.

"Materiel" means equipment, apparatus, and supplies.

"Net profit share base" means the end of the month credit balance in the NPSL capital account determined pursuant to § 390.021. The net profit share base is the production revenue remaining after subtracting all allowable costs and adding all allowable credits (including production revenue) in accordance with the procedures established by this Part 390.

"Net profit share payment" means the portion of the net profit share base payable to the United States.

"Net profit share rate" means the fixed percentage share of the net profit share base payable to the United States.

"NPSL" means a net profit share lease, which is an OCS lease that provides for payment to the United States of a fixed share of the net profits for production of oil and gas from the tract.

"NPSL operations" means all activities subsequent to issuance of the NPSL necessary and proper for the exploration, development, operation, maintenance, and final abandonment of the NPSL property.

"NPSL project area" means the NPSL tract, offshore facilities, and shore base facilities.

"NPSL property" means the NPSL tract, and materiel and offshore facilities acquired for use in NPSL operations and that are installed and/or used on the NPSL tract.

"NPSL tract" means a tract subject to an NPSL.

"OCS lease" means a Federal lease for oil and gas issued under the OCSLA.

"OCS lease sale" means the DOI proceeding by which leases for certain OCS tracts are offered for sale by competitive bidding and during which bids are received, announced, and recorded.

"Offshore facilities" means platform and support systems located offshore that are necessary to conduct NPSL operations, *e.g.*, oil and gas handling facilities, living quarters, offices, shops, cranes, electrical supply equipment and systems, fuel and water storage and piping, heliport, marine docking installations, communication facilities, and navigation aids.

"Outside party" means any person who is not a lessee.

"Person" means person as defined in Part 376 of this chapter.

"Personal expenses" means travel and other reasonable reimbursable expenses of lessee's employees.

"Production" means all oil, gas, or other hydrocarbon products produced, removed, saved, or sold from the NPSL property. Gas and liquids of all kinds are included in production. Production includes the allocated share of production from a unit of which the NPSL is a part.

"Production revenue" means the value of all production attributable to an NPSL property, which value is determined in accordance with § 376.110(b) of this chapter.

"Railway receiving point" or "recognized barge terminal" means the location that a vendor would use in determining the sale price to the lessee of new materiel to be delivered to the NPSL project area.

"Reliable supply store" means a recognized source or common stock point for the particular materiel involved.

"Shore base facilities" means onshore facilities necessary for NPSL operations, including:

(1) Shore base support facilities, *e.g.*, a receiving and trans-shipment point for materiel, staging area for shuttling personnel to and from the NPSL tract, a communication, scheduling, and dispatching center; and

(2) Shore base production facilities, e.g., pumps, separating facilities, gas plants, and tankage for production from the NPSL tract.

"Technical employees" means those employees having special and specific engineering, geological or other professional skills, and whose primary function in NPSL operations is the handling and resolution of specific operating conditions and problems for the benefit of NPSL operations.

"Tract" means land located on the OCS that is offered for lease through an OCS lease sale and that is identified by a leasing map or an official protraction diagram prepared by DOI.

§ 390.010 NPSL capital account.

(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations. The NPSL capital account shall include debit entries for all allowable direct and allocable joint costs incurred during the term of the lease, appropriate overhead allowances permitted on these costs pursuant to § 390.012, and allowances for capital recovery calculated pursuant to § 390.020. The NPSL capital account shall be credited with production revenues attributable to the NPSL and any other credits arising from NPSL activities.

(b) The NPSL capital account shall be kept on an accrual basis.

§ 390.011 Schedule of allowable direct and allocable joint costs and credits.

The costs and credits specified in paragraphs (a)–(p) of this section may be charged direct, or allocated to NPSL operations, as appropriate, in accordance with § 390.014.

(a) *Lease rental.* The rent paid by the lessee for the NPSL tract is allowable.

(b) *Labor.* (1)(i) Salaries and wages of lessee's field employees, first level supervisors and technical employees employed in the NPSL project area in NPSL operations are allowable if such costs are not charged under paragraph (g) of this section.

(ii) Salaries and wages of technical employees within technical branches of the lessee's organization who are either temporarily or permanently assigned to, and directly employed in NPSL operations are allowable provided that such employees work "full time" on some particular aspect of NPSL operations or some specific technical problem. Excluded from this category are employees assigned a role in NPSL operations as a duty collateral with other duties that do not directly benefit NPSL operations.

(iii) Salaries and wages of technical employees within technical branches of the lessee's organization who are assigned technical tasks directly related to NPSL operations may be allowable. Costs may be charged to the NPSL if supported by adequate time records showing the nature of the task and the hours spent on that task.

(2) Lessee's cost of allowed employee absence paid to employees whose salaries and wages are chargeable to NPSL operations under paragraph (b)(1)(i) and (ii) of this section are allowable.

(3) Expenditures or contributions made pursuant to assessments imposed by governmental authority that are applicable to lessee's costs chargeable to NPSL operations under paragraphs (b)(1)(i) and (ii) and (b)(2) of this section are allowable.

(4) Reasonable personal expenses, including allowable relocation costs of employees whose salaries and wages are chargeable to NPSL operations under paragraph (b)(1)(i) and (ii) of this section and that are paid by the lessee or for which the employees are reimbursed under the lessee's normal practice are allowable except as limited by § 390.013(g).

(i) Allowable relocation costs include:

(A) Travel expenses, including transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location.

(B) Other necessary and reasonable expenses normally incident to relocation, such as costs of cancelling an unexpired lease, disconnecting and reinstalling household applicances, and purchases of insurance against damages to or loss of personal property are allowable. Costs of cancelling an unexpired lease shall not exceed three times the monthly rental.

(C) Closing costs (i.e. brokerage fees, legal fees, appraisal fees, etc.) for the sale of the employee's actual residence when notified of the transfer are allowable; and

(D) Continuing costs of ownership of the vacant former actual residence being sold, such as continuing mortgage principal and interest payments, maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date of lease or date of new permanent residence are allowable.

(ii) The combined total of costs listed in paragraphs (b)(4)(i) (C)–(D) shall not exceed 8 percent of the sales price of the property sold.

(iii) Section 390.013(g) specifies employee relocation expenses that are not allowable as a charge to NPSL operations.

(5) Lessee's current costs of established plans for employee's group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonds, and other benefit plans of a like nature that are made available to all of lessee's employees on an equitable basis, applicable to lessee's labor cost chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section, are allowable. The amount of these charges shall be lessee's actual cost not to exceed 23 percent of the total charges under paragraphs (b)(1) (i) and (ii) and (b)(2) except that the Director may from time to time establish a different maximum percentage.

(6) Charges for expenses incurred under paragraphs (b)(2)–(b)(5) of this section may be made to NPSL accounts on a "when and as paid" basis or by a percentage assessment method. If the percentage assessment method is used, it shall be based upon the lessee's actual cost experience expressed as a percentage of costs chargeable under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section. Under either method the lessee's own cost of administering the plans and paying the salaries and benefits defined in this paragraph shall be excluded. In determining actual cost experience of an employee benefit plan, any dividend or refunds received that are applicable to insurance or annuity policies shall be used to reduce the cost of such policies.

(c) *Materiel.* (1) Materiel purchased or furnish by a lessee as NPSL property shall be charged or credited at amounts specified in § 390.015. The purchase and inventorying of materiel is subject to the conditions and provisions in § 390.032.

(2) Charges to an NPSL account shall be made only for such materiel purchased or furnished as NPSL property as is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

(3) Credit for salvaged or returned materiel shall be made to the NPSL capital account. When the amount originally charged qualifies for the allowance for capital recovery in § 390.020, the credit shall be calculated pursuant to § 390.021(a)(3).

(d) *Transportation.* Transportation of employees and materiel necessary for NPSL operations to, from, and within the NPSL project area, are allowable, but subject to the following limitations:

(1) If materiel is moved to the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance from the nearest reliable supply store, recognized barge terminal, or railway receiving point where like materiel is normally available, unless agreed to by the Director.

(2) If surplus materiel is moved from the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance to the nearest reliable supply store, recognized barge terminal, or railway receiving point unless agreed to by the Director. No charge shall be made to NPSL operations for moving materiel to other properties owned by or under the control of a lessee, unless agreed to by the Director.

(3) In the application of paragraphs (d)(1) and (d)(2) of this section, there shall be no equalization of actual gross trucking costs of $200 or less, excluding accessorial charges.

(e) *Contract services.* Except when excluded by paragraph (f) of this section and/or § 390.013(c), the cost of services and utilities provided under contract by outside parties to the lessee and which constitute proper and necessary NPSL operations or support for NPSL operations, and rental charges paid to outside parties for the use of equipment used in the NPSL project area in support of NPSL operations, may be charged to NPSL operations subject to the following conditions and limitations:

(1) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit exclusively NPSL operations may be charged at the rates specified in the contract.

(2) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit the NPSL operations and operations on other tracts must be allocated among all tracts benefited and only that portion representing services benefiting the NPSL tract charged to NPSL operations.

(3) Contract services (including professional consulting services and contract services of technical personnel) that are performed at sites outside the NPSL project area may be charged to NPSL operations only if:

(i) The contracted services charged to the NPSL operations benefit only the NPSL tract or support NPSL operations;

(ii) The contract under which such services are provided deals exclusively with services benefiting the NPSL tract or NPSL operations, or the costs of the contract services which are applicable to the NPSL tract or NPSL operations are separately and specifically identified in the contract; and

(iii) Services specified in the contract relate to the resolution of specific technical problems confronting NPSL operations, or specific engineering design problems related to equipment or facilities required for NPSL operations.

(4) The cost of any contract service related to research and development is specifically excluded, as are contract services calling for feasibility studies not directly related to specific engineering design problems or alternatives for equipment and facilities required by NPSL operations.

(f) *Legal expenses.* Expense of handling, investigating and settling litigation or claims, discharging of liens, payments of judgments and amounts paid for settlement of claims incurred in or resulting from NPSL operations, or necessary to protect or recover the NPSL property are allowable, except those costs listed in § 390.013(f) as unallowable. This includes the salaries and wages of lessee's legal staff and the expense of outside attorneys who are assigned to matters described in this paragraph if supported by adequate time records showing the nature of the matter, its direct relationship to NPSL operations, and the hours spent on the matter.

(g) *Rental of equipment and facilities furnished by lessee.* (1)(i) The NPSL capital account shall be charged for the use of equipment and facilities owned by a lessee that are proper and necessary for NPSL operations, including shore base and offshore facilities and pipelines from the tract to shore base production facilities, and that are not NPSL property. Rental charges shall be made at rates based upon actual costs of acquisition, construction, and operation. Such rates may include labor, the cost of setting up and dismantling equipment, maintenance, repairs, other operating expenses, insurance, taxes, depreciation (calculated using a method consistent with generally accepted accounting principles, consistently applied) and a return on the remaining undepreciated basis not to exceed 8 percent per year, except that the Director may from time to time establish a different maximum percentage. Any cost of acquiring real property in excess of that reasonably required to support the facilities furnished for NPSL operations shall not be included in the costs used to establish these rates. Rates charged shall not exceed average commercial rates for equipment and facilities of similar nature and capability currently prevailing in the vicinity of the NPSL project area.

(ii) The term "equipment and facilities" is used in the broad sense to include equipment that may be mobile or semimobile and also installations that may be semipermanent or permanent in nature. Such equipment and facilities listed below shall be charged on the basis indicated.

Equipment/facilities	Basis of charge
A. Mobile equipment:	
Aircraft	Hour.
Automobiles	Mile or hour.
Trucks	Mile or hour.
Tractors	Hour.
Bulldozers	Hour.
Mobile cranes	Hour.
Trailer-mounted test separators	Hour.
Truck-mounted cement mixers	Hour.
Boats	Day or hour.
House trailers	Day.
B. Semimobile equipment:	
Drill rigs	Foot or day.
Workover rigs	Hour.
Pulling units	Hour.
Derricks	Day.
Drilling tender	Day.
Barges	Day.
C. Semipermanent installations:	
Skid-mounted separators	Day or volume.
Skid-mounted compressors	Day or volume.
D. Permanent installations:	
Compressor stations	Volume.
Saltwater disposal wells	Volume or wells.
Source water wells and supply systems.	Volume.
Roads	Wells.
Production/drilling platform	Volume or wells.
Canals	Wells.
Dock	Wells.
Oil storage and loading facilities	Volume.
Gathering systems and pipeline	Volume.
ACT systems	Volume.
Laboratory services (excluding research work).	Hour or unit.
Shore base production facilities	Volume.
Shore base support facilities	Wells.
E. Miscellaneous:	
Drill pipe	Foot or day.
Casing setting tools	Day.
Well testing equipment	Day.

Equipment and facilities that are not listed shall be charged on a basis consistent with the nature of the use.

(2) In lieu of charges in paragraph (g)(1) of this section, the lessee may elect to use average commercial rates prevailing in the vicinity of the NPSL project area less 20 percent. For automotive equipment, the lessee may elect to use rates established by the Director. For other equipment for which no commercial rate exists, the lessee shall submit the basis for determining such costs to the Director for approval.

(h) *Damages and losses to NPSL property.* All costs necessary for the repair or replacement of NPSL property made necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other causes not covered by insurance, except those resulting from lessee's negligence or willful misconduct may be charged to the NPSL capital account. Any settlement received from an insurance carrier should be credited to NPSL operations when received.

(i) *Taxes.* All taxes, except income taxes, profit share payments, and taxes based upon income, that are assessed or levied upon or in connection with NPSL operations and which have been paid by the lessee are allowable. Allowed taxes shall include, but not be limited to, production, severance, excise, ad valorem, and mineral taxes.

(j) *Insurance.* (1) Net premiums paid for insurance required to be carried for NPSL operations are allowable. For NPSL operations in which the lessee may act as self-insurer for Workmen's Compensation and Employer's Liability, the lessee may include the risk under its

self-insurance program in providing coverage under State and Federal laws and charge NPSL operations at lessee's cost not to exceed manual rates.

(2) NPSL operations shall be credited for all reimbursements for costs of damage to NPSL property or personal injury. Reimbursements for damaged NPSL property shall be credited as follows:

(i) If the damaged NPSL property is replaced or repaired, to the NPSL capital account charged for the cost of replacement or repair; or

(ii) If the damaged NPSL property is not replaced or repaired, to the NPSL capital account except that if the cost of the property originally qualified for the allowance for capital recovery in § 390.020, the credit shall be calculated pursuant to § 390.021(a)(3).

(k) *Communications.* Costs of leasing, acquiring, installing, operating, repairing and maintaining communication systems, including radio, microwave facilities, and computer production controls for the NPSL operations are allowable. If communication facilities systems serving the NPSL tract serve operations and/or facilities outside the NPSL project area, charges to NPSL operations shall be made as provided in paragraph (g) of this section or shall be allocated to NPSL operations in accordance with § 390.014.

(l) *Ecological and environmental.* Costs incurred in the NPSL project area as a result of statutory regulations for archeological and geophysical surveys relative to identification and protection of cultural resources and other environmental or ecological surveys required by the Bureau of Land Management or other regulatory authority, may be charged to the NPSL capital account. Also, the costs to provide or have available pollution containment and removal equipment, including payments to organizations and/or funds which provide equipment and/or assistance in the event of oil spills or other environmental damage are allowable. The costs of actual control and cleanup of oil spills and resulting responsibilities required by applicable laws and regulations are allowable, except that a charge shall not be allowed for any such costs attributable to the lessee's negligence or willful misconduct.

(m) *Dry or bottom hole contributions.* The costs of dry or bottom hole contributions made to obtain information about the structure or other characteristics of the geology underlying the NPSL tract are allowable.

(n) *Abandonment costs.* Actual costs incurred in the plugging of wells, dismantling of platforms and other facilities and in the restoration of the NPSL project area shall be charged to the NPSL capital account only when incurred (i.e., not on an accrual basis), except that costs incurred after the cessation of production shall not be charged to the NPSL capital account. Abandonment costs in excess of offsetting revenues shall not form the basis of any claim against the United States.

(o) *Other costs.* Any other costs not covered in paragraphs (a)–(n) of this section and not disallowed by § 390.013 that are incurred by the lessee in the necessary and proper conduct of NPSL operation and are approved by the Director, are allowable. Approval of a plan of development and production for the NPSL tract by the Director shall be considered sufficient approval for these other costs provided they are separately identified in said plan of development and production. Such separate identification shall note the nature of these other costs and may include an estimate of their magnitude. Any cost approvals under this paragraph for which the specific amounts have not been itemized are presumed to be approved provided they fall within the limits for a prudent operator. Approval of costs under this paragraph shall be approval solely for the purposes of determining allowable costs and shall not preclude a subsequent adjustment at audit of the amount of such costs.

(p) *Other credits.* Credit shall be given to the NPSL capital account, depending on when it is incurred, for NPSL property leased or used in non-NPSL operations, for the sale of information derived from test wells and G & G, and for any and all amounts earned or otherwise due lessee as a result of NPSL operations.

§ 390.012 Overhead allowance.

(a) During the capital recovery period the overhead allowance shall be calculated on a percentage basis at the rate of 4 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 390.021(b)(2).

(b) For each month after the end of the capital recovery period, an overhead allowance shall be calculated on a percentage basis at the rate of 10 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 390.021(c)(2).

(c) Overhead shall not be charged on the value of:

(1) Lease rental (§ 390.011(a));

(2) Contract services (§ 390.011(e));

(3) Taxes (§ 390.011(i));

(4) Re-injected hydorcarbons, originally produced from the NPSL tract, that are charged under § 390.011(c); and

(5) Credits for materiel charged under § 390.011(c) that are salvaged, returned, or used for the benefit of non-NPSL operations.

§ 390.013 Unallowable costs.

The following costs shall not be charged as direct or joint costs to NPSL operations:

(a) Bonus payments to the United States;

(b) Interest (except as permitted under § 390.011(g));

(c) Depreciation, depletion, amortization, or any other charge for capital recovery for materiel charged to the NPSL capital account under § 390.011(c), except as explicitly provided by the allowance for capital recovery calculated according to § 390.020;

(d) The cost of taking inventory;

(e) Research and development costs;

(f) The following legal expenses:

(1) The costs of litigation against the Federal government;

(2) Fines or penalties levied by any Federal agency;

(3) Settlement of claims or other litigation resulting from the lessee's violation of regulatory requirements or negligence; and

(4) The cost of the lessee's legal staff or expense of outside attorneys, except as explicitly allowed under § 390.011(f);

(g) The following employee relocation costs (whether incurred by the employee or the lessee):

(1) Loss on the sale of a home;

(2) Purchase price of a home in the new location;

(3) Payments for employee income taxes incident to reimbursed relocation costs; and

(4) Any relocation cost in connection with an employee move that is for the primary benefit of the lessee's non-NPSL operations;

(h) The lessee's own cost of administering employee benefit plans;

(i) The cost of acquiring or constructing shore base facilities and real property improvements that are charged to NPSL operations on a rental basis under § 390.011(g);

(j) Rentals on any facilities, the investment costs of which have been charged either directly or as allocable joint costs, to the NPSL capital account; and

(k) Pre-NPSL expenditures.

§ 390.014 Allocation of joint costs and credits.

(a) Joint costs shall be grouped in cost pools for allocation to NPSL and non-NPSL operations in reasonable proportion to the beneficial or causal relationships which exist between a specific cost pool and the operations. That portion of a joint cost pool that may be allocated to NPSL operations is called an allocable joint cost.

(b) The following allocation principles apply in allocating joint costs:

(1) *G & G.* G & G shall be allocated on a line mile per tract basis.

(2) *Wages and salaries.* Wages and salaries that are not charged as direct on the basis of time spent on a particular job shall be allocated on a reasonable and equitable basis.

(3) *Compensated personal absence, payroll taxes and personal expenses.* These items shall be allocated on the same basis as wages and salaries.

(4) *Transportation costs.* Transportation costs for employees that are not charged direct shall be allocated on the same basis as their wages and salaries.

(c) Joint credits shall be allocated in the same manner as joint costs.

(d) When the NPSL is made a part of a unit, the allowed costs shall be charged to the NPSL capital account on the basis specified in the unit operating agreement as approved by the Director. Revenues and other credits shall be made to the NPSL accounts on the same basis as specified in the approved operating agreement. Joint costs of an NPSL and a non-NPSL tract that are adjacent to one another and are on the same structure shall be allocated on a basis approved by the Director.

§ 390.015 Pricing of materiel purchases, transfers, and disposition.

(a)(1) *Purchased materiel.* Except as provided in paragraph (a)(2)(i) of this section, materiel purchased for use in NPSL operations shall be charged to NPSL operations at the price paid, after deduction of any discounts received. Should any purchased materiel be defective or returned to a vendor for other reasons, the credit shall be allocated to NPSL operations when received by the lessee in accordance with § 390.011(c)(3).

(2) *Transferred and disposal materiel.* An item of materiel, which is acquired by the lessee for use in NPSL operations by means other than purchase or disposed of by any means, shall be priced according to this subparagraph:

(i) *Condition A (New) Materiel:* (A) Tubular goods, except line pipe, shall be priced at the current market price in effect on date of movement on a minimum carload or barge load weight basis, regardless of quantity transferred, equalized to the lowest published price "free on board" (f.o.b.) railway receiving point or recognized barge terminal nearest the NPSL tract where such materiel is normally available.

(B) Line Pipe.

(1) Movement of less than 30,000 pounds shall be priced at the current price in effect at date of movement, as listed by a reliable supply store nearest the NPSL tract where such materiel is normally available.

(2) Movement of 30,000 pounds or more shall be priced under the provisions for tubular goods pricing in paragraph (a)(2)(i)(A) of this section.

(C) Other materiel shall be priced at the current price in effect at date of movement, as listed by a reliable supply store or f.o.b. railway receiving point nearest the NPSL tract where such materiel is normally available.

(ii) *Condition B (Good Used) Materiel.* Materiel in sound and serviceable condition and suitable for reuse without reconditioning:

(A) Materiel transferred to the NPSL project area shall be priced at 75 percent of current Condition A price.

(B) Materiel transferred from the NPSL project area shall be priced:

(1) at 75 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition A materiel, or

(2) at 65 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition B materiel at 75 percent of current Condition A price.

(iii) *Conditions C and D (Other Used) Materiel*—(A) *Condition C.* Materiel that is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at 50 percent of current Condition A price.

(B) *Condition D.* Materiel no longer suitable for its original purposes but suitable for some other purpose shall be priced on a basis commensurate with its use and comparable with that of materiel normally used for such other purpose. If the materiel has no alternative use it should be priced at prevailing prices as scrap.

(iv) *Obsolete Materiel.* Materiel that is serviceable and usable for its original function and has a vlaue less than Condition A, B, or C materiel may be valued at a price agreed to by the Director. Such price should be the equivalent of the value of the service rendered by such materiel.

(b) *Pricing conditions.* (1) Loading and unloading costs shall be charged at a rate of 15 cents per hundred weight, or such other rate as may be set by the Director, on all tubular goods movements, in lieu of loading/unloading costs sustained, when the actual hauling costs of such tubular goods is equalized under provisions of § 390.011(d).

(2) Materiel involving erection costs shall be charged at the applicable percentage of the current knocked-down price of new materiel.

(c) When materiel subject to paragraphs (a)(2)(ii)(iii) of this section is transferred, the cost of reconditioning shall be borne by the receiving party.

§ 390.020 Calculation of the allowance for capital recovery.

(a) For purposes of this section, the cost base for the allowance for capital recovery in a particular month shall consist of the sum of:

(1) All allowable direct and allocable joint costs chargeable to the NPSL capital account during the month less any costs specified in § 390.012(c); plus

(2) The value of contract services chargeable to the NPSL capital account during the month pursuant to § 390.011(e); plus

(3) The capital recovery period overhead allowance, calculated in accordance with § 390.012(a), that is chargeable to the NPSL capital account for the month; less

(4) Production revenues and other credits received during the month.

(b) If the cost base for a month is greater than zero (that is, if the sum of the charges specified in paragraphs (a)(1)–(3) of this section exceeds the value of production revenues and other credits), the allowance for capital recovery shall be calculated by multiplying the cost base by the capital recovery factor, and shall be debited to the NPSL capital account as specified in § 390.021(b).

(c) If the cost base for a month is less than zero, the allowance for capital recovery for the NPSL capital account shall be calculated by multiplying the resulting negative cost base by the capital recovery factor. The negative product of this calculation shall be debited to the NPSL capital account as specified in § 390.021(b).

(d) No allowance for capital recovery shall be calculated on the charges or credits related to any time period after the end of the capital recovery period.

§ 390.021 Determination of net profit share base.

(a) During each month of the lease term, the NPSL capital account shall be:

(1) Debited with allowable direct and allocable joint costs;

(2) Credited with an amount reflecting the production revenues for the month,

calculated in accordance with § 390.110(b) of this chapter;

(3) Credited with amounts properly credited back to the NPSL capital account as specified in § 390.011(p). Credits associated with charges to the NPSL capital account during the capital recovery period, however, shall first be increased by the value of the credit multiplied by the recovery factor, before crediting that sum to the NPSL capital account.

(b) At the end of each month of the lease term during the capital recovery period:

(1) The transactions specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) The capital recovery period overhead allowance shall be calculated in accordance with § 390.012(a) and debited to the NPSL capital account.

(3) The allowance for capital recovery shall be calculated in accordance with § 390.020 and the allowance debited (or the negative allowance debited, as appropriate) to the NPSL capital account. (A debit entry of a negative allowance for capital recovery shall have the same effect as a credit entry of the absolute value of the allowance for capital recovery.)

(4) The balance in the NPSL capital account shall be calculated. If, as a result of the accounting transactions described in paragraphs (b)(1)–(3) of this section, there is a credit balance in the NPSL capital account, the capital recovery period will be considered terminated as of this month. The credit balance will be forwarded to the next month, which will be the first month for which a profit share payment is due.

(c) At the end of each month of the lease term following the end of the capital recovery period:

(1) The transaction specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) An overhead allowance shall be calculated in accordance with § 390.012(b) and debited to the NPSL capital account.

(3) The balance in the NPSL capital account shall be calculated.

(d) If, as a result of the accounting transactions described in paragraph (c) of this section, there is a credit balance in the NPSL capital account, this credit balance is the net profit share base for that month. The opening debit and credit balances in the NPSL capital account for any month following a month in which there is a credit balance in the NPSL capital account (except as provided in paragraph (b)(4)) of this section shall be zero.

(e) If, as a result of the accounting transactions described in paragraph (b) or (c) of this section, there is a debit balance in the NPSL capital account, this debit balance shall be the opening debit balance in the NPSL capital account for the following month.

(f) Any credit balance in the NPSL capital account shall become the net profit share base as described in this section. Any debit balance in the NPSL capital account shall be maintained only insofar as necessary for the determination of profit share payments. Such debit balance shall not represent a claim against the United States.

§ 390.022 Calculation of net profit share payment.

The net profit share payment shall be calculated by multiplying the net profit share base calculated in accordance with § 390.021 by the net profit share rate. The net profit share payment shall be paid to the United States in accordance with § 390.031.

§ 390.030 Maintenance of records.

(a) Each lessee subject to this Part 390 shall establish and maintain such records as are necessary to determine for each NPSL:

(1) The volume and disposition of all oil and gas production saved, removed or sold for each month;

(2) The value of all oil and gas production saved, removed or sold for each month;

(3) The amount and description of costs and credits to the NPSL capital account;

(4) The amount and description of all costs of acquisition, construction, and operation of equipment and facilities furnished by the lessee and charged to the NPSL capital account under § 390.011(g). Such records shall include worksheets or other documents that indicate the method used to calculate the amount of each charge made under § 390.011(g);

(5) The cumulative balance of costs and credits to the NPSL capital account; and

(6) The inventory of materiel.

(b) The ledger cards showing the charges and credits to the NPSL capital account shall be maintained until thirty-six months after the cessation of NPSL operations by the lessee. All other documents, journals and records shall be maintained for thirty-six months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later, except that nothing in these regulations shall limit the time of investigation or the need to produce records when prima facie evidence of fraud or willful misconduct is obtained with respect to the government's interest in the NPSL.

§ 390.031 Reporting and payment requirements.

(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account. Such report shall list the costs incurred, including allowances applied, credits received, and the balance of the NPSL capital account. Not later than 60 days after the end of the first month in which production revenues are credited to the NPSL capital account, a final report relating to the period shall be filed.

(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee subject to this Part 390 shall file a report for each NPSL, not later than 60 days following the end of each month, containing the following information for the month for which the report is filed:

(1) The volume and disposition of all oil and gas production saved, removed or sold;

(2) The production revenue;

(3) The amount and description of all costs and credits to the NPSL capital account;

(4) The balance of the NPSL capital account; and

(5) The net profit share base and net profit share payment due the United States and the monthly profit share of the lessee.

(c) Each lessee subject to this Part 390 shall submit, together with the report required by paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

(d) Each lessee subject to this Part 390 shall file a report not later than 90 days after each inventory is taken, reporting the controllable materiel on hand, acquired, transferred or used.

(e) Each lessee subject to this Part 390 shall file a final report, not later than 60 days following the cessation of production, together with the appropriate net profit share payment, indicating the remaining balance and costs and credits to the NPSL capital account for the period.

(f) Reports required by this section shall be filed with the Director, either separately or as part of the reports that are currently filed.

(g) Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirement Manual, in effect for the period or periods over which the net profit share payment is owed, compounded monthly, on the amount of a net profit share payment, from the due date (60 days following the

end of each month for which the payment was due) of a net profit share payment until such payment is received by the United States.

§ 390.032 Inventories.

(a) The lessee is responsible for NPSL materiel and shall make proper and timely cost and credit notations for all materiel movements affecting NPSL property. The lessee shall provide only such materiel as may be required for immediate use or is consistent with practical, efficient, and economical operations. The accumulation of surplus stocks shall be avoided by proper materiel control, inventory and purchasing. The lessee shall make timely disposition of idle and surplus materiel through sale.

(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory. Failure of the Director to be represented at an inventory shall bind the Director to accept the inventory taken by the lessee, except in the case of willful misrepresentation or fraud.

(c) Inventory shall be valued with any generally accepted accounting method used by the lessee to value the same materiel for financial or income tax reporting purposes, provided that the method is consistently applied throughout the life of the materiel.

(d) Reconciliation shall be made of a physical inventory with the NPSL capital account by the lessee, and a list of overages and shortages shall be available to the Director for audit as provided in § 390.033. Inventory adjustments of controllable materiel shall be made by the lessee to the NPSL capital account for overages and shortages. Controllable materiel removed from physical inventory that has not been credited to NPSL operations under § 390.015(a)(2) shall be credited to NPSL operations at its original value, except that when the cost of the materiel originally qualified for the allowance for capital recovery in § 390.020, the credit shall be calculated pursuant to § 390.021(a)(3).

§ 390.033 Audits.

(a) The accounts of an NPSL lessee or of a contractor of the lessee which are related to NPSL operations shall be subject to audit by DOI or its appointed agent. Where possible, the auditor for DOI shall coordinate audit efforts with other nonoperators, if any. DOI shall have the right to initiate an audit any time within thirty-six months of the due date of the monthly statement that is to be audited or the date that the statement was mailed, whichever is later, provided, however, that audits may not be conducted any more frequently than once every year except upon a showing of fraud or willful misrepresentation.

(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call in the same manner as the operator is notified. DOI may elect to send an auditor with the audit team specified by the nonoperators in lieu of calling for a separate audit by DOI.

(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. Such a notice shall be sent at least thirty days before the suggested time for the audit to allow the nonoperators to join in DOI's audit in lieu of calling for their own audit. The place for the audit will normally be the place where the lessee maintains its records pertaining to the NPSL lease. The lessee shall send copies of the notice to the nonoperators on the lease. The lessee shall use reasonable effort to notify all nonoperators, but failure to include one or more nonoperators in the notification shall not void the notice.

(3) When DOI calls for an audit, DOI may suggest the date and time when the audit may commence. The estimated duration of the audit may be mentioned to the lessee as well as to the other nonoperators who may elect to supply and auditor for their own audit purposes. The lessee's office where the audit will be held may be named or, if not known, inquired about. If a visit to a field plant or field office is contemplated by the government auditor, such a field trip may be mentioned. If DOI expresses a desire to review a period on which the thirty-six month time limitation has expired, it is the lessee's prerogative to allow the review or to request that DOI adhere to the time limitation specified in these regulations.

(c)(1) Exceptions to the accounting by the lessee, whether in favor of the government or the lessee, shall be noted in a report to the lessee. The lessee shall have 60 days from the mailing of a notice of exceptions to agree to the adjustments proposed by the DOI auditor or to object to the proposed adjustments. If the lessee accepts the proposed adjustments, the adjustment shall be booked in the month in which the lessee agrees to the adjustment, except where such adjustment would have resulted in a change in any net profit share payment due the United States. In such a case, there shall be a redetermination of the NPSL capital account pursuant to § 390.034.

(2) If the lessee disagrees with the adjustment, the lessee shall have the right to appeal the adjustment to the Director.

(d) Upon receipt of an agreement by the government auditor that there are no required audit adjustments, upon final determination with respect to any audit adjustment proposed by the government auditor, or upon the lapse of thirty-six months from the due date or date of mailing of the statement of account on an NPSL lease, whichever comes later, the books shall be closed for audit adjustment purposes, except upon a showing of fraud or willful misrepresentation.

(e) Records required to be kept under § 390.030(a) shall be made available for inspection by any authorized agent of DOI at any time during normal business hours upon the request of the Director or other authorized official.

§ 390.034 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit under § 390.033, the Director determines that there is an error in the NPSL capital account or an error in calculating the net profit share payment, whether in favor of the government or the lessee, the Director shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

(b) The lessee shall pay any additional amount of net profit share payment owed plus interest, compounded monthly, from the date that the payment was due until the date it is actually paid. Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirements Manual, in effect for the period or periods over which the payment is owed.

(c) If the recalculated profit share payment is less than the amount paid the United States, the lessee shall apply such overpayment to the next profit share payment.

(d) Within 30 days after receiving notice of the recalculation as provided in paragraph (a) of this section, the lessee may appeal the decision of the Director in accordance with the appeals provision of 30 CFR Part 290.

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Friday
May 30, 1980

Part IV

Department of Health and Human Services

Social Security Administration

Low Income Energy Assistance Program; Interim Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 260

Low Income Energy Assistance Program

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Interim final regulations.

SUMMARY: These interim final regulations set forth the requirements for States seeking allotments under the Home Energy Assistance Act of 1980. That Act authorizes grants to States for assistance to eligible low income households to offset rising costs of home energy. The regulations describe the procedures for administration of the program in States, Puerto Rico and the Trust Territories. They also describe the priorities for assistance and the ways in which States may assist eligible households.

DATES:

Effective date: These regulations are effective on an interim basis beginning May 30, 1980.

Comment date: Before adopting final regulations we will consider any comments we receive by June 30, 1980.

ADDRESSES:

Comments should be submitted in writing to: Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Agencies and organizations are requested to submit comments in duplicate. Beginning two weeks from May 30, 1980, the public may review the comments during regular business hours in the following office: Room 1169, 330 Independence Ave. SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Ira Goldstein, Office of Family Assistance, Room B428 Transpoint Building, 2100 2nd Street SW., Washington, D.C. 20593, (202) 245-2015.

SUPPLEMENTARY INFORMATION:

1. Nature of Program

The Home Energy Assistance Act of 1980 (Title III of Pub. L. 96-223) authorizes grants to the States "to provide assistance to eligible households to offset the rising costs of home energy that are excessive in relation to household income." The funds for this program will come from revenue produced by the windfall profits tax.

Under the Act, responsibility for Federal administration of Low Income Energy Assistance Program funds for FY 1981 is assigned to the Department of Health, Education, and Welfare (now the Department of Health and Human Services). This document sets forth interim final regulations for the States seeking allocations under the Act. The States have the responsibility for local administration of the Low Income Energy Assistance Program and for decisions concerning operation of the program on a local level. States are required to submit State plans to HHS in accordance with procedures, timetables and standards established in these rules. Provisions are also made for grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, Northern Mariana Islands and the Trust Territories of the Pacific Islands, and funds are also available for incentive grants to the States to pay up to 25% of some State-established fuel assistance programs for residential energy costs.

2. Timing and Form of Regulations

The Act allows us only 60 days from enactment to issue regulations for the Low Income Energy Assistance Program. It was signed on April 2, 1980, which requires rules by June 1.

These regulations are Interim Final regulations, and are effective May 30, 1980. This is because the Act requires rules within 60 days of enactment, which is impossible to do if a Notice of Proposed Rulemaking is provided. In addition, it is in the public interest for these interim rules to be published quickly so that States may begin their program planning as early as possible in order that payments are available when the heating season begins. This would not be possible without the high level of assurance provided by interim final rules (rather than an NPRM) that few or no major changes would be made. We have engaged in extensive consultations, as discussed under section 6 below. For all of these reasons, it is in the public interest for us to waive the NPRM.

Nevertheless, we are interested in comments and advice regarding changes which should be made to these rules. We will review any comments on these rules which we receive by [30 days], and will republish the final rules, with any necessary changes, in August. For the same reasons that we have identified above for waiving the NPRM, we allow only 30 days for comment rather than our usual 60 days. Comments should be addressed to the Commissioner of Social Security, Box 1585, Baltimore, Maryland 21203.

States are expected to begin planning their FY 1981 Low Income Energy Assistance programs on the basis of these interim final regulations. Some decisions, including the notification to the Commissioner of Social Security of a State's intent to enter into an agreement with us, according to the option provided by the Act and the regulations under which we will make payments to SSI households, must be made prior to publication of final regulations. This notification must be made no later than June 30, 1980.

Plans may be submitted at any time before September 15, 1980, but States must submit public participation plans described in § 260.22 (Subpart C) by June 30, 1980, prior to implementation of their public participation process. Determinations concerning administration of the program for American Indians must also be made promptly before plans are submitted.

A summary listing of key dates in the regulations is presented at the end of this preamble.

3. Regulatory Analysis

We believe that the administrative costs to the States of operating this program will total less than $100 million, given the cap on reimbursable administrative expenses established by the Congress. A formal regulatory analysis is therefore not required under Executive Order 12044. Under the statute, the Department has very little if any discretion with respect to the administrative responsibilities of the States as detailed in these regulations. Nevertheless, we will review comments to determine whether a formal regulatory analysis seems appropriate.

4. Consultation Process

Prior to publication of these interim final regulations, we engaged in extensive consultations with interested parties. Meetings were held with representatives of Governors, State administrators of energy assistance programs, State legislators, legal service groups, utilities and companies supplying a wide range of fuel types, national energy-related associations, Community Services Administration staff, recipient populations and other Federal agencies including the Departments of Housing and Urban Development, Agriculture, Labor and Energy, as well as the Veterans' Administration. The views of these parties were considered in the development of the regulations and are sought during the comment period as well.

5. Analysis of Major Provisions

The following is provided both to summarize the regulations and to explain the policy considerations we made in developing the interim final regulations published today.

Low Income Energy Assistance Program

Subpart A—Introduction

Section 260.1 gives a general summary of the intent of the Low Income Energy Assistance Program, those eligible for assistance, the form that assistance can take and the factors to be considered in determining the amount of assistance provided.

We have also put a guide to the organization of these regulations into paragraph (b) of this section. The regulations are divided into eleven subparts, labeled A through K.

Definitions of various terms used in the remainder of the regulations are identified in section 260.2.

Subpart B—State Plans—General

In this section we provide a brief summary and overview of the requirements for State Plan approval along with references to those sections of the regulations which contain further descriptions of these requirements.

Subpart C—Development of State Plans

1. *General Procedures.* The State plan for Energy Assistance is a comprehensive statement of the nature and scope of the State's program and will allow us to determine if the plan can be approved and Energy Assistance Program funds alloted to the individual State. State Plan preprints will be distributed to States shortly for their use in submitting plans.

2. *Public Participation in the Development of the State Plan.* We want to assure that the residents of each State have the opportunity to participate meaningfully in the State's decision-making process with respect to development of the State plan for energy assistance. The public participation process is intended to assure that each State has provided for prior participation by eligible households, public and private organizations—including organizations which represent and serve elderly and handicapped persons, public officials, energy suppliers, housing operators, members of Indian tribes and organizations and the general public in assessing need for assistance, identification of priorities and allocating resources in development of the State plan.

States must submit a description of their public participation process by June 30, 1980. We hope to help States avoid noncompliance with §260.22, concerning essential elements of the public participation process, by asking for the public participation plan prior to State plan submission. The public participation process followed by the State must also be included in its State plan.

The essential elements of the public participation process include publication of the plan provisions and eligibility requirements in local newspapers; wide availability of the plan and plan summary; a public comment period of at least 20 days; and of course consideration of and public access to the written comments received.

States may choose to adopt procedures such as public hearings and advisory committees in addition to the required elements for public participation. We encourage the use of advisory committees with a balanced representation from recipient groups, energy suppliers, service providers, and government representatives as a good way to get input from a wide range of groups who will have important roles in the operation of a State's program. This is left to State option to insure maximum flexibility for States to meet local considerations in the development of their plan.

Any waivers that are being requested by the State at the time of plan submission must be available for review during the public participation process and comments on those waiver requests must be summarized and submitted to us, as described in § 260.26(c). Major amendments to the State plan are also subject to the public participation process.

3. *Timetable for Submitting and Approving Plans.* The timetable for submitting and approving plans is outlined in § 260.24. State plans must be submitted by September 15, 1980. Since speedy action is essential if funds are to be made available to eligible recipients for winter heating needs, we will approve (subject to the availability of funding under FY 1981 Congressional appropriation) or disapprove State plans submitted in accordance with these regulations as soon as possible, and will make every attempt to do so within 30 days after receipt of the plan. We are terming these plans and our approval as "conditional" due to the need for an appropriation. If the appropriation for the program is different from the $2.2 billion the Administration has proposed to the Congress, we will issue a notice giving the States 15 days to resubmit State plans.

One important exception to this timetable is our early need to know which States will ask us to make payments for them to SSI households. We must therefore receive notification by June 30, 1980, of a State's intention to enter into an agreement for Federal administration of Energy Assistance Program payments to SSI households. A State which provides such notice or signs the required agreement for these payments may amend it at anytime prior to September 15, 1980, or—if the appropriation is different from $2.2 billion—15 days after the enactment of the appropriation, whichever is later. A State may withdraw from the agreement at any time. However, if it withdraws after September 15, 1980 it must reimburse us for our administrative costs in preparing to make payments on the State's behalf.

Amendments to State plans may be submitted at any time. We will make every effort to approve or disapprove a plan amendment within 30 days after it is received. Requirements for public review of plans and plan amendments prior to submittal or contained in § 260.22.

4. *Waiver of State Plan Requirements.* Where we determine that a waiver is necessary for the State to be able to administer its program, and is likely to assist in promoting the objectives of the program, we may waive compliance with any of the requirements for the State plan (§ 260.26) for a sufficient period of time to enable the State to carry out its energy assistance program. We will determine the time when considering the waiver request.

Waivers will *only* be granted when they are *actually necessary* to enable a State to operate the program and *only* when a waiver of a requirement will promote the objectives of the Act. We do not intend to waive items solely for the convenience of States or when they would make entire population groups ineligible. We intend to review waiver requests carefully to assure that they further the intentions of Congress as identified in the Act.

States may submit requests for waivers in writing to the Commissioner with a copy to the Regional Commissioner at the same time the State plan is submitted. When submitting a waiver, the State must supply the following: (1) A statement of the requirement for which the waiver is being requested; (2) as statement of how the requested waiver will promote the objectives of the Act; (3) the time period for which the waiver will be in effect; (4) a description of why the State would be unable to operate its program without the waiver and the consequences to the State and to eligible households if the request is disapproved; and, (5) the

expected cost impact if the waiver is granted.

A waiver submitted as part of a State plan will be subject to the public participation requirement for State plans. Comments received as a result of public participation should be summarized and submitted to us as part of the waiver request.

If a waiver is requested by a State after plan submittal, the State must, before submitting the waiver request, give notice through local or State-wide media that it intends to request a waiver of a plan requirement and must make copies of the proposed waiver request available in accessible locations for a period of 10 days after notice is given. The State must then consider any comments received, identify how residents of the State had the opportunity to review the waiver request, and summarize those comments as part of the waiver request submitted to us.

5. *Plan Approval and Disapproval.* The State plan should be submitted by the State Agency administering the Energy Assistance Program to the SSA Associate Commissioner for Family Assistance and a copy should be submitted at the same time to the appropriate SSA Regional Commissioner. Federal statutes, these regulations and other issuances will be used to determine if a State plan or plan amendment meets Federal requirements. The plan and amendments will be reviewed in the SSA Regional offices, where staff will consult with State officials who prepared the plan to clarify questionable aspects of the plan or amendments. The Regional staff will send recommendations to the SSA Associate Commissioner for Family Assistance on approval or disapproval of the State plans and amendments. The Associate Commissioner will rule on each plan and will notify the State of his approval or his intent to disapprove of the State plan or amendment and, if disapproved, of the opportunity for a hearing under § 260.30.

6. *Hearing on Plan Disapproval:* A State may make a written request for a hearing within 10 days after receipt of notification of our intent to disapprove its plan or plan amendment according to the procedures outlined in § 260.30.

Upon receipt of the State's request for a hearing, we will promptly send the State a list of all material that was used in making the decision to disapprove the plan or plan amendment and will notify the State of the date, time, and location of a hearing to be held in the State, on the issues pertaining to our decision. The presiding officer at the hearing will be designated by us. The hearing will be held not less than 20 days after the date of the notice to the State in order to give the State time to prepare for the hearing.

The Commissioner will arrive at a decision within 30 days after the receipt of the hearing officer's record and recommendations. The Commissioner's decision will be our final administrative action on the disapproval.

Attempts will be made before and after the hearing to aid the State in rectifying any plan deficiencies in order to allow their program to be approved.

7. *Withholding of Funds for Noncompliance With Approved State Plans.* We will cite a State for noncompliance when it fails to substantially comply with the Home Energy Assistance Act and implementing Federal regulations and issuances or if the State's practices are not in compliance with an approved State plan. Issues of noncompliance are outlined in § 260.32.

We will notify the State by letter whenever a question of compliance exists. At the same time we will give notice of the intent to withhold funds and inform the State of its right to a hearing. The State may, within 20 days, request a hearing which will be carried out in accordance with the procedures described in § 260.30.

If after a hearing a finding of substantial failure to comply is made, we will make no further payments to the State. We will resume payments if or when we are satisfied that there is no longer any substantial failure to comply.

Subpart D—Administration of the State Program

1. *State Agency and Local Administrative Arrangements.* A single State agency must be designated in the State plan for the purpose of administering the energy assistance program. This designation will have to be made by the Governor or the Attorney General in his or her behalf. Functions may be delegated to other agencies of the State and to local agencies, unless these functions involve administrative or policy discretion. If the State agency decides to use another agency to perform any operational function of the program, the State plan must specify the division of responsibility between the agencies and how the designated single State agency retains control and supervision. The State plan must also specify what methods are available to the single State agency to achieve corrections if another agency performing functions pursuant to the plan either fails to carry them out or does so improperly or inadequately.

This allows States to contract with such organizations as community action agencies and utilities, as well as local governments, to accept and process applications. This flexibility permits the widest possible access by eligible households. However, some contracting organizations, such as utilities, may have a vested interest in finding applicants eligible. Accordingly, we stress that the State retains full responsibility for correct eligibility determinations and must closely monitor organizations to which it delegates functions.

2. *Administrative Procedures.* Appendix B provides a description of the specific administrative requirements that the State must meet in its State plan. This information will be included in State plan preprints to be provided by us.

3. *Maintenance of Regular Benefit Levels.* In § 260.56 we require as a condition to receiving funds under the Act, that States not reduce, before October 1, 1981, the level of benefits in any Federally assisted cash assistance program from the level in existence as of February 26, 1980. However, if benefits in a Federally assisted cash assistance program were increased solely to help pay for home energy, the State may reduce those increased benefits by the same amount provided to households under the energy assistance program.

We have reviewed programs that could be described as "Federally assisted cash assistance programs" and view this requirement as applying to AFDC, SSI State Supplements, and Federal-State Unemployment Compensation programs. Regular benefit levels refers to the basic payment standard or schedule on which recurring benefits are based. This would not include special or nonrecurring payment items.

4. *Coordination With Weatherization and Energy Conservation Efforts.* We are requiring that the State plan provide for effective coordination of the State's energy assistance program with energy conservation and weatherization efforts. In particular, we are asking the State to indicate its plan for coordination with government, voluntary agency and private industry weatherization and conservation programs, with a goal of reducing residential energy usage as well as costs.

This will require a description of: The procedures by which weatherization and conservation services for residential purposes are identified; information and instruction about such services provided by local agencies, particularly those participating in the State's energy assistance program; and referral of recipients of energy assistance to

conservation and weatherization services.

5. *Outreach.* We want to assure that the greatest proportion of potentially eligible persons is made aware of the energy assistance program. Towards that end we require State plans to make provisions for outreach to meet this goal. Emphasis for outreach activities should be on those most vulnerable either in terms of health needs or income levels, to the effects of rising energy costs. Specific groups include the elderly, homebound, handicapped, young children, low-income families, migrants, and those who are isolated from services programs by geographical conditions or language barriers.

We require that State plans provide for maximum, effective use of both State-wide and local resources to reach these groups, such as community action agencies and local service providers, public and private organizations serving and representing elderly and handicapped persons, Federal government offices, home energy suppliers, the public education system, local law enforcement agencies, Indian tribes and off-reservation Indian community-based organizations, and, of course, the mass media. A fiscal plan may also provide reimbursement—as a proper expenditure under a State's administrative costs—to other agencies used for outreach activities under the State plan. The State should consider working with Community Action Agencies, State and local area agencies on aging, and State chapters or member organizations of groups such as the National Association of Farmworker Organizations, the National Council of Senior Citizens, the American Coalition of Citizens With Disabilities, and a wide range of governmental and voluntary service organizations which have experience in this area.

6. *Identification and Certification of Eligible Households.* The State plan must describe how the State will identify and certify eligible households for the program and how records supporting these eligibility determinations will be kept.

7. *Monitoring.* The State must design a system for monitoring its program and must describe its monitoring system fully in the State plan. The plan must demonstrate how the State can identify and correct problems in a timely way, especially problems of compliance with the key requirements of this Part, including coordination, outreach, certification, data collection, levels of assistance, agreements with home energy suppliers, verification of income, and timeliness of assistance.

A schedule and format for reporting State monitoring information to HHS will be provided in a program instruction prior to the beginning of FY 1981.

Monitoring records must be maintained for at least three years.

We will conduct reviews of the State's program and monitoring system during FY 1981, including conformance with the State plan; the implementation of sampling techniques, if any; and the validity and reliability of the data collected. Where insufficiencies are identified, our review will include the records and documentation from which program monitoring information has been collected.

We will also review the State's implementation of its data collection system, as required in Section 260.66, for conformance with the State's approved sampling plan, and for the validity and reliability of data. This review may include spot checks of the State records.

8. *Data Collection and Reporting by the States.* The Act requires that State plans describe energy usage and the average cost of home energy in the State by the type of fuel and by regions of the State.

States are also required to provide us with additional information on the operation of the Energy Assistance Program. The data to be reported are either specifically mandated by the Act or are necessary to evaluate State programs in terms of Federal goals and requirements. However, Office of Management and Budget clearance has not yet been obtained for any reporting instruments and thus no reports will be required until such OMB clearance has been obtained and States notified.

Where obtaining information on the entire home energy assistance population would be unduly burdensome, States will gather the data via samples. Tight deadlines are necessary for gathering and reporting the data to us because of the legislatively-mandated annual report which we must submit to Congress.

With regard to the population assisted by the State under the energy assistance program, the State must report on the actual totals of and benefit expenditures for: (1) Eligible households assisted; (2) building operators paid on behalf of eligible households and households for whom those payments are made; and (3) reservation Indian households assisted. In addition, the State must report total administrative expenditures and certain application and hearings processing activities.

These data are to be reported for each calendar month of fiscal year 1981 and must be submitted within 30 days after the end of the month for which the report is being made. The early reports on these basic program aspects are needed to assist us and the Congress as we consider fiscal year 1982 energy assistance.

We recognize that, as described in the regulations, there may be some duplication between fiscal and program data requirements. We will eliminate this duplication by use of a common form whenever this is possible.

The State must also report certain data for a sample of the population assisted under this program. We will provide specifications for size, methods and schedule of the State sampling plan, and the State plan pre-print will be designed to include this information. The sample data required are necessary to assess the State's program, and includes items such as income, priority group, primary source of residential heating energy, source and cost of home energy, method and amount of assistance payment, and housing class. These data are to be reported in unaggregated form.

Sample data for households with heating assistance must be reported by August 1, 1981, and complete data, including data for households with medically necessary cooling, must be submitted by November 1, 1981.

We will provide technical assistance to the States in designing and implementing their data collection systems for the fiscal year 1981 Energy Assistance Program.

Records on which the data reports are based must be maintained for a least three years. The State's expenses for collection and reporting of these program data are allowable administrative costs.

States must also cooperate with our efforts to develop additional information on home energy usage by the general population as required by the statute. This information will include but might not be limited to, data on (1) home energy consumption by the general population, and (2) the annual cost and types of fuel used by various income groups.

9. *Cooperation by States in Program Evaluations.* The State is required to cooperate in any evaluations of the Energy Assistance Program which we may conduct. Such evaluation efforts will be designed to complement information collected as described in the above two sections and to answer remaining questions about the program's effectiveness or efficiency. They will also be designed to impose a minimum burden on State and local program administrators.

Subpart E—Fiscal Control and Accountability

1. *Accounting System and Supporting Fiscal Records.* We require that the State agency designated to administer the energy assistance program, as well as any other State or local agency having costs chargeable to the program, must maintain an accounting system and supporting records adequate to verify the costs claimed. (§ 260.80)

2. *Grants to the States.* We will make quarterly grants to States with approved plans for expenditures. The amount of a State's quarterly grant will be determined on the basis of the State's estimate of its need for funds and its report of expenditures for the past period. Forms for these estimates and reports will be furnished to the States. Because the need for energy assistance is significantly affected by seasonal factors, we believe that quarterly grants will best enable us to coordinate available funds with States' need for funds.

3. *Emergency Reserve.* A State may reserve up to 3 percent of the amount allocated to it for use in case of weather-related or supply shortage emergencies as described in § 260.84. The regulations allow the States to define these emergencies. A State that chooses to have an emergency reserve must describe in its State plan the emergencies or types of emergencies it will cover; the amount and kind of assistance it will provide; the procedures for carrying out its emergency program; and, what it will do with the funds if emergencies do not use up all of the funds. Funds reserved under this section and combined with another State-funded program must not be used in a manner that would violate the provisions of these regulations.

4. *Fiscal Reports By States.* (OMB clearance for any reporting instruments has not yet been obtained and therefore no reports will be required until such OMB clearance has been obtained and States notified.)

In order to make funds available to States when they need them we will require three kinds of reports from States (§ 260.86).

Forty-five days before the start of each quarter the State must submit an estimate of its need for Federal funds for the forthcoming quarter and an estimate of its need for Federal funds for the fiscal year. We will use this report to assist us in determining quarterly grants and reallocation of funds.

Thirty days after the end of each quarter the State must submit a financial status report showing the amount, by type, of payments it has made for the past periods; e.g. direct payments to households, payments to home energy suppliers, etc. In addition, not later than 15 working days after the end of each month the State must submit a report of its cumulative cash disbursements. The purpose of these reports is to facilitate the review of the State's need for Federal funds and the reallotment of funds.

5. *Administrative Costs.* A State may use a portion of its grant award for program administration. Generally, the amount of Federal funds the State may use for administration from its allotment may not exceed 5 percent of the cost of carrying out the plan. We define the cost of carrying out the plan as the sum of the assistance payments actually made and the total administrative costs actually incurred under an approved State plan.

In unusual circumstances we may allow a State to use an additional amount of Federal funds for administration not to exceed 2½ percent of the cost of carrying out the plan. A State must obtain our approval before it uses additional Federal funds for administration. Unusual circumstances may include special geographical factors and events that cause administrative costs to increase but that could not have reasonably been foreseen at the time the State plan was developed.

In no case may the Federal funds used for administering the plan exceed 50 percent of the State's total cost of administration. The State must pay from non-Federal sources the remaining costs of administration.

This means that from its allotment the State may expend for administration and planning up to 5 percent (or, in unusual circumstances 7½ percent) of the total cost of carrying out the plan and it must match the Federal funds equally from State funds. Beyond that point, the State must pay 100 percent of the administrative expenses out of State funds.

Subpart F—Federal Allotments and Payments

1. *Computation of States' Allotments (§ 260.100).* We will divide and assign the amount appropriated for State plans for energy assistance programs according to the formula contained in Section 306(a) of the Act. In the near future we will provide to States, in a separate issuance a chart showing the States' proportional allotments and the amount each State would recieve based on a total appropriation of $2.2 billion, which is the amount requested by the Administration for the energy assistance program.

2. *Apportionment for Other Programs Authorized by the Act.* After allocating the funds appropriated for State plans and for Federal administrative costs, we will distribute the balance of the funds in the following manner and order:

a. First, to the Commonwealth of Puerto Rico and the Insular Areas (Guam, American Samoa, the Virgin Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands), $2.5 million for programs described in item 3 below.

b. Next, to the Community Services Administration, $100 million or the balance after (a), whichever is less, to carry out energy crisis activities under Section 222(a)(5) of the Economic Opportunity Act.

c. Then, any balance which remains (after (a) and (b)) will be made available as incentive grants to the States for fuel assistance programs. We describe these incentive grants in item 7 below.

d. Lastly, if the programs qualifying for grants under paragraph (c) do not exhaust the funds available, any amounts remaining will be distributed to the States in accordance with the formula used in determining their original allotments.

3. *Energy Assistance Programs For the Commonwealth of Puerto Rico and the Insular Areas.* Congress recognized that while there is little need for heating in Puerto Rico and the Insular Areas, energy costs are increasing for refrigeration and other home uses.

We are considering three alternative methods for allocating funds to the Commonwealth of Puerto Rico and the Insular Areas. One method would apportion the funds by population; another would apportion the funds on the basis of aggregate residential energy costs and low income population; still another would apportion the funds on the basis of the amounts needed to carry out plans for energy assistance submitted by the jurisdiction. We have not selected a method of allocation for inclusion in these interim final regulations because we believe it is important to obtain the views of the governments of these jurisdictions, as well as the general public, on these alternatives. We also wish to analyze more thoroughly the available data on income levels and energy usage in these jurisdictions. Since there is little need for winter heating assistance in these jurisdictions there is not the same urgency for final rules on this issue as there is for final rules on State plans. The public is specifically asked to comment on the alternatives identified above.

Each of the jurisdictions, in order to receive funds, must submit a plan which

is consistent with the requirements which States must meet for State plans. Generally in lieu of heating assistance, plans submitted by Puerto Rico and the Insular Areas may provide for home energy uses such as refrigeration and air conditioning when medically necessary.

4. *Equivalent Benefits for Indians.* The Act requires that Indians receive benefits that are equivalent to benefits provided to other eligible households in the State. For the purposes of this program we employ the definitions of Indians, Indian tribes and Indian organizations that are established in our Administration for Native American Program regulations (45 CFR 1336.1).

Our preferable method of assuring equivalent benefits to Indians is through each State's plan for energy assistance. Other vehicles are possible, however. In order for Indians to be served by any vehicle other than by a State via its plan for energy assistance we must make two determinations. We must make a determination that (1) the Indians are not receiving equivalent benefits, or would not receive equivalent benefits under the plan submitted, and (2) that the Indians would be better served through direct grants to a tribe or an Indian organization. In the event of a determination that equivalent benefits are not being provided, we may require that the State make changes in its plan or we may make direct grants from the State's allotment to the tribe or organization. We intend to work with States to make these changes necessary to assure equivalent benefits, where possible. Alternatively, we would work through HHS' Administration for Native Americans to assure that equitable treatment for Indians is guaranteed by the best vehicle.

We recognize that it may sometimes be necessary to agree beforehand that a grant should be made directly to a tribe, where it can be predicted that to do otherwise would clearly yield inequitable treatment of the tribe or people living on the reservation. Therefore, in making our determination to provide a direct grant to a tribe we will take into consideration an agreement between the tribe and the State that the members of the tribe(s) would be better served by a direct grant. This provision for advance agreements does not apply to Indian organizations that are not tribes.

In the event it is decided to make a direct grant to an Indian tribe or organization, the amount of that grant will be the same proportion of the State's total allotment under this program as the appropriate Indian population which should be eligible under the State's plan bears to the population of all eligible households in the State. This means, for example, that if there are 100,000 eligible households in a State, including 10,000 Indians who are entitled to receive equivalent benefits under the State Plan, the State's allotment would be reduced by 10 percent and that amount would be granted directly to the tribe or Indian organization. The tribe or organization will be required to submit a plan that meets the same requirements as are required of the States.

Funds transferred to a tribe or organization in the form of a direct grant will include the 5 or 7½ percent which can be used for administrative costs. Because of the difficulty many tribes or organizations may have providing 50% of administrative costs, we are prepared to seriously consider waiver requests where necessary to enable tribes or organizations to administer grants. In addition, because some of the grants may be extremely small, they may require higher proportional administrative expenses. We are prepared to consider limited waivers of the 5 to 7½ percent administrative cost ceiling. The conditions of transfer of funds and administrative costs would apply to off-reservation Indian community based organizations as well as to tribes.

5. *Reallotment.* If we determine that a portion of a State's allotment will not be required to carry out the State's plan we will reallot that portion to other States based on their need and ability to expend the funds consistent with the provisions of this part. We will make this determination based upon a comparison between actual expenditures and the State's quarterly spending projections. Thus, we will not penalize a State which has spread the use of its funds over the course of the winter or chosen to reserve funds for use in the summer to assist households with a medical need for cooling.

Forty-five days before the beginning of each quarter of FY 1981 each State must submit an estimate of its need for Federal funds in the forthcoming quarter as well as for the fiscal year. Fifteen working days after the end of each month in FY 1981 each State must submit a report on its cumulative disbursements of Federal funds. These reports will assist us in determining which States have allotments greater or less than the amount needed to carry out their approved plans. We will consider the information in these reports in determining whether a reallotment should take place. In addition to these regular reports, a State must advise us whenever it knows that a portion of its allotment will not be required to carry out its approved plan.

Before we reallot any funds away from a State we will notify the Governor of the State by letter, and the general public by notice in the **Federal Register**, of our intent to reallocate a portion of the State's funds.

Comments on the proposed reallocation may be submitted to us during the 30 days following publication of the notice in the **Federal Register**. We will review and consider any comments we receive during the 30 day comment period and notify the Governor by letter, and the public by notice in the **Federal Register**, of our final decision with regard to reallocation of the State's funds.

We will reallot any funds which become available under the above procedure to States expressing a need for additional funds, taking into account the original allocations to those States and their need and ability to expend the funds consistent with the provisions of the Act.

6. *Reimbursement for Expenditures by States in Advance of an Appropriation or State Plan Approval.* To prepare for this winter's energy assistance programs the States will have to begin planning and administrative activities as early as this spring; certainly before the beginning of the 1981 fiscal year on October 1. In order to carry out these activities States will have to advance the costs from their own sources. Thus, we provide in these regulations that any State which uses its own sources after April 2, 1980 (the date of enactment for Pub. L. 96–223) for planning and administration in substantial compliance with its subsequently approved State plan, may claim reimbursement retroactively (after the plan is approved) for those advance expenditures.

Reimbursement for State expenditures incurred before the start of FY 1981 is consistent with the Act, which authorizes reimbursement for advance State expenditures when funds are appropriated to carry out the Act. Since the Act became law on April 2, 1980, we believe that a State could reasonably incur expenditures for planning, and administration on or after that date.

We are considering whether to reimburse States for assistance payments, in addition to planning and administrative expenses, they make before the start of fiscal year 1981 in substantial compliance with their subsequently approved State plans. States that believe they will be in a position to make assistance payments before October 1, 1980 are invited to

address this issue during the comment period.

7. *Incentive Grants to States for Residential Energy Assistance Programs.* After we have alloted funds to the States for the energy assistance program and to the Commonwealth of Puerto Rico, the Insular Areas and the Community Services Administration for their programs, we will make the remainder available to States as matching grants for up to 25% of some State-funded fuel assistance programs serving the same households which are eligible under this Act. The total amount available for these grants will be approximately $7.3 million if the program is funded at the Administration's proposed level of $2.2 billion. The purpose of these grants is to provide an incentive to States which have State funded energy assistance programs to continue such programs and as incentive to other States, where there is a need, to begin such programs.

We have considered two methods for making these funds available to the States. One method is to make the funds available through formula grants. Under this method, each State with an energy assistance program serving the same population as the population eligible under the Act would automatically receive a proportionate share of the funds available. The other method is to make funds available through discretionary grants. Under this option States would apply for grants for programs based on priorities and requirements we would establish. We would select from the applications those which best carry out the priorities established.

We have decided to adopt the option of distributing the funds by means of discretionary grants. We believe this option best utilizes the amount of funds available in support of the priorities established under this Act.

We will publish priorities and requirements for funding incentive grants in the **Federal Register** in July, 1980. States will have until September 1, 1980 to submit applications.

Subpart G—Furnishing Home Energy Assistance

1. *Who Is Eligible for Assistance.* The Act permits payments on behalf of households with income under or at the Bureau of Labor Statistics' Lower Living Standard. It also permits payments for households with at least one person eligible for AFDC, SSI, Food Stamps or certain income-tested Veterans Administration benefits. The definitions in §§ 260.2 and 260.150 exclude certain categories of AFDC and SSI recipients who are protected from energy costs because of their living arrangements.

A State is not required to make payment to every household the Act authorizes as an eligible household. It may limit its program to a smaller eligible population if it chooses. However, the regulations require that if the State does exclude any of the households eligible under the Act it may do so only in accordance with the Act's priority and required considerations, which are defined in § 260.154. Thus, for example, income exclusions would have to be made for highest income households before lower income households. This issue is discussed further in the section on amounts of assistance.

Therefore, while the Act and regulations define the limits of eligibility for assistance, the State retains flexibility for different treatment of eligible groups in its State plan, within the defined set of eligible households and the Act's priorities. If we required States to pay benefits to all eligible households, and thus serve the broadest possible population, the amount of assistance available to each household would be limited and the States' ability to target their assistance on families with highest energy costs and lowest incomes would be hampered.

A State may use evidence of categorical eligibility, i.e. eligibility for SSI, AFDC, Food Stamps, or Veterans benefits to determine eligibility for energy assistance. For example, a State could use our State Data Exchange (SDX) file of SSI benefit payments to determine that a household contains a member eligible for SSI. The intent of this provision is to expedite eligibility determinations. Therefore, a State may not rely on evidence of eligibility for a categorical program if obtaining such evidence would delay furnishing assistance to a household.

2. *To Whom Payments Can Be Made.* Payments may be made directly to eligible households. In addition, payments may be made on behalf of eligible households to their home energy suppliers (under Subpart I). The Act requires that payments be made to operators of subsidized housing (under Subpart H), but those payments may be made only on behalf of a specially-defined subgroup of eligible households, which we call "eligible tenants". We will discuss this special group further below.

A household must be economically at risk for rising costs of home energy in order for a payment to be made to it or to its energy supplier on its behalf. This means that no household which is fully protected by another government program from the impact of energy cost increases may be aided under this program. To receive an energy assistance payment a household must pay some part of its energy cost increases from its own resources, either through increases in rent or utility bills. For example, a household in public housing with rent and utility entirely limited to a fixed percentage of income would be protected from energy cost increases. No payment could be made to or for that household. On the other hand, a similar household in public housing which permits some part of energy cost increases to be reflected in tenants' payments would be at least partially at risk. Tenants in non-subsidized apartments would be considered fully vulnerable to cost increases, even when utilities are included in the rent, because rental levels reflect utility levels when leases are renewed.

Other examples of households which are not vulnerable to energy costs may also be, but are not limited to residents of some rent-controlled housing where increased energy costs will not be added as rent increases; some persons living in congregate or domiciliary care facilities; and other facilities where living costs are subsidized by Federal, State or local governments. A list of more specific examples to aid States in screening out households that are not vulnerable to energy cost increases is included in Appendix D.

In considering whether a household is economically at risk (i.e., vulnerable) for energy cost increases it is not relevant whether the household has actually experienced recent increases. What is relevant is whether there is some formal or structual protection the household has against increases. If there is none, it must be assumed that the costs of energy are being borne by the household. In addition, we do not mean that a family must be in any emergency situation to be economically at risk.

Those who pay their energy costs included in their rent must be treated comparably to those who pay energy costs directly to suppliers. This requirement will assure that households living in rented residential units where energy usage is not metered, and where the cost is included as an undesignated part of the rental payment, are not excluded from eligibility if all other eligibility criteria are met. In addition, the levels of assistance for this group must be comparable to those for households similarly situated in terms of income, priority, and burden of energy costs in relation to income.

Duplicate payments, i.e. more than one payment attributable to the same

energy costs for the same household, are not permitted.

3. *Amounts of Assistance Payments.* Section 260.154 sets requirements for determining amounts of assistance according to the priorities and factors the Act requires for computing benefits.

As specified by the Congress, lowest income households must receive priority, and the highest level of assistance must be given to households with the lowest incomes and the highest energy costs in relation to income. States are left to define "lowest income" and set income ranges.

There are a number of other factors which States must take into account in computing the level of benefits for eligible households. The first of these is average home energy expenditure for households. Because it is extremely difficult to collect adequate direct energy cost information, we will allow both heating degree day data and cost by type of energy source to be substituted as a proxy for average home energy expenditures where that information is inadequate or unavailable. Since use of energy source, and therefore expenditures for energy, depends heavily on the degree days in a location and differential costs of energy sources can be great, we believe these are reasonable measures for determining home energy costs.

The other factors which States must take into account in computing the level of benefits are: (1) The proportional burden of energy cost in relation to ranges of income; (2) the variation in degree days in regions of the State where this information is appropriate and where variations do exist; and (3) the extent to which the household, or category of households, is economically at risk from or protected against rising costs of home energy. The State may also wish to take into account other relevant considerations that are in accordance with the purposes of this program and are not contrary to the priority requirements.

The criteria which we expect a State to use in determining whether different payment categories need to be established are contained in a discussion in Appendix C to the regulations. This includes what we believe are reasonable standards for variations based on degree days and fuel type. Other criteria or interpretations of our suggested standards may be used where the State can justify the alternative measure.

We have left States flexibility in the area of establishing benefit levels particularly for those who pay for utilities indirectly. The legislative history indicates that benefit levels must be established so as to provide generally comparable relief to those who pay utilities directly and those who pay them through rent. We believe a common factor for both groups is the burden of energy costs in relation to income. A State would be expected to evaluate this factor in setting a benefit level. Since information concerning the burden factor of energy expenditures in relation to income may not be available for those who pay their utilities as undesignated portions of rent, it will be necessary for that factor to be "deemed" in their behalf. This suggests use of a percentage of income or of rent, either of which could be based upon a reasonable comparison with energy costs of those who pay utilities directly.

The regulations also state that the amount of the payment should reflect the extent to which an eligible household is vulnerable, i.e., economically at risk.

In reviewing both the priority requirements and the Act's requirement on computing the level of benefits, we had to consider under what conditions an automatic grant (i.e. without application) to families categorically eligible for energy assistance would be acceptable since adequate information regarding vulnerability to energy costs and heating burden are not generally available in the existing State program records for these families. Issuance of an automatic grant for recipients of entitlement programs (AFDC, Food Stamps, SSI, veteran's benefits—all subject to the definitions in §§ 260.2 and 260.150) would be acceptable as one part of a total State program. When an automatic grant is used, other parts of the State's program would have to be established to meet the requirements of § 260.154. The State plan will have to show how the priority and benefit level requirements of the statute and regulations are met in their total program. Further discussion of the use of automatic payments is contained in Appendix C.

4. *Priority for Households With Elderly and Handicapped Persons.* The Act requires that priority be given to eligible households with an elderly or handicapped individual. States are left free to define "elderly", except the elderly may not be younger than 60 years of age. We permit States to use, as a definition of "handicapped," the definition in Section 504 of the Rehabilitation Act; that used for "disability" under Title II or XVI of the Social Security Act; or any other State definition for "handicapped" used in a statewide program.

The State plan must assure that these priorities are provided. This can be done through special treatment relating to ease of application or access to assistance, such as certifying elderly and handicapped persons by home visits or by mail, providing transportation and utilizing the services and facilities of agencies and organizations which serve these individuals.

This priority status does not remove or supplant the priorities in amount of assistance given by the Act to households with the lowest incomes. Extra benefits, or higher benefit levels, may be permitted for households with elderly or handicapped individuals only if those additional benefits are justified by the State in terms of the considerations in § 260.154 relating to income and burden of energy costs.

5. *Purpose for Which Payments Can be Made.* Payments may be made only to: (1) Meet the rising costs of energy sources needed to provide heat in a residential dwelling for an eligible household; and (2) meet the rising costs of energy sources needed to provide cooling in a residential dwelling for an eligible household, when the household establishes to State satisfaction that the need for cooling is medically necessary. The State plan must identify the conditions under which these payments will be made. Payments for cooling can only be made when there is a threat to life or health due to a particular medical condition that can be eased by use of home cooling.

No payments may be made for repairs, weatherization or conservation services under this program. Households in need of weatherization or conservation assistance must be referred to other resources, as indicated in § 260.58.

6. *Methods of Payment.* The State plan must indicate the forms of assistance that will be used to furnish benefits to or on behalf of eligible households. Benefits may include: (1) Cash; and/or (2) in-kind payments, such as deliveries of fuel or prepaid utility bills; and/or (3) vouchers, stamps, coupons or other forms of certificates which may be used in exchange for energy supplies. In-kind payments may not include clothing or shelter. In all cases, the assistance supplied must be directly related to offsetting the rising cost of home energy.

The benefit of any payment made on behalf of an eligible household must accrue to the household for which it was paid. The household must realize full compensation corresponding to the amount paid under this Act to another party. This is intended to prohibit requirements such as those which mandate that eligible households give their assistance or "sign-over" two party

checks unless there is a dollar-for-dollar benefit realized by the household.

6. *Timetable.* The State plan must include a timetable by which payments will be made and indicate the time standard for acting on each application for assistance. Subject to an appropriation for fiscal year 1981, the State's program must begin 30 days after the appropriation or December 15, 1980 whichever is later.

7. *Income and Assets.* In determining what should be counted as income in measuring a household's eligibility, we require States to consider the household's total cash actually received from all sources, excluding cash over which the household has no control. Cash over which the household has no control would include reimbursement for expenses incurred in connection with employment or reimbursement for medical or other expenses. It would also include payments made on the household's behalf to others.

We also permit exclusion of income that is administratively difficult to compute. We leave it to States to define such income, such as irregular or small amounts. In verifying income, the State must apply standards and procedures for verification that are consistent with those it uses for AFDC.

We have been urged to permit or require States to deduct medical expenses from households' income, but we do not believe the Act allows us to do so.

For categorically eligible households, States must not apply assets tests other than the one applied to the appropriate AFDC, SSI, Food Stamp, or specified VA benefit program.

For other households, States may establish assets tests, but must not count cars, household and personal belongings, or a primary residence.

The primary criterion for eligibility for home energy assistance is intended to be income.

Subpart H—Payments to Building Operators

1. *General Principles and Definitions.* The Act specifies that building operators of public and subsidized housing must receive energy assistance payments on behalf of eligible tenants in the building. The payment per eligible tenant paid to a building operator is based on exact monthly expenditures for heat, and may not exceed an amount comparable to the amount established for other eligible households. Our regulations set this comparable amount equal to the limit on the total amount the State may pay to building operators (determined in § 260.206(b)) divided by the number of eligible tenants on whose behalf building operators receive payments under the State's plan.

The comparable amount may be adjusted by the State for individual building operators or categories of operators under criteria based on the factors used to determine whether a building operator should receive a payment.

The Act directs the Secretary to determine the comparable amount by regulation, and we believe this definition assures that comparable amounts are available for payments to eligible households and eligible tenants in public or subsidized housing. After allocating the federal grant to eligible tenants and other households in proportion to their relative numbers, the definition of comparable amount establishes a ceiling on the payment per eligible tenant (as required by the statute) which corresponds to the amount available to the State for assisting other eligible households.

The term "building operator" means the owner or representative of an owner of a residential building or buildings in State or local government-operated housing projects which admit low income tenants based upon an income test. State or local projects that are financed but not operated by the State or local government are not included in this definition. In addition, it means the operator of a residential building or buildings established under five specific HUD and one USDA program set forth in § 260.202(a).

States are not required to make payments to all housing projects and buildings operators. However, distinctions must be based upon objective criteria, including the extent to which the operator's costs are uncompensated by subsidy programs and the benefits such payments will have for the tenants.

The State must also prevent duplicate payments. Thus, the amount of any entitlement a tenant has as an eligible household must be subtracted from the payment made to the building operator for that tenant.

The State must define the criteria by which a tenant in subsidized or public housing will be considered "vulnerable," including partially and fully vulnerable. Tenants who pay excess usage charges or surcharges must be considered vulnerable to some extent. The State is given flexibility to include in its definition of "vulnerable" tenants who have recently experienced rent increases. An example of this would be a municipality which raised the proportion of income the tenant must pay for shelter, over the last few years, from 25% to 30%, and from 30% to 35%.

The State must limit the proportion of its allotment which it pays to operators to the ratio of the number of eligible tenants in the buildings which will receive assistance divided by the total number of eligible households under the State Plan. In determining the total number of eligible households for this ratio, the State will include the eligible tenants in the buildings for which operators will receive assistance. If a State does not have sufficient data to derive an exact number of eligible tenants or households, the State may use estimates. In either case, the State plan must specify the State's limit and the bases upon which it was computed. Since this is a State plan requirement, a waiver of the limit can be considered. However, it would be necessary for the State to show that such a waiver would assist in promoting the Act's objectives and that it was necessary to enable the State to carry out its program. (See § 260.26.)

"Eligible tenant" is used in the regulations for the purposes of establishing the amount of payment to a qualified building operator. In order for an "eligible tenant" to be counted for purposes of payment to a building operator under this subpart, the tenant must occupy a dwelling unit in a building or project operated by a building operator as defined above; meet the eligibility criteria for an eligible household under the State's plan; make a combined payment for rent and utilities in which the utility cost is not differentiated; and must not be fully vulnerable to energy cost increases.

Tenants who pay utility costs separate from rent must not be counted as eligible tenants for the purposes of calculating the amount payable to a building operator, but may still be eligible for a payment as an eligible household under Subpart G.

In the case of a fully protected (i.e., non-vulnerable) tenant in subsidized housing, the State may pay the full benefit to the building operator. In the case of an eligible tenant who is economically vulnerable to the rising costs of energy, the tenant may also qualify as an eligible household under Subpart G and the building operator's payment on his behalf must be reduced by the amount of the household's direct entitlement. In this case the State must pay the tenant as an eligible household, but only to the degree the tenant is vulnerable to the rising costs of fuel.

2. *Method of Calculating a payment to a Building Operator.* Payments will be calculated by taking the exact monthly heating costs of the building operated by an eligible building operator and dividing those costs by the total number

of living units in the building. The resulting heating cost per unit must then be multiplied by the number of eligible tenants. Since exact costs are specified in the act, this would have to be done retroactively rather than before or during each month.

Exact heating costs are the monthly residential heating costs incurred for the building. The State must assure that reimbursement is made based on costs that reflect actual consumption during the month. For example, if a ten unit building has heating costs of $800 during a month specified by the State for heating assistance the cost per unit would be $80. If there are four eligible tenants, the maximum amount payable to the building operator for that month would be $320. The $80 per eligible tenant, and therefore the $320 payment, would have to be decreased, if the comparable amount described under "General Principles and Definitions" was less than $80, or any of the eligible tenants are entitled to receive payments directly as eligible housholds under the State program.

3. *Documentation and Verification.* The State must make payments to a building operator only if the operator documents the specific location of each building for which payments are requested, documents the number of dwelling units in each building, and documents the tenants by name and by either income or type of aid received, if categorically eligible. The building operator must also document the exact monthly amounts of expenditures for heating costs for the building and must certify that tenants eligible for assistance under this program are not discriminated against with respect to rent. This means that they will not, or have not, raised the rent payment for any eligible households living in the project due to a payment received by that household under this program either directly or through a vendor on their behalf.

The State plan must indicate for which months the State will make payments to building operators.

The State is also responsible for the determination of eligibility for payments under this Subpart through prior verification of the data supplied by the building operator. Data sampling, rather than a 100% review, will be acceptable for purposes of State verification. The State will also promptly notify the subsidizing Federal, State or local agency of any payments, by amount and location, to operators of buildings under their jurisdiction.

The State must also provide for methods to avoid duplication of payments when building operators are involved. In order to do this, the State must establish some mechanism or screen by which it can identify those tenants for whom the building operator will receive payment. This will include the necessity to screen out, or adjust the benefits to "eligible tenants" in any flat grant approach used for eligible households.

Direct contact with potentially eligible building operators by the single State agency or other agency responsible for carrying out this Subpart will be the most effective method of obtaining information about eligibility for payments under this Subpart. But this may be difficult and expensive. Therefore, to assist the States in determining which residents of public and subsidized housing are not subject to increases in fuel costs as part of their rent payments, we are developing with the Department of Housing and Urban Development and the Farmer's Home Administration a list of the specific housing programs and subprograms which have statutory or regulatory limits on tenants' rent payments which would make them completely vulnerable and therefore ineligible for direct energy assistance payments as eligible households. Payments to building operators will be made on their behalf subject to the criteria specified above. This information will be sent to the States through a separate transmittal.

The transmittal described above will also include the name, addresses and phone numbers of local HUD and FmHA offices to facilitate this State and building operator communication. Those offices have comprehensive lists of building operators within their local area. Both HUD and FmHA will be notifying all of these local offices of the energy program and the expected communication with the States.

The State has latitude in making payments to building operators. Although the calculation of cost per eligible tenant is calculated on a monthly basis, the State may choose to make monthly payments or a single lump sum payment (for one or more months) to the building operator. Since establishing exact monthly costs is only possible after each month, there are some operational decisions that will have to be made by the State. A lump sum payment *after* the winter season might be utilized not only as an aid in determination of exact costs, but will also allow time to screen out households which may have had direct payment entitlements *during* the winter months under Subpart G.

4. *Reduction of Subsidies.* Congress intended that payments to building operators be in addition to rather than in lieu of the normal subsidies for utility costs. Therefore these subsidies should not be reduced on account of payments received under the State plan.

Subpart I—Payments and Tax Credits to Home Energy Suppliers

States may furnish energy assistance on behalf of eligible households through payments or tax credits to one or more home energy suppliers for the eligible household.

Payments to a home energy supplier may be by means of installment payments, reimbursements or a line of credit.

We have not defined "home energy supplier" because we believe the States should be free to determine the person to whom payments or tax credits would best carry out the purposes of this Part. We also leave to the States the decision whether to allow more than one energy supplier for an eligible household.

A State that agrees to make payments to a home energy supplier on behalf of eligible households must obtain certain agreements from the energy supplier in return. The supplier must agree not to discriminate against eligible households in its terms of sale, credit, delivery or price. For example, the supplier must offer deferred payment and level payment plans to eligible households if it offers them to other households. The supplier must agree not to charge them more than the difference between the home energy assistance program payments and the energy bills the households would otherwise receive.

Under the Act, the supplier must also agree not to terminate service to an eligible household on whose behalf the supplier is receiving payment from the State unless the household has failed to pay the amount charged to it for at least two months and has been provided at least 30 days advance notice of the termination and the opportunity for a hearing prior to termination. We provide that the time for measuring the household's failure to pay a bill begins on the date that payment is due and ends on the same date two months later. If the household is behind in its payment and pays a portion of the bill, the payment must be applied to the oldest part of the bill. Once the part of a bill for which service could be terminated is paid, the supplier cannot terminate service because of a remaining arrearage that is less than two months overdue.

The household must receive the termination notice at least 30 days before the scheduled date of termination. Where State law or other requirements provide for longer grace periods and notification periods, these

State requirements will prevail. The termination notice must inform a household that it may request a hearing before a government agency, to be determined by the State, on the proposed termination within 10 days after receiving the notice and that its energy supply will then continue until a decision based on the hearing is issued.

The hearing must afford the household a reasonable opportunity to explain its side of the dispute to a disinterested party who will settle the issues. Under this requirement the State need not provide a formal adjudicative hearing; States are free to consider less formal dispute settlement mechanisms and innovative techniques of dispute resolution. We will review the hearing procedures set out in the State plan for fairness and efficiency for both the household and energy supplier.

If the State determines that these restrictions on termination would seriously jeopardize the ability of a small home energy supplier to continue in business, the State may partly or wholly exempt that supplier from these restrictions, subject to State law or other requirements. We suggest the factors the State should consider in making that determination, including such things as the number of eligible households that have designated the supplier to receive their energy assistance payments, and the feasibility of the supplier's passing through its losses from nonpayment to other customers. These are among the factors we believe indicate the effect the termination restrictions are likely to have on the supplier's ability to continue in business. The State may determine exemptions individually or by category of supplier. We do not anticipate that public utilities would qualify for an exemption from the termination agreement since they have the ability to "expense" such debts among all their customers. We believe that Congress meant by "small home energy suppliers" independent dealers in fuel oil, propane, wood and the like.

In deciding how it will apply the exemption from the termination requirement, the State should consult with State trade associations, consumer organizations and other interested parties to assure that the exemption is applied in a way that is administratively feasible and consistent with the purpose of restricting terminations as well as the purpose of waiving those restrictions. The State may wish to form an advisory council to recommend policy for granting the exemption from the termination requirement.

State tax credits may be provided to an energy supplier that sells energy at reduced rates to eligible households. Such a credit may not exceed the amount of the supplier's loss of revenue on account of such reduced rates.

A State that chooses to assist eligible households through tax credits to home energy suppliers need not enter into the agreements required for payments to home energy suppliers. Congress did not require such agreements in the case of tax credits.

Subpart J—Direct Payments by SSA to SSI Beneficiaries

A State Plan may provide for automatic payments made directly to categorically eligible SSI recipients. If the State chooses to make such payments, it may make them itself or it may have the Social Security Administration make them for it. This is an administrative option offered to the State by the Act and regulations if the State wants to make automatic payments to SSI recipients. Such payments by us, at the request of a State, are payments made under the State plan and are subject to the same conditions and limitations as other payments made by the State under its plan.

The State must make its request by June 30, 1980 and sign an agreement with us by September 1, 1980, but can withdraw from the agreement without cost at any time before September 15, 1980. Like the State plan, any agreement signed before the appropriation for this program is enacted will be conditional on an appropriation of $2.2 billion.

We will make these payments as checks separate from those for regular SSI benefit payments. We cannot make energy assistance payments centrally to home energy suppliers or to operators of subsidized or government-operated housing. The Act does not authorize us to do so, and there would be no special advantage for the States in having us do so.

A State can have us pay up to five different amounts varying geographically, in the State, but there can only be one amount within each county. These and most other limits on State options for our payments are due to limitations on how much we can modify our existing SSI computer records and programming for the energy assistance payments within the time available.

We will make payments in up to four checks, one per month, sent in any one or more of the months of December 1980, and January, February, and March 1981.

We cannot make payments to help with the cost of medically necessary home cooling, because our records generally contain no information about this medical need.

The State will be responsible for providing hearings requested by SSI beneficiaries who do not receive energy payments or who think the payment should be larger. The State must also make any payments that result from the hearings. If we receive the hearing request we will forward it to the State with all relevant information we have.

We will withhold from the State's allotment enough money to cover both the estimated payments to SSI households (plus a margin for error) and half our administrative costs for making the payments. The State must reimburse us for the other half of our administrative costs out of State funds.

We can do only limited screening of our SSI rolls to avoid payments to ineligible households, or duplicate payments to a single household. We will screen out (a) people who cannot qualify as a household for energy assistance by virtue of their SSI eligibility because they live in a Medicaid institution, or live in another person's household receiving support and food, as well as shelter, from that other person, or are children under the SSI definition and live with a parent or parent's spouse; (b) people who live in institutions or in other living arrangements where they are not vulnerable to energy costs, if the State is one whose supplements to SSI benefits we administer and the State tells us, at least 60 days before our first agreed-on processing date for the State's energy assistance payments, the data codes for living arrangements that we should screen out; (c) in the case of SSI couples, one spouse; and (d) any other the State can identify for us individuals to screen out which the State gives at least 14 days before our processing date in a form our computers can use.

We will give the State a list showing whom we paid, when, how much, and the basis for paying that amount. The list will be in the same form as the State Data Exchange (SDX) records we give the States showing payments of SSI benefits.

The State must screen against this list to avoid making duplicate payments to or for households we have already paid on the State's behalf.

Instead of having us make its payments to SSI households, a State can use special SDX computer tapes for one or more of the months December 1980–March 1981 to make its own payments. We will provide the tape or tapes subject to reimbursement for cost. We will screen the tape just as we would if we were making the State's payments. The timetable for arranging for this service is the same as for our making the payments.

Subpart K—Applications, notices, and hearings.

States have the option of whether to require an application for energy assistance by categorically eligible households under the State plan or to pay them automatically. The need for an application from these households will depend mainly on whether the State chooses to make automatic payments and how the State wants to take account of factors about which it needs information from the households.

Non-categorically eligible households must file applications to establish their eligibility. The application must be written and signed under criminal penalty for giving false information.

Anyone wishing to apply must be informed of eligibility requirements and appeals rights and be given the opportunity for a hearing and any assistance needed to apply. The State must identify in its plan the time standard it will use for acting on applications for the energy assistance program.

The State agency must also provide communications assistance, in the form of bilingual staff, applications, literature, and other services, if the agency's service area contains a substantial number of non-English speaking eligible households which are not English-speaking proficient. Communication assistance for handicapped persons is also required, as described in § 260.352.

The State's notice of payment, denial, or earlier-than-expected termination of energy assistance must inform the household of its right to a hearing if the household objects to the amount, denial, or termination of the payments. The State must not require that the hearing be requested less than 60 days after notice of payment or denial or less than 10 days after notice of termination. Before conducting a State agency hearing on amount, denial, or termination of assistance the State may provide a preliminary appeal step. This can be either an evidentiary hearing before a local agency or an informal conference, or both. This preliminary step may resolve disputed claims quickly and inexpensively.

The same kind of hearing must also be available if a State fails to approve or disapprove an application for energy assistance within 30 days after application.

The hearing decision on amount, denial, or delay of assistance must be issued within 30 days after the hearing request. The hearing decision on termination must be issued before termination.

Summary of Key Dates From the Regulations

Date	Activity	Reference
	SUMMARY OF KEY DATES FROM THE REGULATIONS	
Apr. 2, 1980....	Earliest date for FFP reimbursement of expenses for planning fiscal year 1981 program.	(260.110)
June 30, 1980	1. States must submit description of public participation process.	(260.22)
	2. Deadline for Indian tribe/State intent to enter into agreement for direct grants to tribes.	(260.102)
	3. States must declare intent to use SSA for making payments to SSI recipients.	(260.300)(b)(1))
July 1980.....	We will publish priorities for State incentive grants.	(260.112(c))
Aug. 15, 1980..	1. Financial report on quarterly estimates of need for first quarter fiscal year 1981 due.	(260.86(a))
	2. Indian tribe/State agreement for direct grants to tribes must be signed.	(260.102)
Sept. 1, 1980..	1. States must complete agreement with SSA for delivery of SSI payments.	(260.300(b)(2))
	2. Deadline for State applications for incentive grants.	(260.112)
Sept. 15, 1980	Final day for States submittal of conditional plans (which States can revise depending on time and amount of appropriation).	
Sept. 15, 1980	Last day for States to withdraw from SSA agreement without paying SSA administrative costs.	(260.300(c))
Oct. 1, 1980....	First quarter grant made to States (provided appropriation is enacted by this date).	(260.102)
	15 DAYS AFTER ENACTMENT OF APPROPRIATION	
	1. States submit revision to State plan if appropriation different than $2.2 billion.	(260.24(b))
	2. States last day to confirm or withdraw from SSA agreement if appropriation different than $2.2 billion.	(260.300(d))
	BEGINNING OF PROGRAM	
	1. 15 working days after first month, monthly report of expenditures due.	(260.86(o))
	2. 30 days after first month, first program date report due.	(260.66)
Dec. 1980	Award for approved State incentive grants.	(260.112)
Jan. 30, 1981 .	First financial report on first quarter fiscal year 81 due[1].	(260.88(b))

[1] First of recurring reports.

Dated: May 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: May 23, 1980.

Patricia Roberts Harris,

Secretary.

Chapter II of Title 45 of the Code of Federal Regulations is amended by adding Part 260 to read as follows—

PART 260—LOW INCOME ENERGY ASSISTANCE PROGRAM.

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Sec.

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260.2 Definitions.

Subpart B—State plan requirements

260.15 Summary of State plan requirements.

Subpart C—Development of State plans

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260.22 Public participation in development of the State plan.
260.24 Timetable for submitting plans.
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260.28 Approval and disapproval of State plans and plan amendments.
260.30 Hearing on plan disapproval.
260.32 Withholding of funds for non-compliance with approved State plans.

Subpart D—Administration of the State program

260.50 State agency and local administrative arrangements.
260.52 Administrative procedures.
260.56 Maintenance of regular benefit levels.
260.58 Coordination with weatherization programs and energy conservation efforts.
260.60 Outreach activities.
260.62 Identifying and certifying eligible households.
260.64 Monitoring procedures by States.
260.66 Data collection and reporting by States.
260.68 Federal monitoring.
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Subpart E—Fiscal control and accountability

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260.84 Reserve funds for emergencies.
260.86 Fiscal reports by States.
260.88 Administrative costs.

Subpart F—Federal allotments and payments

260.100 Definitions.
260.101 Computation of States' allotments.
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260.106 Equivalent benefits for Indians.
260.108 Reallotment of funds.
260.110 Reimbursement for funds advanced by States.
260.112 Incentive grants to States.

Subpart G—Eligibility and payments for home energy assistance

260.150 Who is eligible for assistance.
260.152 To whom payments may be made.
260.154 Amounts of assistance payments.
260.155 Priority for households with elderly or handicapped persons.
260.156 Purposes for which payments may be made.
260.158 Methods of payment.
260.159 Timetable for making payments.
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Subpart H—Payments to building operators

260.200 General.
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260.204 Computing a payment to a building operator on behalf of eligible tenants.

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260.250 When the State may make payments to energy suppliers.
260.254 Conditions for termination of home energy by participating suppliers.
260.256 Termination notices.
260.258 Pre-termination hearings.
260.260 Exceptions to the pre-termination requirements.
260.264 When home energy assistance funds may be used for tax credits to home energy suppliers.

Subpart J—Direct Payments by Social Security Administration to Beneficiaries of the Supplemental Security Income Program

260.299 General.
260.300 Timetable for agreements by States with the Social Security Administration.
260.301 Where we will send checks.
260.302 Payment amounts and timing.
260.304 Notices to households and States.
260.306 Appeals.
260.308 State's payment to Social Security Administration.
260.310 Screening out ineligibles and preventing duplicate payments to households.
260.314 State use of SSI payment tapes.

Subpart K—Applications, Notices, and Hearings

260.350 Applications.
260.352 Communication assistance for limited English-speaking proficiency and handicapped persons.
260.354 Criminal penalties for false information.
260.358 Notices.
260.360 Fair hearing for dissatisfied household.
Appendix A—Lower Living Standard Income Levels.
Appendix B—General Administrative Requirements for the Low Income Energy Assistance Program.
Appendix C—Guidelines for Varying Payment Amounts.
Appendix D—Guidelines for Households Not Vulnerable to Energy Cost Increases.

Authority: Sec. 313, Title III, Pub. L. 96–223, 94 Stat. 298 (42 U.S.C. 8612).

Subpart A—Introduction

§ 260.1 Scope of this part.

(a) *General.* This part implements Title III of Pub. L. 96–223, the "Home Energy Assistance Act of 1980." This Act establishes the Low Income Energy Assistance Program, through which grants will be made to States to provide assistance for eligible low-income households to offset the rising costs of home energy that are excessive in relation to household income. For this purpose, the Act authorizes grants to States for fiscal year 1981 to provide financial assistance to and on behalf of eligible households. Eligible households are those containing a person eligible for Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) (with some exceptions), Food Stamps, certain Veterans Administration benefits, and other households with income at or below the Bureau of Labor Statistics Lower Living Standard. The assistance can be in the form of direct payments to eligible households; payments on their behalf to their suppliers of home energy; and, for certain eligible tenants that live in specified public or subsidized housing, payments to their building operators. The amount of assistance for a household depends on such things as the household's income and energy costs, climate, and the presence of an elderly or handicapped person in the household.

(b) *How this part is organized.* (1) Subpart A (§§ 260.1 and 260.2) provides an introduction and important definitions of terms used throughout this part.

(2) Subpart B (§ 260.15) contains a summary of provisions required to be in a State's energy assistance plan.

(3) Subpart C (§§ 260.20–260.34) explains the procedures for submission of a State Plan to us. It includes a discussion of plan approval and disapproval, compliance, waivers of Federal requirements, and public participation in development of the State plan.

(4) Subpart D (§§ 260.50–260.70) explains the State's administration of the energy assistance program. It includes a discussion of required coordination, outreach, monitoring, data collection, and reporting by the States.

(5) Subpart E (§§ 260.80–260.88) explains fiscal control and accountability requirements.

(6) Subpart F (§§ 260.100–260.112) explains how allotments will be computed for the States, Puerto Rico, the territories, the Community Services Adminstration, and additional incentive grants to the States. It also explains how and when we will reallocate funds among States and the conditions under which we will reimburse a State for expenditures incurred before it has an approved State plan. It also explains conditions for direct Federal payment to Indian tribes.

(7) Subpart G (§§ 260.150–260.158) explains who may receive energy assistance and the purpose for which it may be paid. In addition, this Subpart discusses methods and amounts of payments.

(8) Subpart H (§§ 260.200–260.206) explains the circumstances under which States may make payments to building operators on behalf of eligible tenants, and the amount of these payments.

(9) Subpart I (§§ 260.250–260.264) explains the agreements States may make with energy suppliers to pay them on behalf of eligible households, and conditions these suppliers must meet before terminating supply to an eligible household. The subpart also describes the States' option to grant tax credits to energy suppliers.

(10) Subpart J (§§ 260.300–260.316) explains how a State may, at its option, request SSA to administer energy payments to supplemental security income beneficiaries.

(11) Subpart K (§§ 260.350–260.356) discusses applications, need determinations, notices and hearings, and criminal penalties for false information.

§ 260.2 Definitions.

Terms used in single sections or subparts are defined in those sections or subparts. Terms used throughout the part are defined here. As used in this part—

"Act" means the "Home Energy Assistance Act of 1980," title III of Pub. L. 96–223.

"AFDC" means Aid to Families with Dependent Children payments made under title IV–A of the Social Security Act, but not including Foster Care payments under § 233.110 or Emergency Assistance payments to needy Families with children under § 233.100 of this chapter.

"Associate Commissioner" means the Associate Commissioner of Social Security for Family Assistance.

"Commissioner" means the Commissioner of Social Security.

"Compliance" means the State plan and State practice meets requirements of the Energy Assistance Act, Federal regulations and issuances.

"Categorically eligible" means eligible for assistance under the Act as a result of eligibility for AFDC, Food Stamps, certain SSI and certain veterans benefit programs.

"Days" means calendar days.

"Elderly" means a person over any age designated by the State, but not less than 60 years old.

"Eligible household" means—

(a) Any household in which one or more persons are categorically eligible; and

(b) Any other household with income equal to or less than the Lower Living Standard Income Level.

"Fiscal year" means the Federal fiscal year October 1 through September 30, unless otherwise stated.

"Handicap" or "handicapped" means one of the following, at State choice—

(a) The definition of handicapped established by the Rehabilitation Act of

1974, under which a handicapped person is a person who "has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment;"

(b) The definition of disability established by Title II of the Social Security Act for the SSA disability program, under which disability means—

(1) "Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months"; or

(2) In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(c) The definition of disability established by Title XVI of the Social Security Act for the SSI program, under which disability means—

(1) "Inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity);" or

(2) Permanent and total disability as defined under a state plan approved under title XIV or XVI of the Social Security Act as in effect for October 1972 and for which an individual received aid under such plan (on the basis of disability) for December 1973, and for at least one month prior to July 1973 so long as he is continuously disabled as so defined; or

(d) Any definition of handicap or handicapped or equivalent term which the State uses for a Statewide program of assistance for the handicapped.

"Heating degree days" means the result of the following calculation: For each day in a year's time on which the day's mean temperature in a given locality is less than 65 degrees F., find the difference between the day's mean temperature and 65 degrees F. Then add together all of these daily difference for the whole year. The result is the "heating degree days" for that locality.

"Home energy" means electricity, oil, gas, coal, wood, kerosene, or any other fuel used for heating or cooling in a residential dwelling.

"Household" means any individual or group of individuals who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent.

"Lower Living Standard Income Level" means the income level determined annually by the Secretary of Labor based upon the most recent Lower Living Standard family budget. The amount is different for different places in the United States and families of different sizes. The current Lower Living Standard Income Levels are listed in Appendix A.

"Regional Commissioner" means the Regional Commissioner of Social Security for the Federal Region within which the State is located.

"Secretary" means the Secretary of Health and Human Services.

"State" means the 50 States and the District of Columbia.

"SSI benefits" means Supplemental Security Income benefits under title XVI of the Social Security Act, including mandatory and optional payments that we administer for a State under Subpart T of 20 CFR Part 416 to supplement Federal benefits, but excluding benefits:

(a) Paid under 20 CFR 416.231 because the beneficiary is living in a Medicaid institution and Medicaid is paying more than 50 percent of the cost of care;

(b) Reduced by one-third under 20 CFR 216.1125(b) because the beneficiary is living in another person's household and is receiving both support and maintenance (food and shelter) from that person and is not paying his pro rata share of food and shelter expenses; or

(c) Paid to a beneficiary who is:

(1) A child for SSI purposes under 20 CFR 416.1050; and

(2) Living with a parent or with the spouse of a parent.

"We", "us", or "our" means the Department of Health and Human Services.

Subpart B—State Plan Requirements

§ 260.15 Summary of State plan requirements.

Each State that wishes to receive a home energy assistance grant must submit a State Plan. Following is a brief summary of the requirements for State plan approval. The referenced sections include a full description of the State plan requirements which States must include in their plans. The State plan must—

(a) Be submitted in accordance with procedures, timetables, and standards established by us. See §§ 260.20–260.28;

(b) Designate an agency of the State to administer the program, and describe local administrative arrangements. See § 260.50;

(c) Provide that the State agency will furnish home energy assistance to eligible households through payments to home energy suppliers, to eligible households, to any combination of home energy suppliers and eligible households, and to building operators. See § 260.150—260.314;

(d) Describe procedures for identifying and certifying eligible households as participants. See § 260.62;

(e) Describe the amount of assistance to be provided to or for participating households, assuring that priority is given to households with lowest incomes and to eligible households with elderly or handicapped persons; and that the highest level of assistance is provided to households with the lowest incomes and highest energy costs in relation to income. See §§ 260.154 and 260.155;

(f) Provide for agreements with home energy suppliers under which they will receive payments. See § 260.250;

(g) Provide for direct payments to eligible households when the household is paying for utilities through rent and in other situations when the State determines it is practical to do so. See § 260.152;

(h) Provide for public participation in the development of the State Plan and describe that process. See § 260.22;

(i) Provide assurance that owners and renters will be treated equitably. See § 260.152;

(j) Provide that, in carrying out the plan, the State will pay from non-Federal sources at least half of its total program administrative costs. In addition, provide that the State will use from its Federal allotment, to pay for administrative costs no more than an amount equal to 5 percent (and in some unusual circumstances 7½ percent) of its total costs of carrying out the plan. See § 260.88;

(k) Provide that there are administrative procedures for carrying out the Plan. See § 260.52;

(l) Provide fair hearing procedures to be used by the designated State agency for individuals whose claim for assistance is denied or not acted upon with reasonable promptness. See § 260.360;

(m) If the State chooses, provide for a setaside of up to 3 percent of its

allotment for weather-related and supply shortage emergencies. See § 260.84;

(n) Provide assurance that there will be, to the maximum extent possible, referral of individuals to, and coordination with existing Federal, State, and local weatherization and energy conservation efforts. See § 260.58;

(o) Provide for outreach activities through community agencies and home energy suppliers to assure that all eligible households are aware of assistance availability—with emphasis upon the elderly, the handicapped, the house-bound, migrants, persons with limited English-speaking proficiency, the working poor, children, and those in remote areas. See § 260.60;

(p) Establish procedures for monitoring the assistance provided under the Plan, including monitoring and auditing agreements with home energy suppliers. See § 260.64;

(q) Provide assurances that the State will not reduce regular benefit levels, from the level of such benefits as of February 26, 1980, in existing federally assisted cash assistance programs, except that in a State which increases those program benefits solely for energy assistance, that increase may not be considered a part of the regular program for the purposes of this requirement. See § 260.56;

(r) Provide that fiscal controls and fund accounting procedures will be established as may be necessary to assure proper disbursal and accounting for Federal funds. See § 260.80;

(s) Provide that reports will be filed and will contain all information we require. See § 260.66; and

(t) Provide assurance that the State will not establish any energy assistance program eligibility requirements involving assets tests which count cars, household or personal belongings, or primary residences. See § 260.160.

Subpart C—Development of State Plans

§ 260.20 General.

The State plan is a comprehensive statement submitted by the State agency administering the Home Energy Assistance Program which describes in full the nature and scope of its program. It represents the State's commitment to administer the program in conformity with Federal statutes, regulations and issuances. The State plan must contain all Federally-imposed State plan requirements in sufficient detail for us to determine if the program is approvable.

§ 260.22 Public participation in development of the State plan.

(a) The purpose of the public participation process is to enable the residents of each State to participate meaningfully in the State's decision-making processes for the home energy assistance program. It is intended to assure that each State has provided an opportunity for prior public participation of eligible households, public and private organizations—including organizations serving or representing elderly and handicapped persons—public officials, energy suppliers, housing operators, Indian tribes and off-reservation Indian community-based organizations, and the general public in needs assessments, identification of priorities and allocation of resources in development of the State plan.

(b) The State plan must provide for public participation in the development of the plan. Under this requirement, the state must—

(1) Submit a description of its public participation process to the Associate Commissioner and the Regional Commissioner by June 30, 1980. We will promptly tell the State if its planned process complies with the requirements of this section.

(2) Include a description of its public participation process in its State Plan. The process must include at least—

(i) Notices or advertisements in major local newspapers containing a summary of the major provisions, eligibility requirements, and any waiver requests (under § 260.26) in the plan;

(ii) Availability of the proposed State plan for inspection, and distribution of a summary (which must include explicit identification of any waivers requested under § 260.26), free of charge, at a public agency in each county;

(iii) Notice to the public through news media of—

(A) The locations within each county where the proposed plan may be inspected and the plan summary obtained;

(B) The latest date on which written comments on the proposed plan will be accepted, which must be no less than 20 days from the date the notice is published; and

(C) The address where written comments may be sent and, if there are to be public hearings on the proposed plan, the location, date and time for those hearings; and

(iv) Consideration of, and public access to, the written comments received by the State agency.

(c) States may adopt procedures in addition to those required under paragraph (b)(2) of this section including public hearings, advisory committees and other mechanisms. States are urged to consider use of advisory committees which would provide a broad base of usable information and general public reaction.

(d) States must use the above public participation process when major amendments are proposed to approved State plans. Amendments which involve significant changes in the population served or amounts of assistance paid, are examples of major amendments.

§ 260.24 Timetable for submitting plans.

(a) By September 15, 1980, States must submit proposed State plans. These proposed plans must be conditional on the assumption that the program will be appropriated at a level of $2.2 billion. We will approve or disapprove State plans submitted in accordance with these regulations expeditiously. Approvals will also be conditional on the assumption that the program's funding will total $2.2 billion. Extenuating circumstances or the need for additional information may delay a decision to approve or disapprove a plan.

(b) If the appropriation for the program is different from $2.2 billion, we will issue a notice giving States 15 days in which to resubmit State plans or amendments according to their new allotments. If the appropriation is $2.2 billion, we will release the "conditional" aspect of any approvals.

(c) Amendments to State plans may be submitted at any time.

§ 260.26 Request for waiver of plan requirements.

(a) Where we determine that a waiver is necessary for the State's administration of its program and is likely to assist in promoting the objectives of the home energy assistance program, we may waive compliance with any of the State Plan requirements of § 260.15, to the extent and for the period necessary to enable a State to carry out its energy assistance program.

(b) Requests for waivers.

(1) States must submit requests for waivers of any State plan requirements in writing to us. Requests may be made when State plans or amendments are submitted.

(2) The waiver request must—

(i) Identify the specific requirement the State is asking us to waive;

(ii) State specifically and in detail how the requested waiver would promote the objectives of the energy assistance program;

(iii) State the period during which the waiver would be in effect;

(iv) Describe in detail why the State would be unable to carry out its energy assistance program without the waiver and the consequences to the States' program if the request is disapproved; and

(v) Identify the expected cost impact if the waiver is granted.

(c) Before submitting a request for a waiver the State must do the following unless it is exempted from doing so under paragraphs (d) or (e) of this section—

(1) Give public notice through local or State-wide media that it plans to request a waiver of a plan requirement and describe the waiver contemplated;

(2) Make available copies of the waiver request in accessible locations for a period of at least 10 days after notice is given;

(3) Consider any comments received;

(4) Send copies or a summary of comments to the Associate Commissioner; and

(5) Certify to us that residents of the State had the opportunity to review the waiver request and that their comments were considered.

(d) The State need not adhere to the requirements of paragraph (c) of this section if—in our judgment—the requirement to be waived is not significant.

(e) A waiver request that is submitted as part of the State plan will be subject to the public participation requirements established for plan submissions under § 260.22 rather than the requirements of paragraph (c) of this section.

§ 260.28 Approval and disapproval of State plans and plan amendments.

(a) State plans and amendments must meet the requirements of Federal statutes, regulations and issuances. They must be submitted in the format we prescribe to the Associate Commissioner with a copy to the Regional Commissioner.

(b) Approval of State plans and amendments.

(1) The date of receipt of the State plan or amendment is the date the Associate Commissioner receives it.

(2) Staff of the Regional Commissioner will—

(i) Review each proposed State plan and amendment;

(ii) Secure clarification of the plan or amendment as appropriate;

(iii) Send recommendations to the Associate Commissioner regarding disposition of the proposed plan or amendment.

(3) If the Associate Commissioner approves the State plan or amendment he will so notify the State.

(4) If the Associate Commissioner believes the plan or amendment should be disapproved, he will notify the State of the intent to disapprove and of its opportunity for a hearing under § 260.30 prior to disapproval.

(5) If after approval we discover that the plan or amendment should not have been approved we will notify the State, as provided under paragraph (b)(3) of this section, that disapproval is being contemplated. In this case the State will have an opportunity for a hearing under § 260.30.

§ 260.30 Hearing on plan disapproval.

(a) A State may request a hearing within 10 days after receiving notice under § 260.28(b)(4) or (5) that we intend to disapprove its plan or amendment. The request must be made in writing to the Commissioner with copies to the Associate Commissioner and the Regional Commissioner.

(b) Upon receipt of the State's request for a hearing we will—

(1) Promptly send the State a list of all material that was used in deciding that the plan or amendment should be disapproved;

(2) Notify the State of the date, time and place in the State at which a hearing will be held. The hearing will be held not less than 20 days after the date of this notice to the State unless there is written agreement with the State to hold the hearing at another time.

(c) We will work with the State to resolve the issue at any time before, during or after the hearing. If the issue is resolved and an approvable plan or amendment is submitted, the hearing will be cancelled or terminated.

(d) We will designate a hearing officer, who will preside at the hearing and—

(1) Take testimony;

(2) Make a record of the proceedings;

(3) Hold conferences to settle or simplify issues; and

(4) Submit to the Commissioner the hearing record and his or her recommendation(s) regarding the disapproval.

(e) The Commissioner will arrive at a decision and notify the State regarding the disapproval within 30 days after receiving the hearing officer's record and recommendation(s).

(f) The Commissioner's decision is our final administrative action on the disapproval.

§ 260.32 Withholding of funds for non-compliance with approved State plans.

(a) We will cite a State for noncompliance when it fails to substantially comply with the Home Energy Assistance Act and implementing Federal regulations and issuances. An issue of noncompliance exists when—

(1) The State fails to amend its approved plan to conform to new Federal requirements for State plans; or

(2) The State fails in practice to comply with its Plan or a Federal requirement (whether or not its State plan has been amended to conform to the requirement);

(b) If we believe a State is out of compliance, we will notify it of this belief including our intention to withhold funds.

(c) The State may request a hearing within 20 days after it receives the notice specified in paragraph (b) of this section. The hearing will be carried out in accordance with the procedures in § 260.30.

(d) After a hearing, or after the 20 day time period in paragraph (c) of this section if the State has not requested a hearing, we will make a finding regarding whether there has been a substantial failure to comply. If there has been such a failure, we will withhold further payments to the State. Further payments will not be made until we are satisfied that there is no longer any such failure to comply.

Subpart D—Administration of the State Program

§ 260.50 State agency and local administrative arrangements.

(a) The State plan must name a single State responsible for administering the home energy assistance program for the State. Under this requirement, the single State agency must be certified by the Governor or Attorney General of the State as having proper authority to administer the program.

(b) The single State agency may contract with other agencies such as community action agencies, off-reservation Indian community-based organizations or utilities to perform operational functions of the home energy assistance program. If it does so, the State may not delegate any function which involves administrative or policy discretion. The State plan must specify, in relation to any functions that are delegated—

(1) The division of responsibility between the agencies;

(2) How the single State agency plans to carry out its responsibility for supervision of the program with respect to the functions that are delegated; and

(3) What methods are available in the single State agency for correction of errors in case the agency performing operational functions fails to carry them out correctly.

§ 260.52 Administrative procedures.

The State plan must include an agreement by the State that it will implement the administrative procedures to be used in carrying out the plan and satisfying the requirements of these regulations, including the specific administrative requirements in Appendix B.

§ 260.56 Maintenance of regular benefit levels.

The State plan must provide that—

(a) In order to receive assistance under the Act, the State will not reduce, before October 1, 1981, regular benefits levels in any federally assisted cash assistance program from the level as of February 26, 1980.

(1) By "federally assisted cash assistance programs" we mean AFDC, SSI State Supplements and Federal-State unemployment compensation.

(2) By "regular benefit levels" we mean the basic payment standard or schedule on which recurring benefits are based. This would not include special or non-recurring payment items.

(b) Notwithstanding paragraph (a) of this section, if benefits in a Federally assisted cash assistance program were increased solely to help pay for home energy, the State may reduce those increased benefits by no more than the amount provided to eligible households under this energy assistance program.

§ 260.58 Coordination with weatherization programs and energy conservation efforts.

A State plan must—

(a) provide assurance that there will be, to the maximum extent possible, referral of individuals to, and coordination with existing Federal, State and local weatherization and conservation efforts To carry out this requirement, the State plan must—

(1) Specify the government, voluntary and private weatherization and conservation programs to which there will be referrals in order to reduce the energy costs of households eligible for assistance under this program;

(2) Specify the arrangements made by the State agency with the programs specified in subparagraph (1) of this paragraph, including the services available to recipients of assistance to help them make economical and efficient use of energy.

(3) Identify information about and indicate instructions for use of such programs for distribution to local agencies participating in the administration of the State's program.

(b) Indicate how recipients of assistance under this program will be referred to programs identified in paragraph (a) of this section and informed about and instructed in energy conservation and weatherization practices.

§ 260.60 Outreach activities.

A State plan must—

(a) Make provision for reaching and serving those eligible for and in need of assistance under the State's program, with priority attention to outreach activities to identify and serve—

(1) Those most vulnerable to the effects of cold, especially the elderly, the ill and bedridden, handicapped and young children;

(2) Those for whom access to assistance programs is made difficult by—

(i) Remote location of residence, such as isolated or rural areas;

(ii) Frequent change of residence, such as migrants and migrant farm workers;

(iii) Limited English speaking proficiency or communications handicaps;

(iv) General lack of knowledge about community service programs; and

(3) Lowest income individuals and families, especially those who are most seriously threatened by the increased costs of energy for residential purposes or who are not categorically eligible.

(b) Provide for maximum, effective use of Statewide and local resources serving and finding the eligible individuals, families and groups specified in paragraph (a) of this section, for example—

(1) Community service agencies such as Community Action Agencies, State and Local Welfare Agencies, and other appropriate agencies and organizations within the State.

(2) Volunteer programs carried out under the Domestic Volunteer Service Act of 1973;

(3) State and local area agencies on aging.

(4) Indian tribes and off-reservation Indian community-based organizations.

(5) Home energy suppliers;

(6) Crisis assistance programs or other agencies with outreach expertise or experience with winter energy programs;

(7) Individuals particularly recruited and trained for the purposes to serve as casefinders, program interpreters and escorters;

(8) Units of the Federal government located within the State, including post offices, SSA District and Branch offices and Veterans Administration Regional Offices;

(9) The public education, public library and public recreation system as well as police and fire departments throughout the State;

(10) Religious organizations; and

(11) Public media facilities.

(c) Provide a fiscal plan for reimbursement of outreach activities as proper administrative expenses. Contracting with organizations or other agencies to perform outreach activities is a valid part of the State's fiscal plan and administrative expenditures.

§ 260.62 Identifying and certifying eligible households.

The State plan must describe how the State will identify and certify eligible households as home energy assistance program participants and the records the State will keep to support its eligibility decisions.

§ 260.64 Monitoring procedures by States.

The State plan must describe the program monitoring system which will be used including the monitoring of agreements with energy suppliers and securing documentation of energy supplied to eligible households. That system must enable the State to identify and correct, in a timely manner, problems in the operation of its home energy assistance program, including non-compliance with the provisions of this Part or of the State's plan.

§ 260.66 Data collection and reporting by States.

(a) The State plan must provide—

(1) A description of energy usage and the average cost of home energy in the State, identified by type of fuel and by region of the State; and

(2) For reporting to us information on the following items—

(i) For the population of eligible households who apply for or are assisted by the program the State agency must report to us for each month, by the end of each following month—

(A) The number of eligible households assisted and the benefit expenditures;

(B) The number of building operators to whom payments are made (under Subpart H) the total expenditures to those building operators, and the number of eligible tenants on whose behalf those payments are made;

(C) Total administrative expenditures;

(D) The number of applications received for benefits, and their dispositions;

(E) The number of requests received for hearings, and their dispositions; and,

(F) The number of assisted Indian households located on reservations and the total benefit expenditures for them.

(ii) For a sample of the households assisted under the program—

(A) Whether a member is categorically eligible under § 260.150;

(B) The income of the household;

(C) The household's Lower Living Standard income level;

(D) Whether the household falls into a priority group due to the presence of an elderly or handicapped person, or its classification as "lowest income" level;

(E) Whether the household falls into an outreach target group under § 260.60—for example, due to the presence of handicapped person or persons with limited proficiency in the English language;

(F) The primary source of home energy—for example, electricity, fuel oil or natural gas;

(G) The actual cost of home energy for FY 1981;

(H) Whether payments are made directly to the household, to a vendor, or to the building operator;

(I) Whether payments are in cash, voucher, line of credit, or another form;

(J) The amount of assistance in dollars;

(K) Whether the residence is owned by the recipient, rented with designated energy payments, rented with undesignated energy payments, or a building operated by an operator defined in § 260.202(a);

(L) The county of the residence;

(M) Whether any weatherization or conservation referral occured as a result of participation by the household in the energy assistance program.

(N) The number of people in the household;

(O) The age of the oldest person in the household;

(P) The sex and ethnicity of the head of household; and

(Q) Such other data as may be specified in program issuances.

(b) Records on which the reports described in paragraph (a) of this section are based will be maintained for a minimum of three years after the reports are received by us, in a manner as to provide ready access by us.

(c) Expenses incurred by States for data collection and reporting required under this section are valid administrative costs under the State's plan.

(d) States must submit data required under paragraph (a) of this section according to specifications we will provide in subsequent instructions. The instructions will establish specifications and a schedule for sample data under paragraph (a)(2) of this section. Data under paragraph (a)(2) of this section relating to heating assistance must be submitted to us by August 1, 1981. Complete sample data, including data for households with medically necessary cooling, must be submitted to us by November 1, 1981.

(e) States must cooperate with our additional efforts to develop information on home energy usage by the general population. This information will include, but might not be limited to—

(1) Home energy consumption by the general population; and

(2) The annual cost and types of fuel used by various income groups.

§ 260.68 Federal monitoring.

The Regional Commissioner will monitor the State's compliance with its approved State plan.

§ 260.70 Cooperation by States in program evaluations.

The State agency must cooperate in any evaluations of the energy assistance program that are conducted or funded by the Federal government.

Subpart E—Fiscal Control and Accountability

§ 260.80 General.

The State plan must provide that fiscal controls and accounting procedures will be established to assure proper disbursal and accounting for Federal funds. Under this requirement the agency must—

(a) Maintain an accounting system and supporting fiscal records adequate to audit and otherwise verify that the assistance payments and administrative cost claims for reimbursement meet Federal requirements.

(b) Assure that any other State or local agency having costs chargeable to the home energy assistance program will maintain a similar accounting system and supporting fiscal records.

§ 260.84 Reserve funds for emergencies.

(a) The State reserve up to 3% of the funds allotted under § 260.100(a) for weather-related and supply shortage emergencies.

(b) A State wishing to reserve these funds must include in its State plan—

(1) A description of the emergencies or types of emergencies it will cover and the amounts and kinds of assistance to be available;

(2) Its procedures for planning for such emergencies;

(3) The administrative procedures it will use to determine that covered emergencies have occurred; and to implement its emergency plan;

(4) The procedures by which eligible households will be informed that emergency assistance is available and how they may apply for it; and

(5) The procedures for the use of funds reserved under this section during the fiscal year in the event that the funds are not exhausted by emergencies.

§ 260.86 Fiscal reports by States.

(a) The Quarterly Estimate of Expenditures and Allotment Need will be used to help determine the amount of the State's quarterly grant and for reallotment purposes. It must—

(1) Provide the State agency's estimate of its need for Federal funds for a forthcoming quarter and an estimate of its need for Federal funds for the fiscal year. (We will provide a form for this report).

(2) Contain the following information—

(i) The amount by which the State's allotment under § 260.100 is greater or less than the amount needed to carry out the approved State plan;

(ii) An explanation, if the State's allotment is less than the amount needed, of how the State determined the additional amount it needs and how the total amount requested for the fiscal year will be expended;

(iii) Estimated energy assistance payments to be made during the estimate quarter;

(iv) Total estimated expenditures, Federal share and State share, for the estimate quarter;

(v) Total estimated administrative costs, Federal share, and State share for the estimate quarter; and

(vi) Estimated Federal funds needed for the fiscal year.

(3) Be submitted to the Associate Commissioner, with a copy to the Regional Commissioner, at least 45 days before the beginning of each calendar quarter in fiscal year 1981.

(b) The Financial Status Report presents the State agency's accounting of the disposition of the Federal funds granted for past quarters and provides the basis for making adjustments necessary when the State's estimates are greater or less than the amount the State actually expended in the period covered by this report. (We will provide a form for this report.) It must—

(1) Contain information including, but not limited to—

(i) Expenditures for home energy assistance payments to eligible households;

(ii) Expenditures for payments made to home energy suppliers on behalf of eligible households;

(iii) Expenditures for payments made to housing operators on behalf of eligible tenants;

(iv) Expenditures for tax credits to home energy suppliers; and

(v) Total expenditures for planning and administering the State's approved plan for energy assistance to low income households and the Federal share of those expenditures.

(2) Be submitted to the Associate Commissioner, with any necessary supporting schedules, with a copy to the Regional Commissioner, by 30 days after

the end of each calendar quarter in fiscal year 1981 and each quarter thereafter until the State has submitted its final report for the 1981 program.

(c) The Grantee Monthly Report of Expenditures must—

(1) Present the State agency's cumulative cash disbursements for the period covered by the report; and

(2) Be submitted to the Department's Federal Assistance Financing System office with a copy to the Associate Commissioner in accordance with our instructions by 15 working days after the end of each month in fiscal year 1981, and quarterly thereafter until the State has computed its 1981 Energy Assistance program.

§ 260.88 Administrative costs.

(a) A State may use for planning and administering the plan an amount of its allotment up to 5 percent of the total cost of carrying out the plan. By "total cost of carrying out the plan" we mean the sum of all expenditures for allowable assistance payments and administrative costs made under an approved State plan.

(b) Upon proof of unusual circumstances that affect administrative costs, and after approval by us, the State may use an additional part of its allotment for planning and administering the plan up to 2½ percent of the total cost of carrying out the plan.

(1) "Unusual circumstances" include, but are not limited to, special geographical factors, acts of God, and a low total grant level such as might occur if we make grants to some Indian Reservations.

(2) A State which seeks to use an amount of its allocation for planning and administering its plan between the 5 percent and 7½ percent limitations must submit to us a description of the unusual circumstances on which it bases its request and such other information as we may require.

(c) In no case may the Federal funds received under the Act be used to pay over half of the State's total cost of planning and administering the plan. The State will pay from non-Federal sources the remaining costs of planning and administering the plan.

Subpart F—Federal Allotments and Payments

§ 260.100 Definitions.

As used in this part:

"Allotment" means a State's share of the Federal funds appropriated for the Low Income Energy Assistance Program for fiscal year 1981.

"Reallotment" means decreasing the allotment amount, for one or more States whose allotment amount is in excess of Federal fund needs, and redistributing such excess to the State or States in need by increasing the allotment amount for those States.

§ 260.101 Computation of States' allotments.

We will distribute each State's allotment and the remainder of the amount appropriated under the Act in the following manner and order (after providing for Federal administrative expenses)—

(a) First, to each State with a State plan approved under § 260.28 of these regulations, an amount computed in accordance with the allocation formula contained in section 306(a) of the Act;

(b) Next, to the Commonwealth of Puerto Rico, and the Insular Areas (as defined in § 260.104(a)(1)) $2,500,000 allotted on the basis of need under § 260.104(b);

(c) Next, to the Director of the Community Services Administration, $100,000,000 or the balance after paragraphs (a) and (b), of this Section whichever is less;

(d) Next, to the States as incentive grants for fuel assistance programs under § 260.112, the balance, if any, after paragraphs (a), (b) and (c) of this Section;

(e) The remainder after paragraphs (a), (b), (c) and (d) of this Section, if any, will be distributed in accordance with the allotment formula contained in section 306(a) of the Act.

§ 260.102 Quarterly grants to States.

Grants will be made for each quarter of FY 1981 to States with plans approved under this Part.

§ 260.104 Allotments for the Commonwealth of Puerto Rico and the Insular Areas.

(a) *Definitions.*

(1) "Insular Areas" means Guam, American Samoa, the Virgin Islands, Northern Mariana Islands and the Trust Territory of the Pacific Islands.

(2) "Home energy," for purposes of this section, means a source of heating, refrigeration or other home uses, but includes air conditioning only when medically necessary.

(b) [Reserved for allotment method]

(c) Each jurisdiction seeking a home energy grant under this section must submit to us a plan containing provisions which describe the program for which a grant is sought and which are consistent with the requirements for State plans under this part. (See § 260.15) Grants for home energy assistance will be awarded to the Commonwealth of Puerto Rico and the Insular Areas upon approval of their respective plans.

(d) Except as otherwise provided in this section, the provisions of Subparts A through K of this part apply to grants under this section.

§ 260.106 Equivalent benefits for Indians.

(a) *Definitions.* As used in this section, "Indian", "Indian Tribe", and "Indian Organization" mean the definition established for them, respectively, by 45 CFR 1336.1, under which—

(1) Indian means "any individual who is a member or a descendent of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives".

(2) Tribe or Indian tribe means "a distinct community of Indians that exercises powers of self-government." Consortia of tribal governments may act in behalf of Indian tribes.

(3) Indian organization means "a public or private non-profit agency whose primary purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian."

(b) The State plan must provide assurances that Indians will receive benefits that are equivalent to benefits provided to other households in the State.

(c) If we make a determination that Indians are not receiving or will not receive equivalent benefits under the proposed State plan—

(1) As a condition of approving the plan we will require the State to make changes in its plan so that Indians will receive benefits equivalent to other households in the State; or

(2) We will determine that Indians would be better served through grants made directly to Indian tribes or organizations. If we make this determination, we will—

(i) Withdraw from the State's allotment that proportion of its total allotment that the population of eligible Indians not receiving equivalent benefits bears to the population of all eligible households in the State; and

(ii) Provides that proportion of the Federal funds by direct grant to the

appropriate Indian tribe or Indian organization.

(d) If, during the development of a State's plan, the State and an Indian tribe within that State (or a tribe and more than one State, in cases where tribal lands are in more than one State) agree that members of the tribe would be better served by a direct grant to the tribe, rather than under the State's plan, the State and the tribe must notify us of their intent to enter into such an agreement by June 30, 1980 and must finalize the agreement by August 15, 1980. We will determine whether members of the tribe are not receiving or will not receive equivalent benefits, and will determine whether members of the tribe would be better served by a direct grant from us, taking that agreement into consideration. In the event of such an agreement and determinations, we will make a direct grant to the tribe.

(e) In order for an Indian tribe or tribal organization to receive direct funding if we make the determinations under paragraph (c)(2) of this section, it must submit to us for approval a plan containing the same provisions that are required of States. We will provide, on a priority basis, technical assistance to help an Indian tribe or organization for which such determinations have been made to prepare a Plan for delivering benefits to members. Under that Plan—

(1) The tribe or organization will receive Federal funds according to the calculation in paragraph (c)(2) of this section;

(2) If it is demonstrated by the tribe or organization that it is unable to provide the administrative matching funds required under § 260.88, we will consider a waiver of the administrative cost-sharing requirement; and

(3) If the size of the tribe's or organization's program is so small that administration within the 5% limit under § 260.88 is infeasible, we will determine, upon request, whether unusual circumstances as defined in § 260.88(b)(1) exist, and may approve administrative costs from Federal funds up to 7½ percent. If appropriate, we will also consider a waiver of the 7½ percent limit in favor of a more appropriate, higher limit.

§ 260.108 Reallotment of funds.

(a) The portion of any State's allotment which the Secretary determines will not be required to carry out its approved State plan for fiscal year 1981 will be reallotted as provided below to other States based on their need and ability to expend the funds consitent with the provisions of their approved State plans. The purpose of this reallotment is to assure the most effective use of the funds available.

(b) In addition to meeting the reporting requirements set forth in § 260.86, a State must advise the Commissioner whenever it determines that a portion of its allotment will not be required to carry out its home energy assistance plan.

(c) We will determine after the end of each month the amount of funds, if any, available for reallotment. The determination will be based on--

(1) Reports from the States submitted under to these regulations;

(2) Climatic conditions;

(3) Provisions in State plans regarding method, timing and form of payment, emergency reserves, and payments for *summer cooling* when medically necessary;

(4) Notice and comment under paragraphs (d) and (e) of this section; and

(5) Other relevant factors necessary to assure that no State loses funds necessary to carry out the purposes of the home energy assistance program.

(d) Before removing any portion of funds which were allotted to a State, we will notify the Governor of the State by letter and the general public by notice in the **Federal Register** of the intent to reallot, inviting comment. A period of 30 days from the date of publication of the notice in the **Federal Register** will be allowed for comments to be submitted to us.

(e) After considering any comments received during the 30 day notice period, we will notify the Governor of the State of any decision to reallot funds and will publish the decision in the **Federal Register.**

(f) We will reallot the funds determined to be available under paragraph (e) of this section to States having a valid need for additional funds using the following method:

(1) First, the total amount of the excess allotment for those States determined to have an excess will be computed;

(2) Then, the total original allotment amounts for those States which have a need for additional funds will be computed;

(3) Next, for each of the States in paragraph (f)(2) of this section the percentage its original allotment is of the total in paragraph (f)(2) of this section will be determined;

(4) Next, the percentage for each State determined in paragraph (c)(3) of this section will be applied to the amount determined in (f)(1) of this section; and

(5) Last, if each State's reallotment determined in paragraph (f)(4) of this section is equal to or less than the additional amount each State needs, the process of making the reallotment is completed.

(6) If the amount of the reallotted funds to any State in paragraph (f)(4) of this section exceeds the additional needs of that State, the excess will be further reallotted to those States needing additional funds using the procedures in paragraph (f)(2), (f)(3) and (f)(4) of this section. This reallotment process will continue until all excess allotments available for reallotment have been reallotted or all the States' needs have been satisfied.

(g) A State allotment as changed by any reallotment will be considered to be its allotment under § 260.100(a) for fiscal year 1981.

§ 260.110 Reimbursement for funds advanced by States.

Any State which, on or after April 2, 1980, makes advances from its own sources for activities relating to the development of a State plan or other activities in substantial compliance with a subsequently approved State plan, may be reimbursed for such advances from the allotment made to that State under § 260.100(a) when funds are appropriated to carry out the provisions of this part.

§ 260.112 Incentive grants to States.

(a) The purpose of these grants is to provide an incentive to States that have State-funded home energy assistance programs serving eligible households as defined in § 260.150 to continue these programs. It is also to provide an incentive to other States, where there is a need, to begin such State-funded programs.

(b) A State seeking an incentive grant under this section must submit a written application to the Secretary no later than September 1, 1980. The application must—

(1) Describe the State program for which Federal incentive funds are sought under this section;

(2) Identify the eligible households that will be served under the program;

(3) Provide that the provisions of 45 CFR Part 74, apply to the State program; and

(4) Describe how the State program meets the priorities for funding established by us under paragraph (c) of this section.

(c) We will publish in the **Federal Register** in July, 1980, priorities for the awarding of grants under this section and any additional provisions that a State must include in its application.

(d) We will select from the applications for grants those State programs which in our judgment will

best carry out the priorities established by us. States will be notified in December, 1980, whether their programs have been selected for funding. States whose programs are selected will be sent grants in that month.

(e) No grant under this section will be for more than 25% of the cost of the State program selected for incentive funding assistance.

Subpart G—Eligibility and Payments for Home Energy Assistance

§ 260.150 Who is eligible for assistance.

The State plan must identify the categories or groupings of households that will be eligible for home energy assistance under the State's program.

(a) In order for a household to be an eligible household, it must have income less than or equal to the Bureau of Labor Statistics Lower Living Income Standard. However, households that have incomes over that income standard are nevertheless eligible households if they contain at least one person eligible for—

(1) AFDC (other than AFDC Foster Care or Emergency Assistance to Needy Families with Children);

(2) Supplemental Security Income (except if excluded in § 260.2);

(3) Food Stamps; or

(4) Veteran's benefits under sections 415, 521, 541 or 542 of title 38 of the U.S. Code.

(b) In determining eligibility for categorically eligible households, a State may use verified data already on file for such households, if using that data will expedite or not unreasonably delay delivery of benefits.

§ 260.152 To whom payments may be made.

(a) The plan need not provide for payment for all households identified in § 260.150(a). However, when it does not provide for payments for all of those households, it may make exclusions only after taking into account the priority identified in § 260.154(a)(1). This means that people who have lowest incomes may not be excluded.

(b) The State plan must provide that payments for home energy assistance will be made—

(1) Directly to eligible households;

(2) To home energy suppliers in behalf of eligible households, as described in Subpart I; or

(3) To any combination of eligible households and home energy suppliers; and,

(4) To operators of subsidized housing in behalf of eligible tenants, as described in Subpart H.

(c) Under the Plan, eligible households that pay energy costs as undesignated portions of their rent payments will be treated comparably to similarly situated eligible households that pay those costs directly to energy suppliers.

(d) The State Plan must provide that payments will not be made to or on behalf of households that are not vulnerable to energy cost increases, except for payments made to building operators on the basis of eligible tenants as described in Subpart H.

(1) By "vulnerable to energy cost increases" we mean that a household is at least in part responsible for its own energy costs. This could be through direct payments to utilities, increases in rent when leases are renewed, extra energy charges or surcharges, or other vehicles through which the household's costs for shelter could ultimately be expected to rise as home energy costs rise. A household that is vulnerable to energy cost increases is one that is not fully protected against such increases under any government program.

(2) Appendix D contains guidance and examples of some situations in which households may not be vulnerable to energy cost increases.

(e) The plan must assure that no duplicate payments will be made and we will not reimburse for any duplicate payments. A duplicate payment is more than one payment under the plan attributable to the same energy costs for the same household

§ 260.154 Amounts of assistance payments.

The State plan must describe the amounts of assistance that will be furnished under the plan and how—

(a) In setting the amounts of assistance to be furnished to or on behalf of eligible households—

(1) Priority is given to households with lowest incomes; and

(2) The highest level of assistance is provided to households with lowest incomes and the highest energy costs in relation to income.

(b) The State plan must indicate how the State will meet the priority requirement under paragraph (a) of this section. As used in this section, "priority" means that special amounts of assistance are provided under the State's program. This can be done through higher benefits, or favorable methods of income or payment calculation for households with priority, over similarly situated households without priority.

(c) Payment amounts must vary according to differences in circumstances for categories of households. In computing the amount of benefits, States must reasonably take into account—

(1) The average home energy expenditure for households. If adequate information is not available, heating degree day data and average cost by type of energy source may be substituted;

(2) The proportional burden of energy costs in relation to income or ranges of income;

(3) The variation in degree days in regions of the State, where appropriate. If the degree day variation within the State is minimal, the State may elect not to take this into account; and

(4) The extent to which the household is vulnerable to or protected against rising costs of home energy; and

(5) Any other relevant consideration selected by the chief Executive of the State, including provisions for payment levels for households making undesignated payments in the form of rent.

(d) The factors in paragraph (c) of this section must be taken into account in computing amounts of benefits. Criteria which we consider reasonable, in determining whether different payment amounts must be established due to variation in those factors, are set forth in Appendix C. Upon adequate explanation, we will consider the applicability of additional or substitute criteria, or alternative uses of the criteria discussed in the appendix, if the requirements of paragraph (c) of this section are met.

(e) In computing benefit amounts, the State may take into account the specific energy costs of an eligible household. It may also take into account other relevant considerations that are in accordance with the purposes of this program and not contrary to the priority requirements in paragraph (a) of this section and in § 260.155, or the required payment considerations in paragraph (c) of this section. If the State chooses such optional considerations, it must identify them in the plan.

(f) A State may use automatic payments to categories of eligible households. However, if such a system is used, other payment mechanisms in the State's Plan must satisfy the requirements of paragraphs (a) and (c) of this section and as described in Appendix C.

(1) States which use automatic payments must describe in their Plans their procedures for assuring that such payments will not be made to households that are not vulnerable to the rising cost of home energy, except where a waiver has been granted.

(2) An automatic payment is a payment made under this program to an eligible household, without use of a

separate application, based upon its categorical eligibility.

(g) Households eligible under the State's plan and that are similarly situated with respect to energy costs, income, and other considerations relevant to assistance under the Act, must receive similar amounts of assistance. In the case of households that pay energy costs as undesignated portions of their rent, the State must establish and describe in the State Plan its method for reasonably attributing a portion of the rent to energy costs.

§ 260.155 Priority for households with elderly or handicapped persons.

(a) The State plan must describe how priority will be given to eligible households with elderly or handicapped persons. As used in this section "priority" means that households are given special treatment relating to ease of application or access to assistance, timing of benefits, or guarantees of assistance if program funds are inadequate.

(b) A State may provide extra or higher benefit levels for households with elderly or handicapped individuals only if the State's Plan justifies those levels on the basis of the income and energy burden considerations required by § 260.154(b). If the State's Plan does establish such higher or extra benefit levels on that basis, those higher levels will satisfy the priority requirements of this section.

§ 260.156 Purposes for which payments may be made.

(a) The State plan must provide that payments will be made only to—

(1) Meet the rising cost of energy needed to provide heat in a residential dwelling for an eligible household; and

(2) Meet the rising cost of energy needed to provide cooling, when medically necessary, in a residential dwelling for an eligible household.

(b) The State plan must identify the conditions under which payments will be made to eligible households for the rising costs of cooling. Payments for cooling may be made only when there is a threat to life or health due to a particular illness or medical condition which can be ameliorated by cooling facilities. An example of such conditions would include certain respiratory diseases.

(c) The State's energy program must not provide assistance for weatherization, conservation or repairs.

§ 260.158 Methods of payment.

(a) The State Plan must indicate the form(s) and method(s) of payment to or on behalf of eligible households. These may include, but are not limited to—

(1) Cash; and/or

(2) In-kind payments, including deliveries of fuel, and prepaid utility bills. In-kind payments may not include clothing or shelter; and/or

(3) Vouchers, stamps, coupons and other forms of certificates which may be used in exchange for energy supplies.

(b) The benefit of any payment made to or on behalf of an eligible household must accrue to that eligible household. Under this requirement, when a payment in behalf of a household is made to another party, the household must realize full compensation corresponding to the amount paid to the other party.

§260.159 Timetable for making payments.

The State Plan must include the timetable by which payments will be made under its energy assistance program. Under this requirement, the State's energy assistance program must begin 30 days after the date of the appropriation, or December 15, 1980, whichever is later.

§ 260.160 Income and assets—definition and verification.

(a) Household income is the household's total cash actually received from all sources, excluding—

(1) Cash over which the household has no control, including but not limited to—

(i) Reimbursement for expenses incurred in connection with employment;

(ii) Reimbursement for other expenses incurred, such as for medical expenses; and

(iii) Payments made to others on the household's behalf;

(2) Loans; and

(3) Any cash which the State defines in its plan as excluded because it is administratively difficult to consider or compute, such as irregular or small amounts.

(b) States must verify household income eligibility. In verifying income, the State must apply verification standards and verification procedures consistent with those it uses for AFDC. For categorically eligible households it is sufficient to verify that the household is eligible for or receiving assistance under one of the programs identified in § 260.150(a)(1) through (a)(4).

(c) For categorically eligible households, the State may apply no assets test other than the one it applied to that household under the appropriate categorical program. For other households, the State may establish an assets test, but that test may not consider cars, household or personal belongings, or a primary residence.

Subpart H—Payments to Building Operators

§ 260.200 General.

The State plan must provide for direct payments to building operators of specified public and subsidized housing projects on behalf of eligible resident tenants. The amount paid to each operator must be based upon the monthly actual heating cost per unit in the building(s), the number of eligible tenants, and the entitlement to direct assistance which eligible households have under the State's Plan. Payments need not be made to all building operators; and the State must consider several factors in determining those to which the payments will be made. States must prevent duplicate payments as defined in § 260.152.

§ 260.202 Definitions.

(a) "Building operator" means the owner of a residential building or buildings, or the owner's representative, in State or local government-operated housing projects which admit low-income tenants based upon an income test. In addition, it means the owner of a residential building or buildings, or the owner's representative, in housing projects established under—

(1) Section 221(d)(3) of the National Housing Act of 1968 (12 U.S.C. 1715 1);

(2) Section 236 of the National Housing Act of 1968 (12 U.S.C. 1715 z–1);

(3) Section 202 of the Housing Act of 1959 (12 U.S.C. 1708);

(4) Low rent housing established by the U.S. Housing Act of 1937 (42 U.S.C. 1437);

(5) Section 8 Housing as created by the Housing and Community Development Act of 1974 (42 U.S.C. 1437 f); or

(6) Section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

(b) An "eligible tenant" means a houshold that—

(1) Occupies a dwelling unit in a building or project operated by a building operator;

(2) Meets the rquirements for an eligible household under the State's plan;

(3) Generally makes payment for energy as an undesignated portion of rent. A family that generally pays for its heating or cooling energy with separate payments directly to a supplier or utility is not an eligible tenant; and

(4) Is not vulnerable under the State's definition required in § 260.204(d).

§ 260.204 Computing a payment to a building operator on behalf of eligible tenants.

(a)(1) Payments to building operators must be calculated by first taking the exact monthly residential heating costs of the building or project divided by the total number of living units in the building or project, and multiplying the quotient by the number of eligible tenants in the building or project that month. The payment to the building operator must be the lesser of that amount or the product, calculated on a monthly basis, of the comparable amount determined under paragraph (a)(2) of this section multiplied by the number of eligible tenants in the building or project.

(2)(i) The comparable amount is equal to the limit on the total amount of the State may pay to building operators as determined in § 260.206(b) divided by the number of eligible tenants in the buildings and projects which will receive assistance under the State Plan.

(ii) The comparable amount may be adjusted higher or lower for individual building operators or categories of operators according to criteria which reflect—

(A) The extent to which the building operator's costs for residential heating are not compensated by subsidies, rent receipts, and other revenues; and

(B) The extent to which payments made to the building operator will benefit eligible tenants in the building or project.

(iii) The State must make any adjustments under paragraph (a)(2)(ii) of this section in such a way as to assure that the total payments to building operators under the Plan substantially equals the amount the State may pay to building operators under § 260.206(b).

(b) "Exact monthly residential heating cost" is the cost of fuel used for heating the building or project during the month for which payment is claimed. States must specify in the State plan those months for which payments will be made to building operators.

(c) An example of the calculation in paragraph (a) of this section would be as follow—

(1) If the State specifies that it will make payments to building operators for the month of January, the payment for a ten unit building would be calculated by first dividing the exact cost of heating fuel consumed during that month by ten units. If the exact cost of heating fuel consumed was $800, the per-unit cost would be $80. If there are four eligible tenants who are not entitled to a direct payment as eligible households, then under this heating cost formula the amount payable to the building operator for January would be $320.00.

(2) Suppose, however, that under the State's plan the comparable amount determined under paragraph (a)(2) of this section is $60 for January, tenants would receive $60 for January. This would then be the maximum per-tenant payment, and would yield a maximum payment of $240 for four tenants. The State must pay the lesser of this amount or the $320 computed under paragraph (c)(1) of this section. In this case, the payment would be $240.

(3) If one of the four eligible tenants is partially vulnerable and therefore entitled to a direct payment from the state under § 260.154, the amount to which that tenant could entitle the operator would then have to be further reduced by the amount of that tenant's direct entitlement.

§ 260.206 State administration of payments to building operators.

(a) The State Plan must identify the objective criteria the State will use to determine which housing operators will receive payments under this subpart. In establishing these criteria the State must take into account—

(1) The extent to which building operators's costs for residential heating are not compensated by subsidies, rent receipts and other revenues; and

(2) The extent to which payments made to particular building operators will benefit the eligible tenants in their buildings or projects.

(b) The State plan must specify the total amount the State will pay to building operators under the Plan.

(1) This amount must equal the State's allotment multiplied by the number of eligible tenants in the buildings and projects for which operators will receive assistance under the State Plan divided by the total number of eligible households (including eligible tenants) who qualify for assistance under the State plan.

(2) The Plan will identify the basis upon which the State's payments to building operators are computed under this paragraph.

(c) The State plan must assure that no duplicate payments will be made as required under § 260.152(e). Under this requirement, any time an eligible tenant is entitled to assistance as an eligible household under Subpart G and the State Plan the amount of that assistance must be deducted from the payment to the building operator on that tenant's behalf.

(d) The State Plan must define "vulnerability" for eligible tenants.

(1) This definition must include as vulnerable those eligible tenants who pay extra energy charges, surcharges or other excess charges over the normal monthly undesignated rent payment.

(2) The Plan may include as vulnerable those tenants whose rent payments have increased recently to compensate for rising energy costs.

(3) Under this requirement the State plan must identify criteria for determining extent of tenant vulnerability, including at least partially vulnerable and fully vulnerable.

(e) The benefit of any payment made to a building operator must accrue to the tenants in the building or project for which the payment was made.

§ 260.208 Documentation and verification.

(a) States may make payments to a building operator only after the operator—

(1) Documents the specific location of each building for which payments are requested;

(2) Documents the number of dwelling units in each building;

(3) Documents the number of eligible tenants in each building by—

(i) Name and income, if eligible because of income below the Lower Living Standard; or

(ii) Type of aid received (e.g., AFDC, SSI, FS, VA), if categorically eligible.

(4) Documents the exact monthly costs of heating fuel used in that building during the month or months for which the operator will receive a payment; and

(5) Certifies that tenants eligible for assistance under this program are not discriminated against with respect to rent. This means that the rent has not been and will not be raised because a tenant has received, directly or through a vendor, a payment under this program.

(b) The State agency must—

(1) Be responsible for the determination of eligibility of eligible tenants and verification of the data supplied by the building operator upon which the eligibility determination was based; and

(2) Promptly notify the subsidizing Federal, State or local agency of any payments, by amount and location of building, made to the operator.

Subpart I—Payments and Tax Credits to Home Energy Suppliers

§ 260.250 When the State may make payments to energy suppliers.

(a) A State may furnish home energy assistance on behalf of an eligible household through payments to one or more home energy suppliers designated by the household, but only if the supplier has agreed:

(1) To charge the household in the supplier's normal billing process and no more than the difference between—

(i) The actual cost of the energy delivered; and

(ii) The payments the supplier has received or can expect to receive from the State under this Plan.

(2) Not to discriminate against any eligible household in regard to terms and conditions of sale, credit, delivery, or price; and

(3) Unless exempted under § 260.260, not to stop supplying energy to any eligible household except under the conditions in § 260.254.

(b) Payments to an energy supplier must be made by the State in a timely manner by means of installment payments, reimbursements, or a line of credit.

(c) The State must notify each eligible household when it makes a payment to a home energy supplier on the household's behalf, specifying the amount of the payment.

§ 260.254 Conditions for termination of home energy by participating suppliers.

(a) A home energy supplier, unless exempted under § 260.260, must agree not to terminate home energy to an eligible household except under the following conditions—

(1) The household has failed to pay its share of an energy bill under § 260.250(a)(1) for at least two months measured from the due date for each such payment to the same date two months later;

(2) The household has received a written termination notice, as described in § 260.256, at least 30 days prior to the termination; and

(3) If the household requests a hearing within ten days after receiving the termination notice, the supplier will continue supplying home energy to the household until a decision is reached in accordance with the requirements of §§ 260.256 and 260.258.

(b) If State law or other legal requirements provide for longer periods of time than those contained in paragraph (a) of this section, the State law or other legal requirements must apply.

(c) For purposes of this section and § 260.256, the date of receipt of a termination notice is presumed to be five days after the date of such notice unless there is a reasonable showing to the contrary.

§ 260.256 Termination notices.

The termination notice required by § 260.254 must be in writing and state at least the following—

(a) The earliest date the supplier will stop supplying home energy to the household;

(b) The reason for the termination;

(c) The amount the household must pay, by when, and where, to prevent termination;

(d) How to request a hearing and where the hearing will be held; and

(e) That if the household requests a hearing within 10 days after receiving the termination notice, the supplier will continue supplying home energy to the household until a hearing decision is reached.

§ 260.258 Pre-termination hearings.

The hearing required by § 260.254 must be held and decided by the State agency or another Government agency designated by it. The hearing must afford the household a reasonable opportunity to appear before a disinterested party who will hear and resolve the dispute fairly between the household and energy supplier.

§ 260.260 Exceptions to the pre-termination requirements.

(a) If a State determines that the requirements of §§ 260.254 through 260.258 would seriously jeopardize the ability of small fuel oil dealer or other small home energy supplier to continue in business, the State may, subject to State law or other legal requirements, modify its plan provisions to change the requirements of those sections as they relate to those suppliers or exempt them from some or all of the requirements of those sections. If the State chooses to do this it must identify the criteria it will use to determine which suppliers will be subject to modifications of §§ 260.254 through 260.258, and what those modifications are.

(b) The State may make the determination under paragraph (a) of this section on an individual basis or by categories of suppliers. In making the determination, the State may consider among other things—

(1) The feasibility of the supplier passing through its non-payment losses to other customers;

(2) The number of eligible households that have designated the supplier to receive their energy assistance payments as a proportion of the supplier's total customers;

(3) The number of persons employed by the supplier;

(4) The supplier's gross sales in dollars;

(5) The supplier's sales in terms of gallons or other unit of measurement;

(6) The availability of credit to the supplier;

(7) The supplier's past credit practices; and

(8) The supplier's overdue and uncollectable accounts.

§ 260.264 When home energy assistance funds may be used for tax credits to home energy suppliers.

(a) The State plan may provide for a credit against State tax to an energy supplier that sells energy at reduced rates to eligible households. The credit may not exceed the amount of the supplier's loss of revenue on account of the reduced rate.

(b) For purposes of paragraph (a) of this section:

(1) "State tax" means any tax imposed by the State directly on the energy supplier, or on the consumer when the energy supplier is acting in the capacity of a collections agent for the State;

(2) "Reduced rates" means the sale price of home energy to eligible households at less than the energy supplier's normal selling price to households other than eligible households in the same or similar location.

(c) A State plan that includes provision for tax credits under paragraph (a) of this section must provide for—

(1) Certification to us, at the end of each quarter, of the total amount of credits provided which represent an allowable Federal expenditure; and

(2) Maintenance of auditable records supporting the amount of tax credits provided and showing that the tax credits meet Federal and State requirements.

Subpart J—Direct Payments by the Social Security Administration to Beneficiaries of the Supplemental Security Income Program

§ 260.299 General.

A State plan may provide for automatic payments made directly to categorically eligible SSI recipients. If the State chooses to make such payments, it may make them itself or it may have the Social Security Administration make them for it.

§ 260.300 Timetable for agreements by States with the Social Security Administration.

(a) At the request of a State, we will make its energy assistance payment for heating needs, out of the State's allotment, to members of eligible households in the State who receive SSI benefits as defined in § 260.2.

(b) Such payments by us, at the request of a State, are payments made under the State plan and are subject to the same conditions and limitations as

other payments made by the State under its plan.

(c) In order to have us make its payments to SSI beneficiaries, a State must—

(1) Notify us by June 30, 1980 of its intent; and

(2) Sign an agreement with us to this effect by September 1, 1980.

(d) A State which signs an agreement by September 1, 1980, may withdraw from it without cost any time before September 15, 1980. A State which withdraws later must pay us the administrative cost we incurred preparing to make energy assistance payments for the State.

(e) If a State signs the agreement in paragraph (b)(2) of this section before an appropriation for this program is enacted, the agreement will be conditional on appropriation of $2.2 billion for the program. If the appropriation is a different amount, the State must confirm its agreement or sign an amendment by September 1, 1980, or 15 days after the appropriation is enacted, whichever is later, in order to have us make its payments to SSI beneficiaries. The State can also withdraw from the agreement, as provided by paragraph (c) of this section.

(f) To make the payments for a State as early as December 1980, we must know its payment amount by November 1, 1980.

§ 260.301 Where we will send checks.

(a) We will send the household's check directly to the SSI beneficiary (or his or her representative payee under Subpart F of 20 CFR Part 416).

(b) It will be a separate check from the regular SSI benefit check.

(c) We will not make energy assistance payments to home energy suppliers or to operators of subsidized or government-operated housing.

§ 260.302 Payment amounts and timing.

(a) A State may have us make payments in up to five different amounts (See Appendix C). The State must specify in the agreement one amount for each county or list of counties.

(b) A State can have us make energy assistance payments, based on SSI rolls, in any one or more of the months of December 1980, and January, February and March 1981. Each month's payment will be made only to individuals who, according to our automated records at the time we process the energy payment, have received an SSI payment for that month.

§ 260.304 Notices to households and States.

(a) We will enclose a general, State-wide notice of eligibility with our energy assistance payments to SSI households in each State.

(b) After making energy assistance payments for a State to its SSI households, we will give the State a tape showing whom we paid, when, how much, and the basis for paying that amount. The tape will be in the same format as the State Data Exchange (SDX) records we give the States showing payments of SSI benefits.

§ 260.306 Appeals.

Under the State Plan the responsibility for conducting a hearing for any dissatisfied SSI beneficiary receiving direct payments from us belongs to the State.

(a) We will forward to the State, for appropriate action, any complaints or appeals we receive about failure to receive a payment or about the amount of the payment. We will include all information we have relevant to the complaint or appeal.

(b) The State must provide a hearing under § 260.360 on request.

(c) If the State decides the household is entitled to a payment, or is entitled to a payment amount other than the amount it received or will receive from us, the State must make the payments.

§ 260.308 State's payment to Social Security Administration.

(a) For benefits to be paid by us, we will withhold from the State's allotment for energy assistance an amount agreed on with the State from which to make payments to SSI households. The amount withheld will include a margin of up to 7 percent for any errors in estimating the number of SSI households. When we have finished making our energy assistance payments to the State's SSI beneficiaries—

(1) We will return to the State any remaining part of the amount we withheld; or

(2) If the payments we made total more than we withheld, the State must pay us the difference.

(b) We will also withhold from the State's allotment half of our administrative costs caused by making energy assistance payments for the State. The State must pay us the other half out of State funds.

§ 260.310 Screening out ineligibles and preventing duplicate payments to households.

(a) To avoid payments to ineligible households and to households that are not vulnerable to rising energy costs and to avoid duplicate payments to households, we will screen out—

(1) The three groups excluded by the definition of SSI benefits in § 260.2;

(2) One member of eligible SSI couples;

(3) People who live in institutions or other living arrangements where they are not vulnerable to rising energy costs (as described in § 260.152), if the State is one whose supplements to SSI benefits we administer and the State tells us, at least 60 days before our first agreed processing date for the State's energy assistance payments, the State's data codes for living arrangements that we should screen out; and

(4) Other people who are on a list of individuals to screen out which the State gives us at least 14 days before our processing date in a form our computers can use. We will furnish States on request our requirements for the format of this tape. To make sure our computers can use the tape, we must have a test copy of the tape, listing individuals to exclude, at least 60 days before our agreed processing.

(b) By a combination of giving us the items required under paragraphs (a)(3) and (4) of this section, for us to screen out payments, and the State's screening its own payments against the record we provide of the payment we made, the State must, unless it has received a waiver under § 260.26, prevent—

(1) Duplicate payments; and

(2) Payments to households that are not vulnerable to energy costs increases.

§ 260.314 State use of SSI payment tapes.

(a) If a State wishes to make payments to SSI households itself rather than having us make them, we will give the State, upon request, a special SDX computer tape screened as in § 260.310(a). The State must reimburse us for our cost for providing this tape.

(b) The tape will reflect SSI payment status for one or more of the months of December 1980, and January, February, and March 1981, at the State's option.

(c) The timetable for arranging for this service is the same as for our making the payments (§ 260.300).

Subpart K—Applications, Notices and Hearings

§ 260.350 Applications.

(a) The State Plan may require an application for energy assistance by categorically eligible households or provide for automatic payments to categorically eligible households who are receiving payments under the Plan. The State must require a member of other eligible households to file an

application to establish eligibility for energy assistance.

(b) Where an application is required, it must be written and must be signed under penalty of criminal prosecution if false information is knowingly given which results in a payment to which the applicant is not entitled.

(c) The State Plan must assure that everyone who wishes to apply for assistance is—

(1) Given the opportunity to apply without delay;

(2) Provided assistance, when needed, in completing the application form, or in obtaining required documentation; and

(3) Informed of eligibility requirements and hearing rights under § 260.360.

(d) The State Plan must identify that State's time standard for acting on each application after receiving it.

§ 260.352 Communication assistance for limited English-speaking proficiency and handicapped persons.

(a) The State agency must provide communication assistance as needed to serve persons with limited English-speaking proficiency.

(b) If the agency that receives applications serves an area that contains a substantial number of eligible households with limited English-speaking proficiency, who speak the same language and who are or may be eligible for assistance, the agency must provide—

(1) Bi-lingual staff;

(2) Application forms and literature in the appropriate language;

(3) A translation of the notices required in § 260.358 in the appropriate language and a statement that bi-lingual services are available; and

(4) A statement on the notice in the appropriate language explaining the purpose of the notice and a telephone number to call for more information and bi-lingual assistance.

(c) The agency must provide communication assistance, as needed, to insure that persons with impaired hearing, vision or speech or who are illiterate can learn about the program, know their appeal rights and understand what is needed to determine eligibility. Communication assistance must include helping the individual understand notices and forms, complete forms and obtain necessary information. Assistance may include taped material, material in braille or very large type, use of sign language and other communication aids.

(d) The agency must assure that individuals who are illiterate or handicapped are helped in applying for assistance and in establishing eligibility.

§ 260.354 Criminal penalties for false information.

Anyone who violated the provisions of the Act or who knowingly provides false information in any report required under it must be fined not more than $10,000 or imprisoned not more than five years or both.

§ 260.358 Notices.

The State Plan must assure that—

(a) When the State makes its payment (or, in cases of multiple payments, its first payment) to a household, the State will notify the household of the amount and duration of the household's payments.

(b) The State will send a notice to any household whose application for a payment is denied or whose amount or duration of payments will be less than indicated in the notice under paragraph (a) of this section. The notice must state the reason for the denial or for the decrease in amount or duration.

(c) The notice required in paragraph (a) and (b) of this section will state the household's hearing rights under § 260.360.

§ 260.360 Fair hearing for dissatisfied household.

(a) The State plan must provide the opportunity for a fair hearing before the State agency to any household whose—

(1) Application is denied;

(2) Application is neither approved nor denied within 30 days after application, unless the delay was caused by the household's lack of cooperation in providing necessary and reasonable evidence;

(3) Payment is less than the household believes it should be; or

(4) Payments will be made in a lesser amount or duration than the household was notified earlier.

(b) The hearing must meet the following standards—

(1) It must be held in a place reasonably convenient to the claimant;

(2) The claimant must have a chance before the hearing to review the case file and any written evidence that will be used in the hearing;

(3) The hearing officer must be a State employee not involved in the decision being appealed;

(4) The claimant must have the right to—

(i) Bring to the hearing a representative of his or her choice;

(ii) Present oral and written statements and other evidence;

(iii) Have witnesses subpoenaed;

(iv) Cross-examine witnesses; and

(v) Bring an interpreter if needed;

(5) Testimony must be under oath; and

(6) The hearing must be recorded and the decision must be based on the record.

(c) The State may provide a preliminary appeal step, either as an evidentiary hearing before a local agency or as an informal conference, or both, to try to resolve the issue before conducting a State agency hearing.

(d) The State plan must observe the following time limits for hearing—

(1) The State may require that a hearing be requested within a fixed time period after notice of payment, notice of denial or notice of decreased payment amount or duration, but that time must be at least—

(i) 60 days after sending notice of payment or denial; and

(ii) 10 days after sending notice of decreased payment amount or duration.

(2) If a claimant requests a hearing within the time limit allowed, the hearing must be held, a decision issued, and action to carry out the decision taken—

(i) Within 30 days after the request, regardless of whether the State provides a preliminary appeals step, if denial, delay or payment amount is the issue; or

(ii) Before decreasing or stopping payments, if that is the issue.

(e) The State must assure that funds are available to pay successful appeals.

Appendix A.—Lower Living Standard Income Levels

The lower living standard income level varies by location and size of household. First, on Table 1 find the Standard Metropolitan Statistical Area (SMSA) or non-SMSA area for which you want the living standard. That gives the living standard for a household of 4. To find the income level for a household of other than 4, identify the line in Table 2 which contains, in the column for a family size of 4, the standard you found in Table 1. Then track across that line to the desired family size column.

Table 1—*Family of 4*

A. Northeastern States (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont), and Virgin Islands	
Boston SMSA	$13,620
New York SMSA	12,950
Other SMSA's	12,880
Non-SMSA	12,420
B. North Central States (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin)	
Chicago SMSA	$12,890
Milwaukee SMSA	12,690
Minneapolis-St. Paul SMSA	12,790
Other SMSA's	12,600

Table 1—*Family of 4*—Continued

Non-SMSA	12,240
C. SOUTHERN STATES (ALABAMA, ARKANSAS, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, KENTUCKY, LOUISIANA, MARYLAND, MISSISSIPPI, NORTH CAROLINA, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, TEXAS, VIRGINIA, WEST VIRGINIA), AMERICAN SAMOA, NORTHERN MARIANAS, PUERTO RICO, AND TRUST TERRITORY OF PACIFIC ISLANDS	
Baltimore SMSA	$12,770
Houston SMSA	12,100
Washington, D.C.-Maryland-Virginia SMSA	13,630
Other SMSA's	11,960
Non-SMSA	11,180
D. WESTERN STATES (ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA; NEW MEXICO, OREGON, UTAH, WASHINGTON, WYOMING)	
Los Angeles-Long Beach SMSA	$13,400
San Francisco-Oakland SMSA	13,910
Seattle-Everett SMSA	13,910
Other SMSA's	13,240
Non-SMSA	13,540
E. ALASKA	
Anchorage SMSA	$19,690
Non-SMSA	18,510
F. HAWAII AND GUAM	
Honolulu SMSA	$16,510
Non-SMSA	15,520

Table 2.—*Adjustment of Lower Living Standard Income Level by Household Size*

1	2	3	4	5	6[1]
$4,020	$6,600	$9,060	$11,180	$13,190	$15,430
4,310	7,060	9,690	11,960	14,110	16,500
4,360	7,140	9,800	12,100	14,280	16,700
4,410	7,220	9,910	12,240	14,440	16,890
4,470	7,330	10,060	12,420	14,660	17,140
4,540	7,430	10,210	12,600	14,870	17,390
4,570	7,490	10,280	12,690	14,970	17,510
4,600	7,530	10,340	12,770	15,070	17,620
4,600	7,550	10,360	12,790	15,090	17,650
4,640	7,600	10,430	12,880	15,200	17,770
4,640	7,610	10,440	12,890	15,210	17,790
4,660	7,640	10,490	12,950	15,280	17,870
4,770	7,810	10,720	13,240	15,620	18,270
4,820	7,910	10,850	13,400	15,810	18,490
4,870	7,990	10,970	13,540	15,980	18,690
4,900	8,040	11,030	13,620	16,070	18,800
4,910	8,040	11,040	13,630	16,080	18,810
5,010	8,210	11,270	13,910	16,410	19,200
5,590	9,160	12,570	15,520	18,310	21,420
5,940	9,740	13,370	16,510	19,480	22,780
6,660	10,920	14,990	18,510	21,840	25,540
7,090	11,620	15,950	19,690	23,230	27,170

[1]For each household member over 6 persons, add to the 6-person level an amount equal to the difference between the 6-person level and the 5-person level.

Source: Department of Labor, Employment and Training Administration, Office of Comprehensive Employment Development.

Appendix B.—General Administrative Requirements for the Low Income Energy Assistance Program

A. Single State Agency Responsibility

The single State agency designated to administer the State's low income energy assistance program under Pub. L. 96–223, accepts responsibility for the administration of the program. The State agency must administer the program in accordance with the requirements of 45 CFR Part 74 and § 260.50. This includes responsibility for eligibility and administrative policy, and for operational procedures, including: 1. Outreach; 2. Intake process; 3. Methods of eligibility determination; 4. Maintenance of adequate records supporting the eligibility decisions, including a consideration of income and energy cost increases; 5. Method of payment or issuance of vouchers and cash flow; 6. The accounting system; 7. Procedures for monitoring agency performance; 8. Staffing and plans for staff training related to the energy program; 9. Procedures for handling complaints and review process; and 10. Remedial methods for correction of errors.

B. Agency Delegation

If the single State agency uses one or more other agencies to perform any operational function of the energy program, the agencies must enter into an agreement which must specify, at a minimum—

1. The division of responsibility among or between the agencies;

2. The manner in which the single State agency retains control and supervision of the program with respect to—a. Eligibility policy; b. Operational implementation; c. Payment process and methods of reporting; d. Recording and accounting procedures; e. Monitoring of agency performance; f. Handling of complaints and review processes including fair hearings; g. Staffing and staff training plans; h. Administrative cost reimbursements; and i. Benefit calculations.

The agreement must also specify remedial methods for the correction of admininstrative errors, if the agency or agencies providing operational support fail(s) to carry out the provisions of the agreements.

Agreements entered into must be submitted to us as an attachment to the State Plan and are subject to review and approval by us.

C. Expenditures Not Reimbursable Under the Energy Assistance Program

The following expenditures are not subject to Federal reimbursement and must not be claimed—

1. Energy assistance payments to or on behalf of households not meeting the eligibility and payment requirements under the State plan;

2. Tax credits which are not in accordance with the State plan;

3. Any portion of an energy assistance payment which exceeds the amount set forth in the State plan;

4. Allowable administration and planning costs in excess of the limitations in 45 CFR 260.88;

5. Allowable assistance payments, tax credits, and administration and planning costs in excess of the amount we allot to the State;

6. Administrative costs which do not meet the requirements of 45 CFR Part 74 (Administration of grants), 45 CFR 205.150 (Cost allocation), and 45 CFR 205.160 (Non-expendable personal property);

7. Energy assistance payments made to or on behalf of eligible households or tax credits after September 30, 1981; and

8. Any expenditures which are not in accordance with the approved State plan.

We will determine the allowability of costs claimed for reimbursement under the energy assistance program. A State may appeal our determination that expenditures are not reimbursable under the energy assistance program. We will establish procedures for such appeals.

D. Allowable Administrative Costs

Costs charged to the administration of the energy assistance program will meet the requirements set forth in 45 CFR Part 74 (Administration of grants), 45 CFR 205.150 (Cost allocation), 45 CFR 205.160 (Non-expendable personal property), and the following criteria—

1. *For costs which do not require allocation*—those costs that result directly from carrying out the State plan;

2. *For costs which must be allocated*—those costs incurred for common or joint purposes; not readily assignable to a process, function, or activity; and allocated to the administration of the State Plan in accordance with an approved cost allocation plan.

Any State agency having administrative costs chargeable to the energy assistance program must have a cost allocation plan for allocating costs to the administration of the energy assistance program. That plan must be approved by the Regional Director, Division of Cost Allocation, before any allocated costs can be allowed for Federal reimbursement.

Any local agency having administrative costs chargeable to the energy assistance program must have a cost allocation plan available for review. That plan must show the methods used for allocating the costs to the energy assistance program, except when the local agency has an approved cost allocation plan or indirect cost rate. In these cases, the local agency must execute an amendment to its approved plan.

If an agency, other than those local agencies referred to above, does not have a Federally approved cost allocation plan or indirect cost rate, it must establish one in order to claim administrative costs. The Division of Cost allocation of the Social Security Administration's Regional office may be called upon for assistance.

Only those costs that are incurred by the State in administering its approved energy assistance plan, and which are not allocated to and claimed for Federal reimbursement under any other Federal program, may be claimed as a cost of administering the State plan.

We will not reimburse costs associated with the State or local agency's ongoing activities—e.g., eligibility determination, redeterminations or case maintenance for any program other than the energy assistance program.

E. Accounting System

The State's designated agency, any other involved State agency, and, where applicable, any local agency, having costs chargeable to the energy assistance program, will maintain an accounting system and supporting fiscal records adequate to audit and otherwise verify that the energy assistance payments and administrative costs claimed for reimbursement meet Federal requirements.

F. Audits and Reviews

The operations of the State will be subject to review by us. The State will make available the records and documentation requested for review and audit.

G. Records

The State agency must, in discharging its fiscal accountability, maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with Federal requirements. Under this requirement, State and local agencies must retain accounting records for the energy assistance program for a period of 3 years, subject to the following conditions—a. The 3 year retention period starts from the date of submission of the final expenditure report; b. The records must be retained beyond the 3 year period if audit findings have not been resolved; c. Records for nonexpendable property which was acquired with Federal grant funds must be retained for 3 years after final disposition of the property.

H. Recovery of Erroneous Payments

States may recover erroneous payments made. Whenever a State does recover erroneous payments, appropriate adjustments will be made in the State's report of expenditures.

I. Safeguarding of Information

The use or disclosure of information concerning recipients of the energy assistance program will be limited to purposes directly connected to the administration of assistance programs as provided in 45 CFR 205.50 (Safeguarding information).

J. Funds Not Expended

Funds not spent under the State's Plan must be returned to us. We will issue a grant decreasing the State's grant authority for the energy assistance program by the amount of any funds to be returned to us. The State must return the funds by check or it may request that the amount be offset against its grant authority for its Aid to Families with Dependent Children program under Title IV–A of the Social Security Act.

K. Personnel Standards

The State must comply with 45 CFR Part 80, 84 and § 205.200 governing merit system, equal opportunity, affirmative action, protection of civil rights and provision for the handicapped.

Appendix C.—Guidelines for Varying Payment Amounts

1. Payment Variations

The purpose of this appendix is to give States guidance on reasonable payment variations and to provide examples of reasonable standards.

Under § 260.154, States must consider average home energy expenditure in computing benefit amounts. Where actual expenditure data are not available, heating degree data for the area and cost by type of energy source may be substituted.

With regard to heating degree day variations, we believe it is reasonable to establish a separate category for each region of the State which experiences a difference of 500 degree days or more. Therefore, if the 6 Northern counties of State X average 525 heating degree days more than the 10 Southern counties of the same State, the State should set up two regions for purposes of payment under its energy assistance program.

In the same example, if a variation in the average costs of different fuel types exists in that State, a payment variation by fuel types should be built into the program. For example, if the cost of fuel oil is 30% higher than the cost of gas and the cost of gas is 25% higher than the cost of electricity, the State should establish three different payment categories by fuel type. In addition, significant variation in the cost of a single fuel type by Region would also warrant separate payment categories. In each case, it is reasonable to consider a 20% or greater variation in average costs to be significant enough to warrant a different payment amount category.

If less than about 5% of the population uses a specific fuel type, a separate payment category may not be necessary. If in the same State, for example, the cost of wood is 30% less than the cost of electricity, but only 2% of the population uses wood, the State may want to place wood users in the nearest payment category (in this case, electricity) rather than create a separate payment category for wood as a fuel type.

Another requirement under § 260.154 is that the highest level of benefits goes to those with the lowest incomes and highest energy burden. If the highest benefit goes to the lowest income families in each climate region for each fuel type, the payments will reflect the proportional burden of energy cost in relation to need. Income ranges by dollar amount or by percentages of the lower living standard would both be reasonable measures of income variation.

If State X, in the example above, chooses to use dollar income ranges, its payment variations could be set according to a chart like Chart 1:

	Fuel Oil		Gas		Electricity	
Income ($)	Reg I	Reg II	Reg I	Reg II	Reg I	Reg II
under 3,000						
3000 - 6000						
6001 - 9000						
over 9000						

Chart 1

Actual payment amounts could then be set based on estimates for fuel cost by type and region, or by variations on a base benefit amount. The boxes in Chart 1 would either contain payment amounts or multipliers to be applied against a base benefit, and would reflect the differences in the burden attributable to each category of household.

Other variables for payment categories may be desired to reflect other energy cost variations—such as size of dwelling—if the State wishes.

Households which pay undesignated portions of their rent may be either an additional payment category in the chart developed by the State, or could be accommodated with another chart. This will apply to the categorical automatic payment example described below as well.

2. Categorical Automatic Payments

Chart 1 above is most practical in a program which pays benefits upon case-by-case applications. If a State makes automatic payments to categorically eligible households, however, it may not be able to vary those automatic payments by all of the factors in that chart. It might use one of the following alternative method of payment for serving those households categorically eligible.

The benefit level for automatic payments to categorically eligible households might be based only on household income and heating degree days for the climatic zone in which the household is located. This information is readily available. Additional variations could be used if additional information is solicited from categorically eligible households on such item as fuel type or actual energy expenditures.

For example, if State Y has the same two climatic zones as State X above, but for reasons of administrative efficiency or other reasons chooses to make automatic payments to categorical recipients, its payment chart constructed from known information could be as illustrated in Chart 2:

Income ($)	Climatic Reg I	Climatic Reg II
under 3,000		
3000 - 6000		
6001 - 9000		
over 9,000		

Chart 2

Since this payment chart reflects only some of the factors used in identifying the burden of energy costs, the State must establish an additional payment mechanism to reflect variations in fuel burdens as well. One way to do this would be for the State to base the payments in Chart 2 on the least expensive fuel type used in State Y. The State could then supplement those payments with additional payments to households using more expensive fuel types by establishing a vendor line of credit with suppliers of the more expensive fuel types. Thus, the total benefit to households would reflect burden variations, including fuel costs. Alternatively, the State could refer categorically eligible households to an agency responsible for energy assistance applications for income eligible households under the State's plan. An application for additional assistance, up to the payment level set for the appropriate fuel type, or according to other variables the State may set, would then be processed.

If a State did not wish to, or was unable to, vary the automatic payment by income or Region, a flat payment for the smallest amount in the State's plan could be sent to categorically eligible households. Additional assistance would then have to be made available based on the other variables (such as income fuel type and climate) in order to reflect the burden of energy costs. This amount could be available through an application or by a vendor line of credit.

In a variation of the above example, if a State makes an automatic payment to SSI recipients (administered either by us or the State), it may choose to send either a flat amount or an amount only varied by climatic region to all SSI recipients. To meet the other priorities of the Act, additional assistance must also be made available based on variables such as income and cost of energy by fuel type. However, in the case of SSI, and in other instances where income ranges for recipients may be very narrow, an income variation may not be necessary.

Under all payment approaches, all households not vulnerable to energy costs must be screened out. Under an application program this can readily be done as part of the application process; with automatic payments it is the responsibility of the State to achieve this screen, collecting whatever data is necessary prior to making payments.

We believe the guidelines discussed in this appendix (i.e., 500 degree day difference for determining regions, 20% variation in cost of fuel type used by at least 5% of the population) are reasonable standards for establishing payment categories. If the State can justify different standards for creating payment categories, it may do so.

Appendix D—Guidelines for Households Not Vulnerable to Energy Cost Increases

Payments may not be made to households that are not vulnerable to energy cost increases. This will require that States screen applicants to determine those who are not vulnerable for rising energy costs. This screen will have to be made prior to our sending out payments on behalf of a State to SSI recipients, prior to any automatic payments that may be sent out by the State, and at the time of application for other households under the State plan.

In order to assist the State in this screening process we have developed the following list that gives examples of households that may not be vulnerable to energy cost increases. These examples are not an all inclusive list, but should give some guidance about what living arrangements to look for in screening for energy vulnerability.

(1) Residents of some public housing projects;

(2) Residents of some rent-controlled housing;

(3) SSI recipients living in "congregate" care or "domiciliary" care facilities or foster care placements who receive SSI State supplements which correspond to these living arrangements; and

(4) Others in public or private institutions whose living costs are subsidized by State or local governments. Examples of such individuals include, but are not limited to:

(i) Residents of vocational education facilities whose living costs are subsidized; and

(ii) Persons in nursing homes or medical institutions for whom Medicaid pays over 50% of costs.

(5) Residents of group living facilities who share the burden of energy cost increases. These residents must be screened to prevent payments that total more than the amount for a similarly situated household. Payments can be set lower since residents are only partially vulnerable for energy costs.

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Friday
May 30, 1980

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Modification of Graduated Payment Mortgage Program; Interim rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-80-808]

Modification of Graduated Payment Mortgage Program; Interim Rule

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner; Department of Housing and Urban Development (HUD).

ACTION: Interim rule.

SUMMARY: The Housing and Community Development Amendments of 1979 provided for an alternative Graduated Payment Mortgage program under Section 245 of the National Housing Act. Under the new program, a smaller cash investment is required of eligible homebuyers. This provision should make homeownership available to a broader segment of the population.

DATES:

Effective date: June 30, 1980

Comments due: Comments must be received on or before July 29, 1980.

ADDRESS: Written comments should refer to the docket number and date of this rule and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The interim rule may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Coonts, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, D.C. 20410. (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Amendments of 1979 amended Section 245 of the National Housing Act to broaden the availability of graduated payment mortgages by modifying existing restrictions on the maximum loan-to-loan ratio permitted for such mortgages. The amendment does not alter the existing Section 245 program, but instead would provide for an alternate program, which would permit the principal obligation of the mortgage to rise during the mortgage term to an amount higher than the initial appraised value of the property. The following limitations have been placed on this program: (1) The program is being limited by regulation to properties approved prior to the start of construction or substantial rehabilitation, and properties under construction involving Section 203(b) mortgage insurance which are covered by approved insured warranty plans. (2) The program is available only to mortgagors who have not owned a home within the three-year period preceding their application for a graduated payment mortgage. (3) The program would be limited to applicants for mortgage insurance who could not reasonably afford to purchase the home by utilizing the existing Section 245 program or other FHA insurance programs. (4) The mortgage balance could not exceed the lesser of: (a) the limits, when no deferred interest is added, prescribed in Sections 203.18(a), 203.18(b), and 203.18a of HUD regulations, or (b) an amount which, when all deferred interest is added, can never exceed 113 percent of the original appraised value of the home, or 97 percent of the projected value of the property which shall be determined by increasing the value at a rate not to exceed 2½ percent per annum during the period of increasing payments to principal and interest.

(5) Maximum mortgage amounts will be established locally based upon an appraised value which may not exceed 110 percent of the median prototype costs determined for the area in which the property is located, not to exceed the maximum mortgage amount for Sections 203(b) and 234(c). (6) The activity level of the program is limited to 10 percent of the total amount of FHA one- to four-family mortgages insured in the preceding fiscal year or 50,000 mortgages, whichever is greater. (7) The program is limited to two graduated mortgage payment plans providing for increasing mortgage payments for a period of 10 years at a rate of 4.9 percent per year or for a period of 5 years at a rate of 7½ percent per year.

Due to sharp increases in the cost of housing, many middle-income families and individuals have been excluded from homeownership. This interim regulation will make homeownership available to a broader segment of the population, particularly the first time homebuyer, and will also help stimulate and stabilize the production of housing.

The Secretary has determined that this program should be made available to the public as soon as possible since the implementation of this program will make homeownership possible for potential purchasers who are priced out of the present housing market. Accordingly, the Secretary has found that the delay that would result from providing an opportunity for public comment prior to the effective date of this rule would be contrary to the public interest. Thus, this rule will become effective 30 days after publication, with a 60-day public comment period following such publication.

The Department's initial determination was that the numerical criteria which trigger the preparation of a Regulatory Analysis would not be exceeded. However, due to the innovative nature of this program, the Department has subsequently decided to prepare a Regulatory Analysis, which will be available for public inspection in the near future. Also, it is recognized that since this program is unique, close monitoring of actual loss experience is necessary. The Department intends to review this experience and if losses exceed reasonable expectations, appropriate measures will be implemented.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of Rules Docket Clerk at the address set forth above. This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, 24 CFR Parts 203 and 234 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

1. A new § 203.46 is added as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with additional requirements of this section if the mortgagor could not reasonably afford to purchase the property by means of a mortgage insured under any other one-

to four-family mortgage insurance program.

(a) The mortgagor shall not have owned a home within the three-year period preceding the date of application for mortgage insurance.

(b) The mortgage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed in §§ 203.18(a), 203.18(b), and 203.18a, provided that the appraised value shall not exceed 110 percent of the median prototype housing cost limits as established by the Commissioner for the market area in which the property is located, or

(2) An amount which, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not at any time exceed the lesser of:

(i) 113 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance, or

(ii) 97 percent (or if the mortgagor is a veteran, the percentage prescribed for veterans in § 203.18(a)) of the projected value of the property which value shall be determined by increasing the appraised value as of the date the mortgage is accepted for insurance at a rate of 2½ percent per annum during the period of increasing payments to principal and interest.

(d) The mortgage shall cover a dwelling which:

(i) Was approved for mortgage insurance prior to the beginning of construction or substantial rehabilitation.

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs prior to the beginning of construction or substantial rehabilitation.

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction.

(e) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthy payments by the mortgagor not in excess of his/her reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest shall increase annually for a period of ten years at a rate of 4.9 percent per year or for a period of 5 years at a rate of 7½ percent per year. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(f) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(g) Sections 203.21, 203.43, 203.43a, 203.43b, 203.44, and 203.50 through 203.102 shall not be applicable to this section.

(h) The aggregate amount of the initial principal obligation of mortgages which are insured under this section and § 234.76 in any fiscal year shall not exceed 10 percent of the aggregate amount of the initial principal obligation of all mortgages covering one- to four-family properties which are insured during the preceding fiscal year, or 50,000 mortgages, whichever is greater.

(i) "Substantial rehabilitation" as used in this section means the improvement of a unit in substandard condition to a decent, safe and sanitary level, meeting FHA's standards for mortgage insurance. Units are in substandard condition when, while they may be structurally sound, they do not provide safe and adequate shelter, and in their present condition endanger the health, safety, or well-being of the occupants. Such housing has one or more defects, or a combination of potential defects in sufficient number or extent to require considerable repair or rebuilding, or is of inadequate original construction. The defects are either so critical or so widespread that the structure should be extensively repaired. The estimated cost of rehabilitation should normally not be less than 25 percent of the value of the property (including land) after rehabilitation. The rehabilitation should be of such scope that, when completed, all the components in the house are operable and should not be anticipated to require any work or major expense over and above normal maintenance for the first one-fourth to one-third of the mortgage term.

(j) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245 of the National Housing Act.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

2. A new § 234.76 is added as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section if the mortgagor could not reasonably afford to purchase the property by means of a mortgage insured under any other one- to four-family mortgage insurance program.

(a) The mortgagor shall not have owned a home within the three-year period preceding the date of application for mortgage insurance.

(b) The mortgage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed in §§ 234.27(a) and 234.27(c), provided that the appraised value shall not exceed 110 percent of the median prototype housing cost limits as established by the Commissioner for the market area in which the property is located.

(2) An amount which, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not at any time exceed the lesser of:

(i) 113 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance, or

(ii) 97 percent of the projected value of the property which value shall be determined by increasing the appraised value as of the date the mortgage is accepted for insurance at a rate of 2½ percent per annum during the period of increasing payments to principal and interest.

(d) The construction or substantial rehabilitation of the condominium project shall have been completed not more than one year prior to the application for mortgage insurance and the family unit shall have had no previous occupant other than the mortgagor.

(e) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring

monthly payments by the mortgagor not in excess of his/her reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest shall increase annually for a period of ten years at 4.9 percent per year or for a period of 5 years at a rate of 7½ percent per year. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases or payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(f) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(g) Sections 234.36 and 234.70 shall not be applicable to this section.

(h) The aggregate amount of the initial principal obligation of mortgages which are insured under this section and § 203.46 in any fiscal year shall not exceed 10 percent of the aggregate amount of the initial principal obligation of all mortgages covering one- to four-family properties which are insured during the preceding fiscal year, or 50,000 mortgages, whichever is greater.

(i) "Substantial rehabilitation" as used in this section means the improvement of a unit in substandard condition to a decent, safe and sanitary level, meeting FHA's standards for mortgage insurance. Units are in substandard condition when, while they may be structurally sound, they do not provide safe and adequate shelter, and in their present condition endanger the health, safety, or well-being of the occupants. Such housing has one or more defects, or a combination of potential defects in sufficient number or extent to require considerable repair or rebuilding, or is of inadequate original construction. The defects are either so critical or so widespread that the structure should be extensively repaired. The estimated cost of rehabilitation should normally not be less than 25 percent of the value of the property (including land) after rehabilitation. The rehabilitation should be of such scope that, when completed, all the components in the house are operable and should not be anticipated to require any work or major expense over and above normal maintenance for the first one-fourth to one-third of the mortgage term.

(j) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245 of the National Housing Act.

(Secs. 203, 211, 245 of National Housing Act, as amended; 12 U.S.C. 1709, 1715b, 1715z–10)

Issued at Washington, D.C., April 22, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

29297 5–2–80 / Private Land Mobile Radio Service; providing for geographic sharing of certain frequencies in the petroleum, forest products, special industrial, and manufacturers radio service.

[Corrected at 45 FR 30637, May 9, 1980]

Rules Going Into Effect Sunday, June 1, 1980

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

28081 4–28–80 / Filberts grown in Oregon and Washington; changes in certain reporting requirements

31045 5–12–80 / Potatoes grown in Southeastern States; expenses and rate of assessment

ENERGY DEPARTMENT

Economic Regulatory Administration—

22012 4–3–80 / Phase out of small refiner bias

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—

30602 5–8–80 / Mortgage insurance; elimination of application fee

SECURITIES AND EXCHANGE COMMISSION

23653 4–8–80 / Registration Statement Form S–8 and Annual Report Form 11–K; amendments

TRANSPORTATION DEPARTMENT

Coast Guard—

2027 1–10–80 / Navigation safety; electronic navigation equipment

Federal Railroad Administration—

26708 4–21–80 / Freight car safety standards; pre-depature inspections, defective cars received in interchange, etc.

VETERANS ADMINISTRATION

31717 5–14–80 / Increase in pension rates and income limitations

List of Public Laws

Last Listing May 29, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 668 / Pub. L. 96–251 To permit the Cow Creek Band of the Umpqua Tribe of Indians to file with the United States Court of Claims any claim such band could have filed with the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049). (May 26, 1980; 94 Stat. 372) Price $1.

H.R. 2313 / Pub. L. 96–252 "Federal Trade Commission Improvements Act of 1980". (May 28, 1980; 94 Stat. 374) Price $1.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: June 27; July 11 and 25; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235. Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

PITTSBURGH, PA.

WHEN: June 4 at 1:30 p.m. and June 5 at 9 a.m. (identical sessions.)

WHERE: Rooms 2212 and 2214 (both days), Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa.

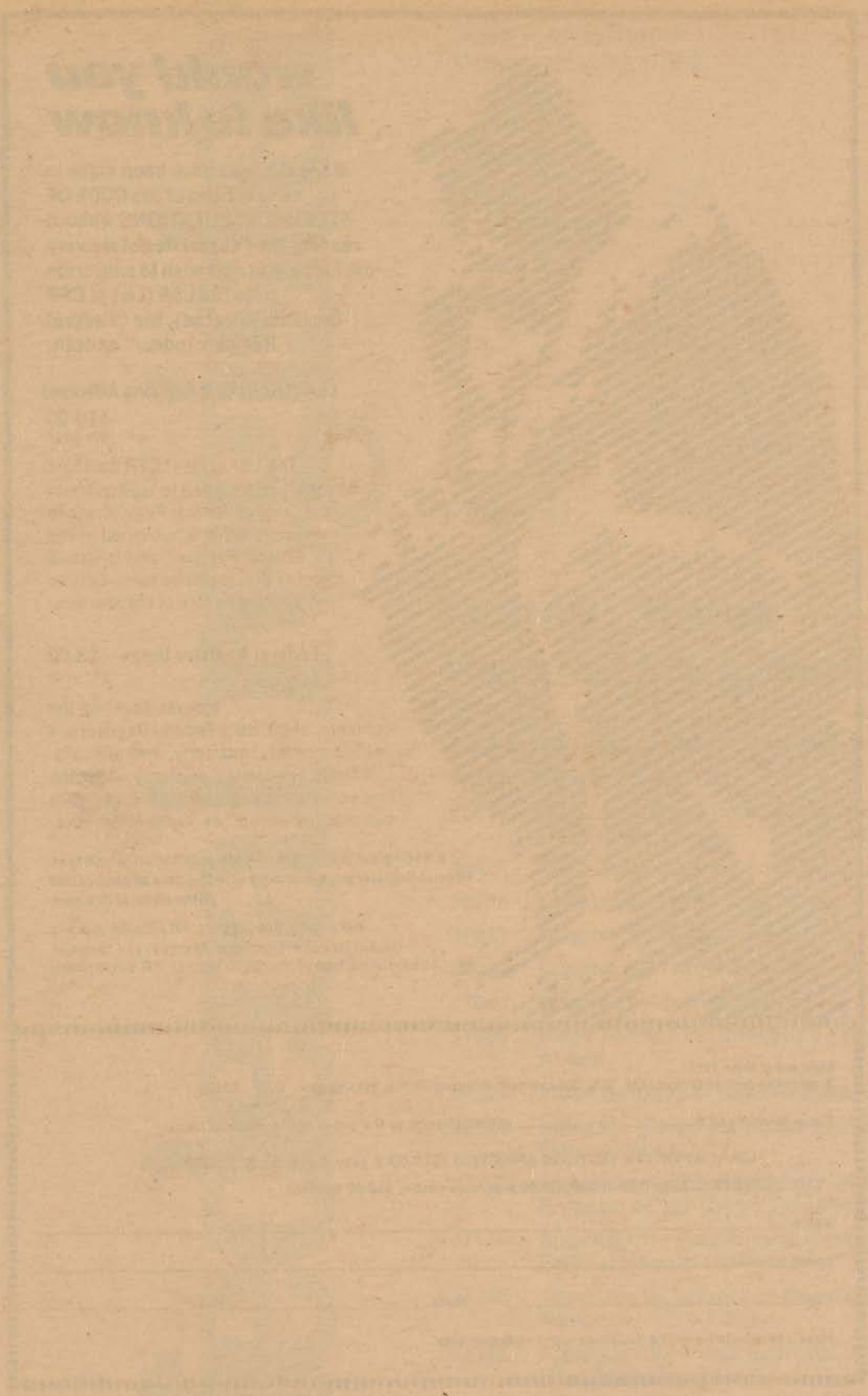
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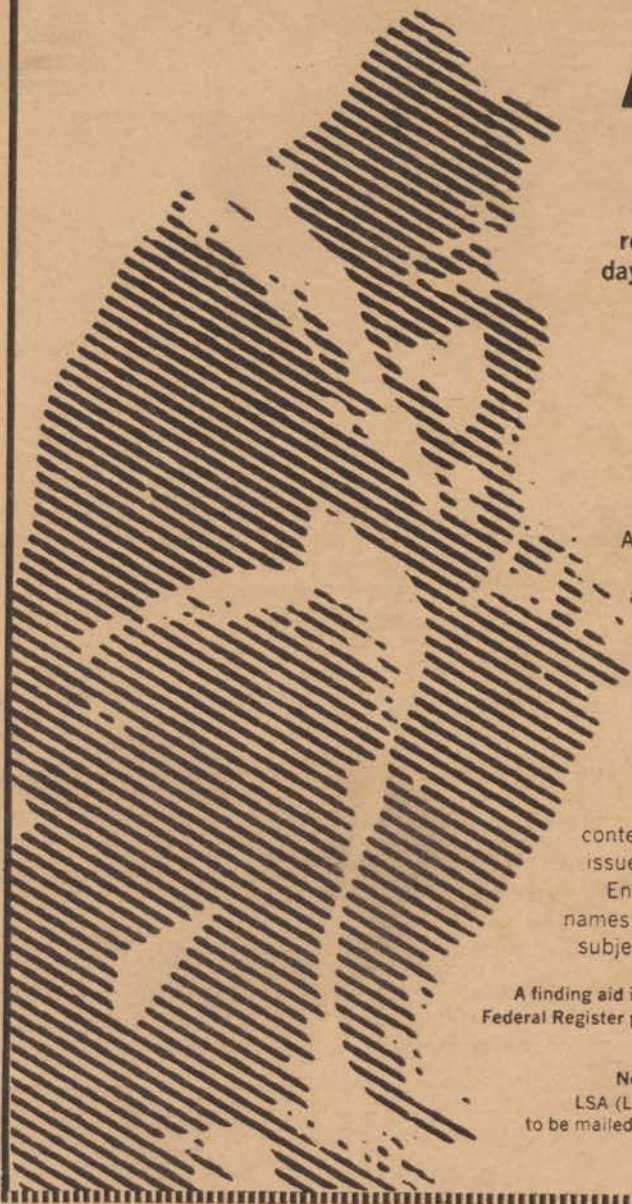
ST. LOUIS, MO.

WHEN: June 24 and 25; at 9:00 a.m. (identical sessions.)

WHERE: Room 3720, Federal Office Bldg. 1520 Market Street, St. Louis, Mo.

RESERVATIONS: Call Evelyn Wiebusch, Federal Information Center, 314–425–4106.





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Indexes covering the contents of the daily Federal Register are issued monthly, quarterly, and annually. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the LSA (List of CFR Sections Affected) will continue to be mailed free of charge to regular FR subscribers.

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Book 2 of 2 Books
Friday, May 30, 1980

Part VI

United States Regulatory Council

36844 Calendar of Federal Regulations
36851 Chapter 1—Energy
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36925 Chapter 3—Finance and Banking
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UNITED STATES REGULATORY COUNCIL

AGENCY: The United States Regulatory Council.

ACTION: Calendar of Federal Regulations.

SUMMARY: The United States Regulatory Council publishes the **Calendar of Federal Regulations** in order to provide a comprehensive catalog of important Federal regulations under development by participating agencies. This is the third edition. We publish the **Calendar** every six months, in November and May.

The **Calendar** is designed to provide in one place a concise summary of important regulations under development. It is a tool to increase public awareness of and participation in the regulatory process.

Special indices and appendices to the **Calendar** should help readers quickly identify the items that might be of most interest; other indices and appendices describe how to participate in the rulemaking process at each Council department and agency.

ADDRESS: United States Regulatory Council, Washington, D.C. 20503.

FOR FURTHER INFORMATION: For information about specific regulations, please refer to the "Agency Contact" listed at the end of each entry.

For information on the work of the Council: Peter J. Petkas, Director, United States Regulatory Council, Washington, D.C. 20503 (202) 395–6110.

For information on the Calendar: Mark G. Schoenberg, Associate Director, United States Regulatory Council, Washington, D.C. 20503 (202) 426–1962 or (202) 653–7240.

SUPPLEMENTARY INFORMATION:

Letter From the Chairman of the United States Regulatory Council

President Carter established the United States Regulatory Council in October 1978 to improve coordination of Federal regulatory activities and encourage more effective management of the regulatory process. The Council is one element of the President's regulatory reform program. (See Appendix I: "The Regulatory Reform Program of the Carter Administration.")

Presently chaired by Environmental Protection Agency Administrator Douglas M. Costle and directed by Peter J. Petkas, the Council is comprised of 36 departments and agencies with significant regulatory responsibilities.

The Council seeks to eliminate duplication and inconsistencies in existing and proposed rules. When several agencies regulate the same product or sector of the economy, the Council may analyze the cumulative regulatory impact and work to correct specific problems.

The Council's **Calendar of Federal Regulations** provides a comprehensive overview of important regulations which agencies are developing, and a summary of the analytical bases for them. It is designed to encourage greater public participation in the regulatory process, identify areas of multiple regulatory impact, and to assist the regulators in developing cost-effective and consistent regulations.

Other Council activities include:

- Developing national policies on major regulatory issues, such as the control of cancer-causing chemicals;
- Resolving special regulatory problems of small businesses;
- Organizing interagency efforts to manage better the regulatory environment of specific industries, such as automobiles and nonferrous metals;
- Identifying and reducing conflicting regulation or action affecting single industries, such as hospitals and coal producers;
- Assessing the benefits of regulation;
- Encouraging innovative, market-oriented approaches to regulation, such as EPA's "bubble" policy; and
- Improving regulatory methods, such as regulatory analysis.

The **Calendar of Federal Regulations** is an important tool for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. This **Calendar** is also the first comprehensive and continually updated catalog of important Federal regulations under development. With the **Calendar** and the semiannual regulatory agendas now published by each agency under President Carter's Executive Order on Improving Government Regulations (E.O. 12044; 43 FR 12661, March 14, 1978), interested persons can follow most of the regulatory activity underway in the Federal government.

The **Calendar of Federal Regulations** is a cooperative product of the Regulatory Council staff and the staffs of the 36 Council agencies.

We published the first edition of the **Calendar** (44 FR 11388) on February 28, 1979 and the second edition (44 FR 68201) on November 28, 1979.

We designed the **Calendar of Federal Regulations** as a tool for the user to locate easily information on the regulations described in it, and to help you to participate effectively in the Federal regulatory process. We surveyed many of those who used the previous two editions, and incorporated many of their suggestions for improving the document.

We hope to continue to improve each edition and ask your help in doing so. Please send us any comments and suggestions that would make this document more useful to you. We would appreciate hearing from you.

Dated: May . 1980.

Douglas M. Costle,

Chairman.

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COUNCIL MEMBERS AND THE CALENDAR

The Regulatory Council is composed of 36 Federal departments and agencies. Eighteen executive agencies are participating members, and 18

independent regulatory agencies contribute to the activities of the Council in various ways. The extent of an independent regulatory agency's activity in any Council project is determined by the independent agency. They may observe or fully participate in any Council activity as they choose. All council agencies have submitted information for some sections of this Calendar. For a variety of reasons, seven agencies have not submitted entries concerning regulations under development to this edition. These agencies are identified with an asterisk (*) in the following list. Five of the seven agencies that did not submit entries do not issue regulations of the type covered by this document, though they do conduct some forms of activity related to regulations, such as analysis of administrative procedures or administrative adjudications. These five agencies are identified by a dagger (†) in the following list.

Executive Agencies

†*Administrative Conference of the United States
Department of Agriculture
Department of Commerce
Department of Energy
Department of Health, Education, and Welfare
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
General Services Administration
National Credit Union Administration
Small Business Administration
†*United States International Trade Commission
Veterans Administration

Independent Regulatory Agencies

Civil Aeronautics Board
Commodity Futures Trading Commission
Consumer Product Safety Commission
Federal Communications Commission
Federal Deposit Insurance Corporation
*Federal Election Commission
Federal Energy Regulatory Commission
Federal Home Loan Bank Board
Federal Maritime Commission
†*Federal Mine Safety and Health Review Commission
*Federal Reserve System
Federal Trade Commission
Interstate Commerce Commission
†*National Labor Relations Board
Nuclear Regulatory Commission
†*Occupational Safety and Health Review Commission
Postal Rate Commission
Securities and Exchange Commission

INFORMATION ABOUT ADDITIONAL COPIES AND BOOK REPRINTS

Additional copies of the **Federal Register** edition of the **Calendar** are available for $1.00 each from:
Superintendent of Documents
Washington, D.C. 20402
(202) 783–3238
Stock No. 022–003–01057–2

In addition, the Council will republish the **Calendar** in a paperback book format. It will be available from the Superintendent of Documents as Stock No. 052–003–00755–0. Please contact the Council or the Superintendent of Documents for further information.

HOW TO USE THE CALENDAR

The **Calendar** is organized to help users locate information about regulations of interest to them. The **Calendar** contains a letter from Regulatory Council Chairman, Douglas M. Costle; a Table of Contents; a section on how to use the **Calendar**; a List of Abbreviations; a List of Regulations covered in this Edition; seven chapters describing these regulations, three indices, and five appendices.

The section on how to use the **Calendar** explains the basic organization of the **Calendar**, how to use its individual components, the criteria the agencies used to select the regulations reported, the type of information available in each entry, and the limitations on the data presented.

We have divided the entries describing regulations into seven Chapters; each covers a major area of Federal regulatory activity.

The Chapters are:

Energy: developing and conserving energy resources

Environment and Natural Resources: protecting the environment and protecting and developing natural resources

Finance and Banking: Regulating banks, financial institutions, and securities and commodity markets

Health and Safety: Promoting and protecting human health and safety, including consumer product and workplace safety

Human Resources: Promoting social justice and non-discrimination, and managing social services

Trade Practices: Promoting fair business and trade practices

Transportation and Communication: Promoting and regulating different modes of transportation and communication.

Within each Chapter, the entries are presented in alphabetical order first by executive and then by independent agencies. The entries are further alphabetized by issuing office, if any, and then by the title of the entry.

We have created eight Indices and Appendices to aid **Calendar** readers to locate easily information that may be important to them and to help them learn more about the process of developing regulations.

Separate indices identify sectors affected by each proposal, the estimated date of the next regulatory action, and information on opportunities for public participation in developing the individual regulations, where applicable.

The Appendices include sections on President Carter's regulatory reform program, public participation procedures in each agency, status of the regulations reported in the last edition of the **Calendar**, publication dates for each agency's semiannual Regulatory Agenda, and important regulations scheduled for agency review under the provisions of Executive Order 12044.

Each index and appendix begins with a brief description of its contents, and how to use it.

ABOUT THE ENTRIES

Council agencies submitted entries that describe their regulations under development. These entries comprise the body of the **Calendar**.

Criteria for Selection

This edition of the **Calendar** provides an overview of important regulations under development by member agencies of the Regulatory Council. Each agency submits entries for the **Calendar** according to several criteria. At a minimum, agencies were asked to use the same criteria as those they use for determining when to prepare regulatory analyses under the general guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, March 14, 1978).

These Executive Order guidelines apply to executive agencies and those independent agencies which voluntarily choose to follow them, and cover:

- Regulations that have an annual effect on the economy of $100 million or more.
- Regulations that will impose a major increase in costs or prices for individual industries, levels of government, or geographic regions.
- Regulations otherwise determined by the agency head.

In addition to these criteria, agencies have submitted reports on regulations for this edition that concern:

- Precedent-setting rules.
- Issues of great public interest.
- Rules that may increase productivity and/or profits without causing any adverse affects.
- Grants and income transfer program regulations that may impose annual compliance costs of $100 million or more
- Regulations which the agency is reproposing after review pursuant to Executive Order 12044, if the proposed change will have important consequences.

In addition, any regulation which was noted in the second edition of the **Calendar** is also noted in this third edition unless it has been finally issued or withdrawn. If so, this action is noted in Appendix III: Status of Regulations from November 1979 Edition.

The regulations covered in the **Calendar**, that is, those that are "under development," are those for which an agency is reasonably likely to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), a Final Rule, or to take other significant action *within the next twelve months.*

For clarity and consistency, the Council staff asked all agencies to follow a set of guidelines developed in consultation with the agencies and the Office of Management and Budget, the Council of Economic Advisors, the Council on Wage and Price Stability, and others in the Executive Office of the President. In addition, we published the guidelines for the November edition of the **Calendar** in the **Federal Register** (45 FR 7992, February 5, 1980) and incorporated public comments in the guidelines we issued for this edition. A copy of the full set of Regulatory Council guidelines used by agencies in preparing submissions to this edition of the **Calendar** is available from the Council.

Contents of Entries

Category—Each CALENDAR entry describes a regulation and contains the following standard categories of information	Content—The following information is provided in each category
Title and FR citation	Title of the regulation under development and the CFR citation for the regulation. An asterisk (*) after the CFR citation indicates that the regulation will be a revision to an existing regulation that has been codified in the CFR. If the regulation under development will occupy a new CFR section, there is no asterisk. If there is no CFR citation, the regulation has not yet been assigned a place in the CFR.
Reason for including This Entry	A brief statement of the importance of the regulation under development.
Statement of Problem	A brief discussion of the problem that the regulation is addressing.
Alternatives Under Consideration	A brief description of the major choices the agency is considering to achieve its regulatory objectives.
Summary of Benefits	A discussion of the expected direct and indirect benefits of the regulatory action to the sectors of the economy, population, government, etc. that will be affected.
Sectors Affected	A listing of those sectors that may benefit as a result of the proposal.
Summary of Costs	A discussion of the expected direct and indirect costs of this action to the sectors of the economy, population, government, etc., that may be affected.
Sectors Affected	A listing of the sectors that may bear costs as a result of the proposal.
Related Regulations and Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
Active Government Collaboration	The steps the agency is taking to coordinate the proposed regulation with any other Federal, State, or local agencies.
Timetable	A chronological listing of the future major steps which the agency will take to develop the regulation.
Available Documents	A list of major background documents related to the proposed regulation, and notice of where they may be obtained or read.
Agency Contact	The name, address, and telephone number of a person in the agency who can respond to questions about the proposed regulation.

Data Limitations

Agencies prepared entries for this edition of the **Calendar** to give the public the earliest possible notice of their schedules for proposing and promulgating regulations. They have tried to predict their future plans accurately, but dates and schedules are still tentative. Some regulations listed may be withdrawn, and some not listed may be proposed or promulgated. The regulations included that are going to be proposed or promulgated may be developed at an earlier or later date than those listed in the **Calendar**. The **Calendar** does not create a legal obligation on submitting agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear. The information in this edition is accurate as of May 2, 1980, in the judgment of the submitting agencies.

Readers should note that information on costs, benefits, and other economic effects make up only a part of the basis for decisions in regulatory agencies. In particular, agencies do not mechanically add up estimates of costs on the one hand, and benefits on the other, and then act on that basis. Furthermore, there is considerable disagreement about methods used for estimating costs, benefits, and other economic impacts. Necessarily, agencies that include economic information in the **Calendar** have not used a common methodology in producing it. Therefore, such information when expressed quantitatively, cannot and should not be added.

LIST OF ABBREVIATIONS

The following abbreviations appear throughout this edition of the **Calendar**:

ANPRM—The Advance Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. It is issued before the agency develops a detailed proposed rule. It usually describes the general area that will be subject to the regulation, lists the alternatives that are under consideration, and asks for public comment in developing a regulation.

CFR—The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. It is issued quarterly and revised annually.

E.O.—An Executive order is a Presidential directive to executive agencies that is promulgated under Constitutional or statutory authority. For certain E.O.'s, independent agencies may voluntarily comply. E.O.'s are published in the **Federal Register** and in Title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal government publication that announces all proposed and final Federal regulations. It also contains notices of public meetings and other events the agency may schedule. Most major libraries carry the **Federal Register.**

FY—Fiscal year is a budget term. The Federal fiscal year runs from October 1 to September 30 as opposed to the calendar year which runs from January 1 to December 31.

NTIS—The National Technical Information Service of the Department of Commerce, is the central point in the United States for the public sale of government funded research and development reports and other analyses prepared by Federal agencies, their contractors, or grantees.

NPRM—The Notice of Proposed Rulemaking is the document issued by an agency, and published in the **Federal Register**, that solicits public comment on a proposed regulatory action. Under the Administrative Procedure Act, it must include, at a minimum:

• A statement of the time, place, and nature of the public rulemaking proceedings;

• Reference to the legal authority under which the rule is proposed; and

• Either the terms or substance of the regulation under development, or a description of the subjects and issues involved.

SIC—The Standard Industrial Classification Manual, published by the Office of Management and Budget in the Executive Office of the President, defines industries in accordance with the composition and structure of the economy and covers the entire field of economic activities. The **Calendar of Federal Regulations** uses SIC terminology, whenever possible, throughout the "Sectors Affected" sections.

U.S.C.—The United States Code contains a consolidation and codification of all laws of the United States. The U.S.C. is divided into 50 titles which represent broad areas subject to Federal law.

LIST OF AGENCY ACRONYMS

Executive Agencies

ACUS—Administrative Conference of the United States
USDA—United States Department of Agriculture
- AMS—Agricultural Marketing Service
- FNS—Food and Nutrition Service
- FSQS—Food Safety and Quality Service
- SCS—Soil Conservation Service

DOC—Department of Commerce
- EDA—Economic Development Administration
- MARAD—Maritime Administration
- NOAA—National Oceanic and Atmospheric Administration
- OCZM—Office of Coastal Zone Management

DOE—Department of Energy
- BCS—Buildings and Community Systems
- CS—Conservation and Solar Applications
- ERA—Economic Regulatory Administration
- RA—Resource Applications

HEW—Department of Health, Education, and Welfare
- FDA—Food and Drug Administration
- HCFA—Health Care Financing Administration

HUD—Department of Housing and Urban Development
- FHA—Federal Housing Administration
- HOUS—Office of the Assistant Secretary for Housing
- NVACP—Neighborhoods, Voluntary Associations and Consumer Protection

DOI—Department of the Interior
- BLM—Bureau of Land Management
- FWS—Fish and Wildlife Service
- HCRS—Heritage Conservation and Recreation Service
- OSM—Office of Surface Mining
- WPRS—Water and Power Resource Service

DOJ—Department of Justice
- BOP—Bureau of Prisons
- CRD—Civil Rights Division
- INS—Immigration and Naturalization Service
- OJARS/LEAA—Office of Justice Assistance, Research, and Statistics/Law Enforcement Assistance Administration

DOL—Department of Labor
- ESA—Employment Standards Administration
- ETA—Employment and Training Administration
- LMSA—Labor Management Services Administration
- MSHA—Mine Safety and Health Administration
- OSHA—Occupational Safety and Health Administration

DOT—Department of Transportation
- FAA—Federal Aviation Administration
- FHWA—Federal Highway Administration
- FRA—Federal Railroad Administration
- NHTSA—National Highway Traffic Safety Administration
- USCG—United States Coast Guard

TREAS—Department of the Treasury
- ATF—Alcohol, Tobacco and Firearms Bureau
- CUSTOMS—U.S. Customs Service
- OCC—Office of the Comptroller of the Currency

EPA—Environmental Protection Agency
- OANR—Office of Air, Noise, and Radiation
- OMSAPC—Office of Mobile Source Air Pollution Control
- OPTS—Office of Pesticides and Toxic Substances
- ORD—Office of Research and Development
- OWWM—Office of Water and Waste Management

EEOC—Equal Employment Opportunity Commission
- OPI—Office of Policy Implementation

GSA—General Services Administration
- FPRS—Federal Property Resources Service
- HRO—Administration Operations Division
- NARS—National Archives and Records Services

NCUA—National Credit Union Administration
SBA—Small Business Administration
USITC—United States International Trade Commission
VA—Veterans Administration
- DMA—Department of Memorial Affairs
- OHG—Office of Human Goals

Independent Regulatory Agencies

CAB—Civil Aeronautics Board
CFTC—Commodity Futures Trading Commission
CPSC—Consumer Product Safety Commission
FCC—Federal Communications Commission
FDIC—Federal Deposit Insurance Corporation
FEC—Federal Election Commission
FERC—Federal Energy Regulatory Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FMSHRC—Federal Mine Safety and Health Review Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
ICC—Interstate Commerce Commission
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
OSHRC—Occupational Safety and Health Review Commission
PRC—Postal Rate Commission
SEC—Securities and Exchange Commission

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CHAPTER 1—ENERGY

DEPARTMENT OF ENERGY

Conservation and Solar Applications

Emergency Building Temperature Restrictions (10 CFR 490)

Legal Authority

Title II, Sections 201(a) and (b) of the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6261 (b) *et seq.*

Reason for Including This Entry

This entry is included because of its widespread impact and its importance as a nationwide mandatory conservation measure.

Statement of Problem

The Emergency Building Temperature Restrictions (EBTR) were implemented July 16, 1979, after the President determined that the United States was unable to rely upon imports of crude oil to meet normal demand due to international instability. Worldwide production of crude oil is now at levels below those of the comparable period last year. As the President pointed out in the proclamation extending the Building Temperature Restrictions on April 15, 1980, the United States has had to terminate crude oil imports from Iran, and is experiencing increased uncertainty about the level of continued crude oil supplies from other producing countries. Actions by the Soviet Union in Afghanistan and the tensions between Iraq and Iran further increase the threat to the stability of commerce in the Persian Gulf.

U.S. dependence on insecure crude oil imports, which have rapidly increased in price, has substantially increased our inflation rate and created a major adverse impact on the national economy. Because these effects are likely to be of significant scope and duration, it is necessary to take action which will help forestall additional shortages.

The Energy Policy and Conservation Act contains provisions permitting the President to develop and submit to Congress standby emergency energy conservation contingency plans. Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions (EBTR), was transmitted to Congress on March 1, 1979, and approved by both Houses. The plan was implemented by Presidential proclamation on July 16, 1979, due to a severe energy supply disruption caused by events in Iran, and renewed for an additional nine months on April 15, 1980. Savings are estimated between 200,000 to 400,000 barrels per day oil equivalent, about 25 percent of which can be translated directly into barrels of oil saved, principally middle distillates. By saving this amount of energy, EBTR may help to alleviate the severity of the continuing energy crisis faced by the nation. Additionally, EBTR has helped complying building owners and operators to develop new energy-saving modes of building operation.

EBTR accomplishes this goal by generally requiring that thermostats in most nonresidential buildings be set no lower than 78° F. for cooling, no higher than 65° F. for heating, and no higher than 105° F. for general purpose hot water. The regulations also require building temperature setbacks during unoccupied hours.

Alternatives Under Consideration

The EBTR regulations permit any State or political subdivision to submit to the Department of Energy (DOE) for approval a comparable plan which could include temperature limits other than those provided for in the EBTR regulations, in addition to other building energy conservation measures. Such plans have already been approved for New Jersey, Massachusetts, and Houston, Texas.

Section 231 of Title II of the Emergency Energy Conservation Act of 1979 (EECA) (P.L. 96–102, 93 Stat. 757, to be codified at 42 U.S.C. 8501) requires that EBTR must permit a State or political subdivision to include in any comparable plans, procedures permitting individual building owners to propose alternative conservation means that will achieve at least as much energy savings in their buildings as would the temperature restrictions plan. DOE has published an amendment to the EBTR regulations bringing them into compliance with this provision of EECA (10 CFR 490), February 28, 1980.

DOE is strongly considering publication of an amendment which would permit all building owners or operators to submit alternate plans directly to DOE. Alternate means would not be restricted to adjustments in heating, ventilating and air-conditioning systems, but might include changes in the design, construction, or operation of the building, such as lighting reduction, insulation, weatherstripping, installation of control systems, hours of operation, etc. This will afford maximum flexibility to building owners and operators and give retailers, restaurateurs and others the chance to implement strategies which they have indicated may be more appropriate to their particular circumstances. This amendment would be designed to help foster creative and innovative approaches to energy efficient building operation.

The emphasis of the EBTR program is on voluntary public compliance. Although over 30,000 building inspections have been conducted by DOE and participating States, (demonstrating approximately an 80% compliance rate), inspectors have concerned themselves primarily with educating the public and assisting building owners in bringing their buildings into compliance, rather than stressing enforcement and punitive action.

Summary of Benefits

Sectors Affected: The general public; and owners and operators of approximately 2.8 million nonresidential buildings, including industrial/manufacturing buildings, schools, restaurants, retail stores, offices, hotel/lodging nonsleeping areas, shopping centers, warehouses, and retail food stores, and excluding the sleeping areas of hotels and other lodging facilities, hospitals and other health care facilities, elementary schools, nursery schools, and day care centers.

Compliance with the EBTR regulations can save an average of 6 percent of total building energy use (with consequent reductions in utility bills), although this figure will naturally vary from building to building. Nationwide, DOE estimates that the program has saved between 200,000 to 400,000 barrels per day oil equivalent.

In estimating potential fuel savings, computer simulations of building energy usage before and after EBTR were used. These building models were based on sensitivity analyses of key characteristics affecting energy savings, such as infiltration and building HVAC (heating, ventilating, airconditioning system) system type. Building owners and managers will become more conscious of energy conservation.

Summary of Costs

Sectors Affected: DOE; and State energy offices.

The costs of EBTR were primarily administrative. Eight million dollars was expended over the first nine months of the program to cover grants to States for inspections and public education, and for DOE regional and headquarters support. This included funding for program analysis (Argonne National Laboratory), administrative costs, printing and mailing of program manuals and operation of a toll-free EBTR information hotline.

Related Regulations and Actions

Internal: The Standby Federal Emergency Energy Conservation Plan, (10 CFR 477, February 7, 1980), developed under the authority of EECA, contains a building temperature measure similar to EBTR.

External: Some State energy offices are considering the inclusion of building temperature measures in State emergency energy conservation plans being developed to meet the requirements of EECA.

Active Government Collaboration

DOE has been working with over 75 Federal agencies to ensure that all Federal buildings are in compliance with EBTR. The energy conservation directors of each of these agencies have maintained contact with DOE and have inspected any buildings against which public complaints have been lodged. The General Services Administration, Department of Defense (DOD) and Post Office, the three Federal agencies with the largest building populations, are in almost daily contact with DOE regarding EBTR enforcement within their jurisdictions. DOD, with over 122,000 buildings covered by EBTR, has conducted inspections of 64,000 buildings since the program was implemented in July 1979.

Timetable

NPRM—DOE plans to publish a series of amendments to the EBTR regulations in May 1980

Public Comment Period—30 days after publishing NPRM amendments

Public Hearing—to be determined.

Available Documents

Emergency Building Temperature Restrictions Regulations (10 CFR 490), July 5, 1979

"How to Comply with Emergency Building Temperature Restrictions." Copies may be obtained by writing to the Agency Contact listed below or calling the toll-free Emergency Conservation Service Hotline: (800) 424–9122 or 252–4950 (Washington, D.C.).

Emergency Building Temperature Restrictions Docket No. CAS–RM–79–109. Transcripts of all public hearings and supporting documents are available for review in the Freedom of Information Office. Correspondence should be addressed to:

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DOE–CS

Energy Conservation Program for Consumer Products Other Than Automobiles (10 CFR Chapter II Subchapter D Part 430)

Legal Authority

Title III, Part B of the Energy Policy and Conservation Act, P.L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, P.L. 95–619, 92 Stat. 3257.

Reason for Including This Entry

The Department of Energy includes this entry because the proposed rule imposes substantial conversion costs on a $20-billion appliance industry, increases the cost of consumer appliance products, and involves energy conservation issues of great public interest.

Statement of Problem

Major consumer products now being manufactured are less energy efficient than they could be. The Department's Energy Conservation Program for Consumer Products Other than Automobiles seeks to reduce energy consumption of major household consumer products. The legal authority establishes 13 product categories for review. These product categories are: refrigerators and refrigerator/freezers, dishwashers, clothes dryers, water heaters, room air conditioners, home heating equipment (not including furnaces), television sets, kitchen ranges and ovens, clothes washers, humidifiers and dehumidifiers, central air conditioners, and furnaces.

DOE has developed test procedures for determining compliance with the impending efficiency standards. These standards will establish the minimum level of energy efficiency required to be achieved by the covered product, but will not prescribe the methods, designs, processes, or materials to be used to achieve the particular efficiency level. The Energy Policy and Conservation Act (EPCA) further directs that DOE design any standard it issues to achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified. Manufacturers will be required to certify that their products are in conformance with the standards by testing them in accordance with DOE test procedures before they can place such products on the market.

Alternatives Under Consideration

The major alternatives considered for each covered product were labeling, rebates, tax incentives, consumer education, prescriptive standards, voluntary programs, and no regulation.

Each of these alternatives has been evaluated relative to achieving the mandate of Congress, and other related policy objectives.

The alternative of labeling as the primary action of DOE was considered to be inappropriate because Congress has, in the Act, mandated the establishment of a labeling program by the Federal Trade Commission (FTC). FTC's labeling program requires that each covered product be labeled as to its average annual operating cost. These costs are based on Federal test procedures developed by DOE. No additional benefits, over and above the estimated benefits of the FTC labeling program, were expected to result from further labeling requirements imposed by DOE.

The alternative of providing consumer rebates for purchase of more energy efficient products was determined to involve unnecessary expenditure of Federal funds. Since the consumer is the ultimate benefactor with regard to net cost savings resulting from increased energy efficiency, a rebate to the consumer would serve only to further increase the consumer's economic benefit. In addition, a rebate would be provided to consumers who would have purchased more efficient products without further stimulus as well as to those whose behavior would be altered by the incentive. The length of time over which the rebate would be extended was also a factor in rejecting this alternative. A long-term program could be very costly, while a short-term program may not achieve lasting benefits.

The alternative of providing tax incentives for purchasing or manufacturing energy efficient products was also considered by DOE. Many of the same problems that were anticipated in the rebate alternative are also pertinent to this alternative. In both programs, the majority of the associated costs would be borne by the Federal government, i.e., distributed among all taxpayers, while the benefits would be derived only by the purchasers of covered products. Thus, on an

individual-by-individual basis, the costs would outweigh the benefits for those taxpayers who do not purchase the covered products.

DOE has not rejected the alternative of a consumer or public education program. Rather, DOE believes that a strong, viable education program is an important facet of any approach undertaken to achieve energy efficiency of the covered products. DOE's education program will focus on educating consumers to read energy efficiency labels when purchasing covered products, and on the most energy efficient use of the covered products. The concept of energy efficiency does not only relate to the design of a product, but also to how the product is used. The benefits of a well-designed energy efficient product may be completely lost if users are not aware of how to operate and maintain the product to achieve the desired performance as well as energy efficiency. For example, some refrigerators provide an antisweat heater to use during damp or humid weather. Proper use of the heater will reduce energy consumption of the refrigerator.

Other alternatives that DOE considered included the possibility of prescriptive standards based on specific energy efficient design elements rather than the proposed performance standards. This approach was rejected because of the potential for reducing manufacturers' options to use innovative technology to achieve the energy efficiency requirements.

The original version of the Act (EPCA, P.L. 94-163) called for the industry to set up voluntary energy efficiency targets for the covered products. Congress specifically changed this section when amending the Act to provide for immediate establishment of Federal standards. DOE rejected the voluntary program in order to achieve energy efficient products as rapidly as possible.

The "no regulation" alternative assumes that standards are not implemented for any of the covered products. If we chose this alternative some energy efficiency improvements would result in the covered products because of State regulations, and labeling programs, voluntary industry certification, and increasing interest by consumers in energy efficiency as energy costs rise. However, these increases would be much less than the levels that would be obtained with minimum energy efficiency standards. Thus, relative to the proposed standards, this alternative would result in smaller energy savings, and reduced progress toward national energy self-sufficiency.

DOE proposes to require industry to meet a prescribed performance standard rather than a specific design standard, leaving the manufacturer free to find the most cost effective means of compliance while maintaining the desired level of overall quality. This performance standard distinguishes the Energy Conservation Program for Consumer Products as one employing an innovative regulatory technique.

Summary of Benefits

Sectors Affected: Users of major household appliances; and the general public.

The improvement of consumer product efficiencies will decrease the amount consumers pay on their monthly utility bills and the overall amount of energy consumed in the Nation. It is also expected that implementation of Federal standards will accelerate adoption of high efficiency consumer products by 10 years. Standards will be effective beginning in 1981. All products below the prescribed level of standards will be eliminated. Energy savings are estimated at between 13.4 quadrillion, British thermal units (Btu's) and 24.1 quadrillion Btu's over the period 1982 through 2005. The discounted value of these energy savings will be between $18.8 and $24.4 billion, in 1975 dollars. For the year 2000, annual energy savings are expected to be between 0.8 quadrillion Btu's and 1.9 quadrillion Btu's. This translates to energy savings in the range of 376,000 to 993,000 barrels of oil equivalent per day by the year 2000.

Summary of Costs

Sectors Affected: Manufacturing of major household appliances; and users of these appliances.

The costs resulting from implementation of the program will be borne by consumers in the form of increased consumer product prices. This cost over the 1982 through 2005 period is expected to be between $8.3 and $11.1 billion in discounted 1975 dollars. However, the overall program will have a positive net present value between $10.5 and $13.3 billion.

Adverse impacts will be minimized by prescribing separate standards for each category of consumer products. This allows the Federal government to maximize benefits while minimizing burdens in a more judicious manner.

Stronger, more technologically sophisticated firms are not expected to be severely burdened. The greatest potential for near-term adverse impacts to manufacturers will be for those which produce air conditioning and refrigeration products. The overall competitive effect of standards is expected to be a slight increase in concentration in this 300-firm industry.

Burdens on manufacturers will be kept to a minimum through careful consideration of potential impacts on a firm-by-firm basis. In addition, firms with sales under $8 million are allowed exemption from standards for 2 years upon successful petition to the Federal government.

Related Regulations and Actions

Internal: Energy Performance Standards for New Buildings, Residential Conservation Service Program.

External: Minimum Property Standards for One- and Two-Family Dwellings, Department of Housing and Urban Development.

Active Government Collaboration

Federal Trade Commission and National Bureau of Standards.

Timetable

NPRM for Nine Products—May 1980
Public Meeting—June 1980
Public Hearings (2)—July 1980—Washington, D.C. and Chicago, Ill.
Written Comment—60-day comment period following publication of NPRM
Final Rule for Nine Products—December 1980
NPRM for Four Products—March 1981
Final Rule for Four Products—November 1981

Available Documents

Test Procedures:

Refrigerators, Refrigerator-freezers—42 FR 46140, September 14, 1977.

Freezers—42 FR 46140, September 14, 1977.

Dishwashers—42 FR 39964, August 8, 1977.

Clothes Dryers—42 FR 46140, September 14, 1977.

Water Heaters—42 FR 54110, October 4, 1977, 43 FR 48986, October 19, 1978, 44 FR 52632, September 7, 1979.

Room Air Conditioners—42 FR 27896, June 1, 1977.

Home Heating Equipment—not including Furnaces, 43 FR 20108, May 10, 1978.

Television Sets—42 FR 46140, September 14, 1977.

Kitchen Ranges and Ovens—42 FR 20108, May 10, 1978.

Clothes Washers—42 FR 49802, September 28, 1977.

Humidifiers and Dehumidifiers—42 FR 55599, October 18, 1977.

Central Air Conditioners, including Heat Pumps—42 FR 60150, November 25, 1977, 44 FR 76700, December 27, 1979.

Furnaces—43 FR 20108, May 10, 1978.

Sampling Requirements of Consumer Products Test Procedures—44 FR 22410, April 13, 1979.

Representative Average Unit Costs of Electricity, Natural Gas, No. 2 Heating Oil, and Propane—44 FR 37534, June 27, 1979.

Standards:

ANPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—44 FR 49, January 2, 1979.

NPRM Regarding Energy Efficiency Standards for Four Types of Consumer Products—44 FR 72276, December 13, 1979.

ANPRM Regarding Energy Efficiency Standards for Heat Pumps—45 FR 5602, January 23, 1980.

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DOE–CS

Standby Federal Emergency Conservation Plan (10 CFR 477)

Legal Authority

Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 93 Stat. 757, to be codified at 42 U.S.C. 8501.

Reason for Including This Entry

The Department of Energy (DOE) issues this rule to conform to the requirements of the Emergency Energy Conservation Act of 1979 (EECA). The Standby Federal Emergency Energy Conservation Plan (the Federal Plan) is one element in the framework provided by EECA for a coordinated national response to a severe energy supply interruption.

Statement of Problem

Serious disruptions due to continued high dependence on insecure crude oil imports have occurred recently in the gasoline and diesel fuel markets of the United States. Because it is likely that such disruptions could recur, an urgent need exists for Federal, State, and local governments to establish emergency energy conservation measures for gasoline, diesel fuel, home heating oil (middle distillates), and other energy sources which may be in scarce supply.

EECA, passed by Congress on November 5, 1979, provides the framework for national, statewide, and local responses to severe energy supply disruptions. Under the terms of the Act, if the President finds that a "severe energy supply interruption" exists or is imminent, or that actions are necessary to restrain domestic energy demand under the terms of international energy agreements, he may establish emergency energy conservation targets for the Nation generally, and for each State for each affected energy source (e.g., gasoline). Within 45 days from the publication of the targets, the Act requires States to submit to DOE emergency conservation plans containing measures designed to meet or exceed the energy savings targeted by the President. Section 213 of the Act requires that DOE establish a Standby Federal Emergency Energy Conservation Plan containing measures designed to reduce the consumption of targeted energy sources. If, after a period of not less than 90 days, a State is not substantially meeting its target, and there is a persistent shortage of 8 percent or greater of the targeted energy source, the President may impose upon the State all or a portion of the measures contained in the Federal Plan.

Because petroleum seems the most likely fuel to be subject to a severe supply interruption, DOE gave primary emphasis in the Federal Plan to measures which are designed to reduce the demand for gasoline and other motor fuels. One nonmotor fuel measure (mandatory building temperature restrictions) was included because it has already demonstrated the potential for savings between 200,000 and 400,000 barrels per day (BPD) of oil equivalent.

Several of the measures referred to above are interim final rules, while others are proposed rules. Included in the interim final rules are:

1. Public information measures, intended to inform motorists about fuel conservation actions they can take, including efficient operation and maintenance of vehicles, alternative means of travel, and trip planning. Additionally, gasoline station owners would be required to have available working air pumps and tire pressure gauges and informative, prominently displayed signs regarding the energy efficiency of proper tire pressure.

2. Minimum automobile fuel purchase restrictions, which set forth restrictions on any minimum gasoline purchase scheme implemented under Federal authority (i.e., the minimum amount of gasoline which may be purchased for a vehicle with 8 or more cylinders shall be $7.00, and for vehicles with fewer then 8 cylinders, the minimum amount shall be $5.00).

3. Odd-even motor fuel purchase restrictions, which set forth restrictions on any odd-even gasoline purchase program adopted by the Federal government.

4. Portions of the employer-based commuter and travel measure, which require private and public employers of a certain size to undertake measures to encourage the use of energy-efficient modes of transportation by their employees in commuting to work.

5. Speed limit enforcement measures, which require States to increase immediately the compliance level for the 55 miles per hour (mph) speed limit, and take additional steps to reduce speed limits depending on the severity of the shortage.

6. Mandatory temperature restrictions, which prescribe thermostat levels for heating, cooling, and hot water in most nonresidential buildings.

Included as proposed rules are:

1. Portions of the employer-based commuter and travel measure, including employer subsidization of employees' cost for mass transit, and "work-at-home" arrangements.

2. The compressed workweek measure, requiring all but exempted government and business activities to reduce their work week by one day.

3. The vehicle-use sticker measure, which prohibits the operation of certain motor vehicles on either one, two, or three preselected days of the week.

Most of the measures are much more intricate than can be captured in this brief analysis. DOE suggests the Federal plan be read in order to gain a better appreciation of each measure. In addition to the demand reduction measures, the Federal Plan also contains a section which describes the contents, review, and approval of State emergency energy conservation plans.

Alternatives Under Consideration

The Act requires that DOE develop emergency conservation measures designed to reduce the public and private demand for certain fuels in the event of an energy supply emergency. The legislation also establishes criteria to judge the suitability of various measures for inclusion in the Plan.

Demand reduction measures may be implemented by Federal, State or local government officials. Measures may be voluntary or mandatory, designed to achieve three goals: a reduction in energy use through a reduction in product or service output, improvements in efficiency which will reduce the

energy required for the same output, and switching from a fuel in short supply to one that is more abundant.

DOE employed a systematic process in selecting demand restraint measures for inclusion in the Federal Plan. First, we analyzed the specific characteristics of U.S. energy demand in order to ascertain which sectors were likely to experience the most severe impact of an energy supply interruption. Next, we analyzed past shortages, and devised demand restraint measures to meet a probable future shortage. We reviewed the existing literature, and surveyed the measures already in operation in various States to develop a catalog of measures for inclusion in the Federal Plan. Finally, we subjected these measures to an increasingly rigorous review to eliminate those which conflicted with statutory requirements. Other reasons for eliminating measures included their relatively minor energy savings, or their perceived unacceptable impacts on public health, the national economy, and the environment. However, some measures we did not select for inclusion within the Federal Plan may well be appropriate for inclusion in State plans in States where they could result in significant energy savings and could be readily enforced. Examples of these measures are:

1. school schedule modification
2. electricity end-user measures
3. electric utility conservation measures
4. commercial and industrial boiler efficiency improvements
5. industrial and utility fuel switching
6. reductions of lighting energy use.

Because the transportation sector accounts for nearly one half of the Nation's average daily consumption of petroleum products, we targeted this sector for concentration in the Federal Plan. The greatest potential for fuel savings in transportation exists in the use of gasoline in passenger automobiles, which now accounts for more than 50 percent of all transportation energy consumption. For these reasons, all but one of the measures contained in the Federal Plan address the consumption of gasoline and motor fuels.

Summary of Benefits

Sectors Affected: All sectors of the economy; particularly transportation related industries; and the general public.

The benefits accruing from the Federal Plan are difficult to measure for it is a standby plan. It is only to be implemented after the States have been given an opportunity to develop and administer their own emergency conservation plans; the State plans may include elements of the Federal Plan. Publication of the interim final rule in February 1980, has sparked an intense debate at all levels of government and the private sector as to the efficacy of various emergency conservation measures. It is clearly in the national interest that a standby plan be prepared so that our Nation will be able to respond within a coordinated framework to a severe energy supply interruption.

The average daily demand for gasoline in 1979 was just over 7 million BPD. Estimated energy savings (primarily gasoline) for the measures contained in the Federal Plan are:

Measure:	*Estimated reduction (in thousand BPD)*
Public information	70–200
Minimum fuel purchase restrictions	Unknown
Odd-even purchase restrictions	Unknown
Employer-based commuting	55
Speed limit (The range indicated depends on the degree of enforcement and designated speed limits)	30–400
Compressed workweek	300
Building temperature restrictions (measured in barrels/oil equivalent)	200–400
Vehicle-use sticker (The range indicated depends on the number of nondriving days, from 1 to 3)	265–1,350

Summary of Costs

Sectors Affected: All sectors of the economy, particularly transportation related industries.

The actual costs associated with this plan depend on the extent of the energy shortfall, how long the shortfall lasts, and which of the standby measures are actually implemented. Implementation costs will be borne by all units of government as well as by the private sector. To give an indication of how much it might cost to implement portions of the standby plan in an energy shortfall consider the following example. A minimal program to reduce gasoline consumption by 8 to 10 percent could include the public information, employer-based commuting, and 55 mph speed limit enforcement measures. It has been estimated that the costs to the Federal government of implementing these three measures would total roughly $100 million.

Under the public information measure, gasoline station owners will be required to have available tire pressure gauges and operating tire pumps. According to the employer-based commuter and travel measure, employers over a certain size will be required to develop for each affected worksite a program to reduce work-related travel by employees. It should be emphasized that these substantial costs are incurred only in the event of an energy shortfall. Administrative costs associated with developing state standby plans will total about $10 million.

Related Regulations and Actions

Internal: On July 16, 1979, the Emergency Building Temperature Restrictions became effective. The regulations, which prescribe heating and cooling limits for most nonresidential buildings, were extended until January 16, 1981, by Presidential Proclamation on April 15, 1980.

External: Many State Energy Offices have begun to design emergency conservation plans. We are encouraging States to submit plans to DOE prior to the actual publication of mandatory emergency conservation targets.

Active Government Collaboration

An interagency task force has been created to ensure that effective input from all Federal agencies is heard in the development of the Federal Plan. Included on this task force are representatives from the Departments of Defense, Labor, Agriculture, Health and Human Services, Transportation, Commerce; the General Services Administration; and the Postal Service.

Timetable

Final Rule—DOE expects to publish the final rule in June 1980
The final rule may incorporate both the interim and the proposed rules.
Regulatory Analysis—

Available Documents

Standby Federal Emergency Energy Conservation Plan—Interim Final and Proposed Rules (10 CFR 477), published February 7, 1980.

Standby Federal Emergency Energy Conservation Plan Docket CAS–RM–79–507. Transcripts of all public hearings, and supporting documents are available for review in the Freedom of Information Office. Correspondence should be addressed to:

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DOE-CS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhoods, Voluntary Associations and Consumer Protection

Energy Performance Standards for New Buildings (10 CFR Part 435)

Legal Authority

Energy Conservation Standards for New Buildings Act of 1976, 42 U.S.C. §§ 831–6840; Department of Energy Organization Act, § 304, 42 U.S.C. § 701 *et seq.*

Reason for Including This Entry

This entry is included because it imposes significant costs on the building and residential housing industries, and because it involves energy conservation issues of great public interest.

Statement of Problem

A major goal of the National Energy Plan, which by law the Department of Energy (DOE) must submit to Congress annually, is to reduce our dependence on uncertain and expensive foreign oil supplies by reducing the growth in demand for energy used in buildings. DOE and the Department of Housing and Urban Development (HUD) are pursuing this goal through a number of conservation programs. The intent of this regulation is to reduce the amount of energy consumed in new buildings by requiring construction which would make them energy efficient. One-third of all energy consumed in the United States is now used in buildings, and inefficient building designs and equipment waste about 40 percent of this energy.

The regulations DOE is developing will set energy consumption "budget" levels, which buildings must be designed to meet. Energy consumption will be measured on the basis of building design, in terms of consumption per square foot of floor space per year. These "design energy budgets" will take into account the differences in energy consumption required by climate and by the different functions of buildings.

Current plans call for HUD to implement and administer the regulations DOE will issue.

Alternatives Under Consideration

According to the legislation, the requirements of the Building Energy Performance Standards permit consideration of few alternatives. However, these regulations are performance-oriented, avoiding specification of design, materials, or components, and they adapt to differences in regional conditions and building functions. The regulation does not require specific construction techniques. This is an innovative alternative approach, which will allow the private sector a great deal of flexibility.

The main alternatives which we are now considering within this program deal with (1) the way in which energy use is measured, and (2) the method of implementation.

The energy consumption measured at the building site does not indicate the loss which occurred in transmitting the energy to the building site. The proportion of this loss varies by energy type. It takes about 7 percent more energy to deliver one British Thermal Unit (Btu) of oil to a building than it does to deliver one Btu of natural gas. (A Btu is the amount of energy required to raise one pound of water by one degree Fahrenheit.) Almost two Btu's of energy are lost in delivering one Btu of electricity. These figures are national averages, and are higher or lower for specific localities, depending on availability of fuel, transportation distance, and the demand for energy at each locality. Basing design energy budgets only on the energy consumption at a site would overlook a significant amount of energy consumption.

An alternative is to relate the energy that is actually used to the amount of energy that is consumed at the building site, and to set standards based on the actual use. This would be done through the use of Resource Utilization Factors (RUFS) to account for energy losses, and Resource Impact Factors (RIFS) to account for economic and environmental impacts. These factors would be applied to the energy used to give an adjusted total energy use.

Another alternative would be to relate the use of each type of energy to the "marginal cost" of that type of energy, and to set standards based on marginal cost. It is easier to determine marginal costs for specific localities than to get RUF and RIF values. (Marginal cost measures the increase in economic resources that must be diverted to energy production when the demand for energy increases.)

Alternative implementation methods range from a voluntary (no Federal sanctions) approach to a mandatory (strong sanction) approach. We are currently conducting research on the effectiveness of different implementation methods.

Summary of Benefits

Sectors Affected: The building industry (architectural services, construction, and manufacturing of construction materials); building workers (professional, management, skilled, and operative); the building market (realtors, purchasers and users of buildings); and the general public.

Buildings which meet these energy budgets will be expected to consume from 17 to 52 percent less energy than recently constructed buildings, depending on the building type.

Energy savings from the Standards are projected to be 0.22 quads annually (0.1 million barrels per day of oil equivalent [MBDOE]) by 1985, and 0.46 quads annually (0.2 MBDOE) by 1990. (A quad is one quadrillion [10^{15}] Btu.) This is in addition to the energy saved by other building energy efficiency improvement programs. The cumulative energy saved between 1980 and 2020 is projected to be 29 quads.

The Standards that we will propose, may, by 1990, increase the gross national product by 0.1 percent and improve the balance of trade by 5 percent. Employment is projected to increase through additional investment in building energy conservation. It is expected that, cumulatively, 48,000 additional jobs will be created in 1980, 86,000 in 1985, and 70,000 in 1990. This includes all classes of labor: professional management, skilled, and operatives. Business is expected to increase in the following building product sectors because of the Building Energy Performance Standards: insulation, heating, ventilating and air conditioning equipment, masonry products, glass, lumber, and wood products. Some decrease is anticipated in the lighting products sector.

Summary of Costs

Sectors Affected: The building industry (architectural services, construction, and manufacturing of construction materials); the building market (realtors, purchasers and users of buildings); DOE; HUD; and State and local governments.

Construction costs for all new buildings will increase slightly. For new commercial buildings, we expect the increase to be from 3 to 5 percent. The cost of a residential building will increase slightly; the cost of a 1,640 square foot one-story home will increase, on the average, about $1200. However, the energy savings that are achieved under the regulation will more than offset these increased construction costs. The added cost to enforce the standards may be about $22 million per

year. An estimated $38 million per year is currently being spent to enforce existing energy standards for buildings. These existing standards would remain in effect.

The Standards will apply to the building industry. They will also affect the general public, because the cost of constructing new buildings will increase by the amounts we estimated above. There may be an increase in the resale price of existing buildings, because these buildings compete in the market with new buildings that will become more expensive.

If sanctions are provided, they may involve the loss of Federal benefits to governmental jurisdictions, rather than Federal penalties to builders. Therefore, with a sanction, the rule could directly affect all governmental jurisidictions that have new building activity. These include the 50 States, 4 territories, 16,000 permit-issuing jurisdictions within the States and territories, and a large but unknown number of local jurisdictions that do not control construction activity within their own boundaries.

Related Regulations and Actions

Internal: DOE: DOE is developing a Model Building Code. This model code specifies detailed requirements for building components (e.g., "install six inches of attic insulation") that are consistent with the performance standards under development.

HUD: Minimum Property Standards for One- and Two-Family Dwellings, Department of Housing and Urban Development (HUD); Minimum Property Standards for Multifamily Dwellings, HUD Handbook 4810, Revision 5, April 1977; Proposed Increase in Thermal Insulation Requirements for the Minimum Property Standards for One- and Two-Family Dwellings, 43 FR 17371–17374, April 24, 1978; Farmers Home Administration, Form 424.7, 7 CFR 1804, Subpart A, Appendix D, Construction Standards.

External: None.

Active Government Collaboration

The Department of Energy, The Department of Housing and Urban Development, and the National Bureau of Standards are participating in activities related to the development of these regulations.

Timetable

Final Rule on standards (DOE)—August 1980.
Final Rule effective—60 days after we issue the final rule.
NPRM on implementation and enforcement (HUD)—August 1980.
Public Comment—for at least 60 days following NPRM.
Regulatory Analysis—under preparation.

Available Documents

NPRM on Performance Standards, 44 FR 6812, November 28, 1979
Phase One/Base Data for the Development of Energy Performance Standards for New Buildings (Final Report), PB–286 898:
Climatic Classification, PB–286 900
Data Collection, PB–286 902
Residential Data Collection and Analysis, PB–286 899
Data Analysis, PB–286 901
Building Classification, PB–286 904
Sample Design, PB–286 903, January 12, 1978
Draft EIS, DOE/EIS–0061–D, November 1979
Draft EIS supplement DOE/EIS–0061–DS, March 1980
Documents available from the Agency Contact listed below.

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DOE-ECONOMIC REGULATORY ADMINISTRATION

Amendments to Puerto Rican Naphtha Entitlements Regulations (10 CFR Parts 211 and 212)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The regulation could have a significant impact on the competitive position of the Puerto Rican petrochemical industry in relation to its main competitors, the petrochemical producers on the United States mainland. Additionally, any increased entitlement benefits to this segment of the industry would result in corresponding crude oil costs to the domestic refining industry.

Statement of Problem

During the 1950s and 1960s the Federal government and the Puerto Rican government encouraged the development of a refining and petrochemical industry in Puerto Rico. Commonwealth Oil Refining Company (CORCO), Phillips, Sun, and Union Carbide were among the major firms which invested large amounts of capital in refinery facilities, based on the tax relief afforded by the Puerto Rican government and the allocation of substantial quantities of low-cost foreign crude oil and naphtha (a volatile, colorless, distillate product between gasoline and refined oil) by the Federal government. Both naphtha and crude oil are "feedstocks" convertible into one or more end-products in the process of refinery operations and petrochemical production.

Two major considerations governed the joint policy of the Puerto Rican and the Federal government towards the establishment of this refining capacity. First, the policy was based on the availability of low-cost imported feedstock, particularly naphtha, which provided a cost advantage over petrochemical producers on the mainland. This advantage was needed to offset the higher shipping and other costs of starting up the industry in the relatively underdeveloped economy of Puerto Rico. A second major consideration was that the new refinery facilities would expand employment and provide Puerto Rico with fuel for manufacture, transportation, and agriculture.

Since the 1960s, the petrochemical industry in Puerto Rico has grown to such an extent that it now contributes greatly to U.S. petrochemical capacity and to the economy of Puerto Rico. In 1977, petroleum related industry in Puerto Rico contributed more than $2 billion to the island's economy, approximately one-third of its total income. In addition, 10 percent of U.S. petrochemical output is now located in Puerto Rico.

Despite these gains, Puerto Rico oil refineries have been severely affected by the worldwide increase in the price of imported crude oil, coupled with the imposition of price controls on domestic crude oil by the Federal government. The combination of soaring prices for imported naphtha and crude oil, joined to Federal regulatory policy which enabled mainland refiners to purchase cheaper domestic crude oil, has reversed the feedstock cost advantage that the

Puerto Rican petrochemical industry formerly enjoyed. Mainland competitors now pay less for feedstocks than Puerto Rican refiners.

To lessen the competitive disadvantage to Puerto Rican companies of higher feedstock costs, the Federal Energy Administration (FEA) amended the entitlements program on July 20, 1976, to permit Puerto Rican petrochemical producers to receive entitlement benefits for imported naphtha feedstocks. (An "entitlement" is a credit given by DOE to a refiner, and is equivalent to the difference between the average [volume weighted] delivered cost per barrel of uncontrolled crude oil and the average [volume weighted] delivered cost per barrel of domestic price-controlled crude oil.) The entitlement credit, used in this manner, would reduce the price of purchased feedstocks. FEA determined that it would be inappropriate to grant the full crude oil entitlement benefit to naphtha imports in months when the differential between the prices of imported and domestic naphtha is less than that month's per-barrel entitlement value. Accordingly, the rules the FEA adopted tie the entitlement credit for naphtha imported into Puerto Rico to the difference between the average (volume weighted) cost for imported naphtha and an imputed domestic naptha price. This imputed value is set at 108 percent of the average (volume weighted) cost of crude oil to refiners. (It is necessary for the government to impute this price because very little naphtha is sold domestically.) The maximum entitlement value that can be received is still limited to the actual per-barrel entitlement value of the crude oil.

These rules are now the responsibility of the Department of Energy (DOE), and are administered by the Economic Regulatory Administration (ERA) within DOE. DOE believes that two factors in the current regulations are causing problems: (1) the naphtha entitlement value is limited to a crude oil entitlement value, and (2) the factor used to impute the domestic naphtha price is too low. FEA never expected that it would need to grant more than a full crude oil entitlement, because, historically, world naphtha prices have paralleled crude oil prices. However, during the last year the prices for imported naphtha have increased much faster than those for crude oil. Further, ERA's review of current data on naphtha prices and crude oil costs shows that the factor presently used to impute the domestic naphtha cost is much too low. As a result of these factors, approximate feedstock costs equalization (the goal of the entitlements system) is not given to firms that import naphtha at their current prices.

In recognition of the problems facing the petrochemical industry in Puerto Rico, DOE's Office of Hearings and Appeals (OHA) issued, on May 16, 1979, a proposed Decision and Order which would have made an exception to existing rules to provide relief for a period of six months to those petrochemical companies in Puerto Rico that import naphtha. This interim relief was proposed in order to provide ERA with sufficient time to address these issues through the rulemaking process. The relief OHA proposed would have given two entitlements for each barrel of imported naphtha used in Puerto Rican petrochemical plants. On August 15, 1979, OHA decided to reverse their earlier finding, based upon their belief that the Puerto Rican petrochemical industry was not experiencing extraordinary financial difficulties which required the immediate attention of DOE. Thus, they recommended that the difficulties described by the petitioners be handled through the rulemaking process.

Alternatives Under Consideration

DOE will consider several options for better calculating the imputed cost of domestically produced naphtha. The cost of naphtha to the mainland domestic petrochemical industry is a central issue in determining the appropriate level of price protection that should be afforded through the entitlement program to maintain a competitive petrochemical industry in Puerto Rico. These Puerto Rican producers find it difficult to compete with mainland domestic firms because these mainland firms have access to naphtha produced from lower cost domestic crude oils.

The possible approaches to imputing a domestic naphtha price that we will examine include:

- Using the current approach of imputing a price based on domestic crude oils, but periodically changing the factor to reflect changes in world market naphtha prices;
- Basing the imputed naphtha price on the prices in alternative but related markets, such as the market for unleaded regular gasoline, jetfuel, or heating oil; and
- Using the current approach, but comparing international naphtha prices to international costs of low-to-medium sulfur crudes rather than domestic crude costs in setting an imputed cost factor.

In addition to examining changes in the ways of calculating the imputed cost of domestically produced naphtha, DOE is considering the possibility of removing the current restriction on a naphtha entitlement value. Currently, the naphtha entitlement cannot exceed the value of a crude oil entitlement. In light of the increasing prices of naphtha worldwide, this may no longer be reasonable.

Summary of Benefits

Sectors Affected: Puerto Rican petrochemical production in the industrial organic chemical industry; the general public of Puerto Rico: and users of naphtha-derived petrochemicals.

Any of the alternative proposals should increase the competitive position of the Puerto Rican petrochemical industry with petrochemical producers located on the mainland. The Puerto Rican petrochemical industry maintains that if no regulatory changes are made to equalize their naphtha feedstock costs with those of firms operating on the Gulf Coast, they will be forced either to trim seriously their operations or incur large operating losses. In fact, one major Puerto Rican petrochemical plant has already closed. As we formerly stated, the development of refining and petrochemical facilities has had a great impact upon the economy of Puerto Rico. Thus, the proposed changes, in making the Puerto Rican petrochemical industry more competitive, would have a direct positive effect on Puerto Rico's economy.

The proposal should reduce the costs of naphtha-derived petrochemicals to U.S. consumers by a small amount.

Summary of Costs

Sectors Affected: Domestic petroleum refining; petrochemical production in the industrial organic chemical industry; and domestic users of petroleum products

None of the proposed changes to the Entitlement Program will increase ERA's compliance or administrative costs. There will be no added reporting requirements for the petroleum industry However, by providing larger entitlements to naphtha, credits available to crude oil are reduced. This would increase the cost of crude feedstock to domestic refiners and, in turn, result in a small price increase in oil products to U.S. consumers.

An increased naphtha entitlement value might also have the adverse effect of increasing the price of naphtha in the world marketplace.

Timetable

This rulemaking has not yet been approved by the Secretary, therefore the timetable is strictly tentative.

NPRM—Draft Regulatory Analysis—second quarter, 1980
Public Comment—60 days following NPRM
Final Rule—third quarter, 1980
Final Rule Effective—60 days after it is issued.

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DOE—ERA

Amendments to the Crude Oil Supplier/Purchaser Rule (10 CFR Part 211*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) believes that the proposed amendments to the supplier/purchaser rule are significant because they would provide a transitional period during which producers, resellers, and refiners could realign their contractual arrangements in a manner more reflective of the economic efficiencies of a free market situation.

Statement of Problem

The domestic crude oil supplier/purchaser rule was adopted by the Federal Energy Office (FEO) in January 1974 (39 FR 1904, January 15, 1974) in response to the Arab oil embargo, and the associated price increases in foreign oil. The primary purpose of the rule was to maintain intact the existing distribution system for domestic crude oil, and thereby to assure all refiners, especially small and independent refiners, continued access to price-controlled domestic crude oil. In addition, by stabilizing the national crude oil distribution system, the rule laid the foundation for a general allocation of crude oil among domestic refiners.

In effect, the original rule froze domestic crude oil sales; it stated that all supplier/purchaser relationships in effect on December 1, 1973 for sales, purchases, and exchanges of domestic crude oil were to remain in effect for the duration of the program. It stated that such relationships could be terminated by mutual consent and that a producer could terminate sales of new and released oil (generally speaking, oil exempt from ceiling prices) if the present purchaser failed to meet any bona fide offer (i.e. not above the ceiling price) from another purchaser. The rule also provided that new and released oil subsequently sold from a property not in production on December 1, 1973, could be sold in a first sale to any person, but that such sale would constitute the establishment of a supplier/purchaser relationship subject to the same restrictions imposed by the rule on relationships in effect on December 1, 1973.

The original need for a regulatory-based allocation system resulted from the combination of shortage conditions and domestic price controls. Imposition of ceiling prices at less than market clearing values foreclosed the use of the normal market mechanism for allocating supplies of domestic oil among refiners. This foreclosure was of particular concern in view of the significant variation in the extent of crude production by individual refiners. Without an effective allocation system, the prospect existed of vertically integrated refiners refusing to continue historical supply relationships, thereby adversely affecting nonintegrated refiners and refiners having lesser degrees of proprietary access to domestic crude oil. In addition to limiting inequities, allocation also was required simply to provide market stability in a period when price competition (for old oil, although not for other domestic oil) was foreclosed. Because all purchasers were restricted to offering generally the same price (ceiling) for domestic crude oil, and the demand at that price was greater than the quantity a producer could supply, a mechanism was needed to carry on the function which price competition had previously provided in stabilizing as much of the existing crude oil flow as possible.

Recent DOE policy has been to simplify the petroleum allocation and price regulations, thus eliminating as much of the current regulatory burden on the industry as possible. In accordance with this policy, we have reevaluated the supplier/purchaser rule to determine whether, and to what extent, it remains an essential feature of the crude oil allocation programs. This reevaluation was prompted by the belief that the rule may be adversely affecting crude oil movements in certain cases, and is inconsistent with the President's plan to decontrol domestic crude oil prices.

As presently structured, the rule prevents significant changes in the distribution of price-controlled domestic crude oil from the pattern existing prior to December 1, 1973, despite major changes in the volumes and areas of production of domestic crude oil, and a significant number of new entrants in both the marketing and small refiner segments of the industry. As a result, the rule may prevent the market from redirecting reduced domestic crude oil supplies in the most effective manner. This would appear to be true in those instances where the rule requires a small refiner to sell its production to other refiners or resellers, or where it prevents a small refiner from competing for volumes of crude oil located nearby. In addition, the rule seems to hinder market forces in the disposition of crude oil supplies in response to changing demand for particular types of crude oil.

Although some major and large independent refiners may rely on the rule to assure continued access to supplies of unique crudes, our analysis indicates that major and large independent refiners do not depend on the rule for large portions of their supplies of crude oil. Most of the larger refiners have access to various sources of crude oil supplies in both domestic and foreign markets, and presumably would be able to replace losses of domestic crude oil from either domestic or foreign sources. In contrast, small refiners have more limited access to crude oil supplies in both domestic and foreign markets, and thus are restricted in their replacement capabilities. The fact that most foreign producers prefer to sell crude oil in large volumes and that a large-volume capital outlay is prohibitively costly for many small refiners has often made long-term contracts between foreign producers and small refiners infeasible. In addition, major oil companies have reduced voluntary sales of foreign crude oil to third parties, further limiting the small refiner's access to crude oil. As a result, small refiners are more vulnerable than the major and large independent refiners to worldwide fluctuations in the supply and distribution of crude oil.

Another factor which prompted the reevaluation of the supplier/purchaser rule is the President's plan for phased decontrol of domestic crude oil. Under phased deregulation, price-controlled crude oil will be moved into the uncontrolled category, and, for all intents and purposes, will be removed from the supplier/purchaser freeze as a

result of the "bona fide offer" provisions. Therefore, the rule will be affecting smaller and smaller amounts of crude oil over the next year and a half. Price deregulation will ultimately bring about the recision of the rule. As stated previously, a primary function of the supplier/purchaser rule is the allocation of domestic crude oil absent the market mechanism of price competition. Because phased deregulation will allow a gradual return to the free market and price competition, continuance of the supplier/purchaser rule may be at variance with such goals.

Alternatives Under Consideration

In an effort to minimize the supplier/purchaser rule prior to the expiration of its allocation authority and to provide a transitional period for producers, resellers, and refiners, DOE proposed, on April 28, 1980, the following options for amendments to the supplier/purchaser rule:

(A) Complete elimination of the supplier/purchaser rule, except as it applies to purchases of all domestic crude oil (or alternatively only price-controlled crude oil) by small refiners. This will assure small refiners a degree of supply security with respect to volumes of controlled oil and will further assure them the right of first refusal on domestic crude oil sold at market level prices. It will also provide a transitional period during which producers, resellers, and refiners may realign their contractual arrangements in a manner more reflective of the economic efficiencies of a free market situation. It will only guarantee continued access to price-controlled crude oil to small refiners.

(B) Continuance of the current rule as it pertains to volumes of price-controlled crude oil for all purchasers, except where the purchaser is a small refiner. This will provide continued access to price-controlled crude oil to most refiners, but will probably continue to prevent the redirection of reduced domestic crude oil supplies in the most economic manner.

(C) Complete elimination of the supplier/purchaser rule. While this will provide greater flexibility in the marketplace by removing artificial barriers to competition, it may also have an adverse impact on small refiners who no longer would have an assured source of crude oil.

DOE's initial preference is Option (A) because it will assure small refiners a degree of supply security with respect to price-controlled crude oil, and will ease the transition to a free market for all refiners.

Option (B) provides a greater degree of assurance that the effects of price controls on remaining volumes of this category of crude oil are not circumvented by numerous resales of the crude or loss of the identity of its pricing category in the distribution chain. Option (C), while consistent with the Administration's policy to reduce regulation of the industry, could diminish the effectiveness of price controls on crude oil and result in so abrupt a return to free market conditions when full decontrol occurs in October 1981 that unwarranted disruptions in product supply and distribution could result.

Summary of Benefits

Sectors Affected: Crude oil production; and refining and wholesale trade of petroleum, particularly small refiners.

Small refiners would be the principal beneficiaries of Option (A), but independent crude oil producers would also benefit, as would refiners. Small refiners would have the benefit of continuing protection from the rule, but would gain the additional benefit of being able to compete for desirable price-controlled crude oils now unavailable to them because of the application of the rule in other frozen sales. Independent purchasers would benefit by being able to sell crude oil to those producers most able to provide beneficial terms in nonprice areas. Resellers would benefit from being able to compete for additional volumes of crude oil, particularly from independent producers, not now available to them as a result of the rule.

While economic benefits could accrue to individual refiners which obtained price-controlled crude oil from a supplier/purchaser relationship to their own refineries, no net economic impact on the refining industry is anticipated as a result of the amendments we are proposing. These modifications would result in a redistribution of the benefits associated with access to price-controlled oil. To the extent such benefits exist, they will decrease rapidly as phased decontrol progresses.

Summary of Costs

Sectors Affected: The petroleum refining industry, other than small refiners.

Refiners other than small refiners would run the risk of losing some volumes of crude oil now protected by the supplier/purchaser rule. The volume and value of these losses cannot be quantified. Presumably, the refiner would compete vigorously for volumes which are especially desirable.

None of the proposed changes to the supplier/purchaser rule will increase the Economic Regulatory Administration's compliance or administrative costs. There will be no added reporting requirements for the petroleum industry.

Related Regulations and Actions

Internal: Notice of Intent on Amendments Concerning Processing Agreements Involving Non-Refiners (45 FR 3060, January 16, 1980).

External: None known.

Active Government Collaboration

None

Timetable

Regulatory Analysis—preliminary with NPRM, final with final rule.
Public Hearings—May 29, 1980 in Washington, D.C.; June 3 and 4, 1980 in Los Angeles.
Public Comment—for 60 days following NPRM.
Final Rule—about 90 days after NPRM.
Final Rule Effective—30 days after final rule issuance.

Available Documents

44 FR 59240, October 15, 1979.

Transcripts and public comments of the public hearing held on October 18, 1979.

NPRM issued April 28, 1980; 45 FR 29770–29780 FR, May 5, 1980

Preliminary Regulatory Analysis

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20595.

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DOE–ERA

Amendments to the Emergency Provisions of the Crude Oil Buy/Sell Program (10 CFR Parts 211 and 212)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The regulation could possibly involve the entire domestic refining industry, and result in crude oil supply and price impacts to most refiners.

Statement of Problem

The crude oil buy/sell program is designed to implement provisions of the Emergency Petroleum Allocation Act of 1973 which require the protection of the competitive viability of small refiners. The program requires the 15 major, integrated refiners (i.e., refiners with integrated systems of exploration, production, transportation, and marketing) to sell crude oil for regular 6-month allocation periods to small refiners that lack physical access to imported crude oil. The buy/sell program regulations also make provision for emergency allocations for most other small refiners which incur sudden losses of supplies. The size of the major refiners enables them to obtain access and favorable terms in negotiating for oil supplies. By contrast, many small refiners lack access to adequate supplies of domestic and foreign crude oil and have difficulty obtaining desirable terms.

Under the terms of the emergency allocation program, DOE has made emergency allocations of crude oil totalling over 21 million barrels to small refiners during the first eight months of 1979. These allocations were required by the weak position of the small refiners in the market and by the continued tightening of world crude oil supplies during the period following the cut-off of crude oil exports from Iran. The Department of Energy (DOE) had received reports from many small refiners that their contracts for crude oil supply have been broken and that they were unable to obtain enough foreign crude oil at any price. Thus, the crude oil buy/sell program was used to maintain the competitive position of the small refiners.

At the same time, the 15 major refiners, required to sell oil under the program, contend that the emergency allocations have caused them undue hardship. They advance two principal objections against the present administration of the program. First, the major refiners contend that the present method of determining the price at which oil is to be sold to small refiners prevents them from recovering their full costs of acquiring that oil. Under the present pricing system, the maximum price a refiner-seller may charge for its crude oil is the weighted average landed cost of imported crude oil purchased during the month of sale. This pricing scheme does not reflect the actual cost of crude oil purchases in periods of rapidly escalating prices, because supplies must often be replaced at much higher costs. Second, refiner-sellers state that emergency allocations have required them to reduce output from their refineries. The major refiners have been compelled to absorb the expense of unused refinery capacity.

The crux of the problem is to maintain the crude oil buy/sell program, while finding a way to alleviate the burdens on the major refiners that we have described. There appears to be a need to distribute sales obligations in a more equitable manner, and to allow refiner-sellers to charge prices which are closer to the market rate.

Alternatives Under Consideration

DOE has proposed two amendments to the crude oil buy/sell program. One of these amendments would expand the classification of refiner-sellers under the program to include, in addition to the 15 major integrated refiners, all other refiners with refining capacity in excess of 175,000 barrels per day (B/D). There are seven large, "independent" refiners that fall into this classification. Including the large, independent refiners in the crude oil buy/sell program would increase the number of refiner-sellers from 15 to 22 (15 major refiners plus 7 large independent refiners), thereby distributing the sales obligations of the program among a greater number of participants. Second, DOE proposed that refiner-sellers be allowed to charge the actual landed cost of crude oil sold to refiners with a refining capacity in excess of 50,000 B/D for emergency allocations only. Refiner-buyers with a refining capacity less than 50,000 B/D would continue to pay the weighted average price of imported crude oil.

DOE is exploring the following range of alternatives in relation to a pricing mechanism which would reduce potential burdens the program imposes on major refiners:

(*A*) *No action.* We would keep the present pricing mechanism charging refiner-buyers the monthly weighted average landed cost. This option would be reasonable if shortages of crude oil supply disappeared and the rapid escalation in spot market prices eased.

(*B*) *Increase handling fee.* We could attach a larger surcharge handling fee to the current weighted average cost of imported crude oil sold under the buy/sell program. The current handling fee (paid by buyers to sellers) is $0.05 per barrel; the handling fee under standby emergency crude oil allocation regulations is $0.25 per barrel.

DOE is exploring the following alternatives with relation to the proposed expansion of the refiner-seller list.

(*A*) *No action.* If the current shortfall of crude oil supply stabilizes, and if emergency allocations are greatly reduced, we could keep the refiner-seller list as it is, consisting of only the 15 major integrated oil companies.

(*B*) *Implementing standby regulations.* In January 1979 we adopted standby rules for allocation of crude oil which we could make effective. We could implement this program if the Administrator of ERA determined that the crude oil supply situation had worsened.

(*C*) *Product allocation.* Instead of allocating crude oil to refiner-buyers, we could allocate refined products to refiner-buyers on an equitable basis.

(*D*) *Large independents selling to only certain small refiners.* We could require the large independents to sell crude oil only to refiner-buyers with refining capacities greater than 50,000 B/D. Thus, if the proposed price change for small refiners is implemented, these new sellers could recover the total cost of crude sold under the program, thereby imposing relatively small burdens on this segment of the refining industry

Summary of Benefits

Sectors Affected: Major, integrated petroleum refiners; and small, independent refiners.

The proposed changes could result in several benefits. Expansion of the refiner-seller list will increase the ability of small independents to obtain crude oil under the program for they would then be able to buy from 22 rather than from just 15 firms included in the current program. However, the sector of the petroleum industry that would benefit the most from the proposed changes would be the 15 major, integrated refiners, as the average number and volume of sales per refiner–seller would decrease. Moreover, the proposal to increase the price of crude oil sold by refiner-sellers would result in a price closer to the market price in such sales. This might be more equitable to the major integrated oil companies, and because the price would be higher, it might provide a greater incentive for refiner-buyers to purchase their own crude supplies. For these reasons, refiner-sellers would probably be more willing to negotiate sales with potential refiner-buyers.

Summary of Costs

Sectors Affected: Independent petroleum refiners; and users of petroleum products.

The costs of compliance and administration associated with the proposed amendments would be slight Only the seven largest independent refiners, if they are included as sellers, would face added reporting requirements.

The regulation would impose only minimal costs on the industrial and public sectors. Including the large independents as sellers and changing the price of the crude would probably increase the price of crude sold to the refiner-buyers. The increase in crude costs legally can and probably would be passed on to the consumer by the refiner-buyers; however, given the small amount of crude sold under the program the impact of prices would be slight. Including large, independent refiners as sellers would only have a small financial effect on them, as long as they were able to replace crude sold under the program and could pass through any additional crude oil cost increases in their product prices.

Related Regulations and Actions

NPRM—Activation of Standby Mandatory Crude Oil Allocation Program (44 FR 67602, November 26, 1979). In response to the President's decision to prohibit the importation of Iranian crude oil into the United States, DOE issued an NPRM on November 23, 1979, designed to take care of any significant crude oil supply problems the domestic refining industry might encounter as a result of this action. In addition, the NPRM requested comments on possible amendments to the existing Buy/Sell and Entitlements Programs to include revisions in the method of determining the price of allocated crude oil, the addition of the large, independent refiners as refiner-sellers, and the inclusion of newly constructed refineries in the Buy/Sell Program. Therefore, many of the issues and proposals contained in the May 14, 1979, NPRM were subsumed by this subsequent NPRM.

Active Government Collaboration

None

Timetable

Final Rule—No decision has been made by DOE regarding any of the proposed revisions to the Buy/Sell and Entitlements Programs contained in either of these NPRMs.
Regulatory Analysis—not required

Available Documents

NPRM—44 FR 26060 (May 4, 1979).
NPRM—44 FR 67602 (November 26, 1979).

Transcripts and public comments of the public hearings held on May 31, 1979, and on December 13 & 14, 1979.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE-ERA

Decontrol of Propane/Simplified Propane Price Rules (10 CFR Part 212)*

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) thinks this rule is important because simplifying the current rules, or decontrolling propane, will create an incentive for future propane production, thereby reducing our reliance on propane from foreign sources.

Statement of Problem

Existing regulations have not allowed propane prices to rise as rapidly as those for alternative fuels (mainly distillate fuel oil). As a result, domestic production has declined and imports have increased. Many refiners find it more profitable to use propane as a refinery fuel rather than selling the gas. Gas processors often do not choose to extract additional quantities of propane from natural gas, for lack of adequate incentives, and sell the propane and other liquids as residue natural gas. The regulations also create disincentives to conserve by users that have access to propane at a price that is held down by controls—in particular, petrochemical plants that find propane considerably less expensive than feedstocks derived from crude oil.

Under the current regulations, different regulatory principles govern the pricing of propane gas depending on whether it is produced from crude oil or natural gas. At the present time, approximately 60 to 65 percent of domestic supply is extracted from natural gas and 25 to 30 percent is derived from refining crude oil. Refiners and gas processors are only permitted to recover actual increased costs (calculated in cents per gallon) incurred over May 1973 levels. There is currently as much as a 30 cents/gallon difference in the maximum producer price between propane derived from crude oil and that derived from natural gas. However, because most sellers are refiners who also own gas processing facilities, these extreme differences are not reflected generally in market prices. Propane resellers and retailers under the current regulations may pass through increased product and marketing costs. As of January 1, 1980, small propane retailers received a 4 cents/gallon increase in marketing costs.

Although supplies and prices of propane have fluctuated considerably over the past 18 months, domestic supplies of propane, including imports, currently appear to be at adequate levels. According to American Petroleum Institute (API) data, end of December stock levels were over 71 million barrels, and demand (measured by stock drawdown) is relatively moderate when compared with that of previous years. Imports are generally running at approximately 10 percent of domestic demand. We do not foresee any future shortages of propane of any consequence that could not be filled by foreign supplies, which are projected to increase in the future. Propane prices at the wholesale level over the past year have risen from a low of about 20 cents to about 40 cents per gallon in response to the passage of the Natural Gas Policy Act, Organization of Petroleum Exporting Countries (OPEC) crude oil price increases, and refiner/gas processor use of "banked" costs accumulated during 1977–1978 when market conditions kept prices abnormally low. We expect propane prices to approach parity with other fuels (e.g. No. 2 heating oil) with similar uses, as long as refiners and gas processors continue to draw down "banked" costs and because high cost imports (5 to 20 cents per gallon above domestic prices) are increasing in volume and are being rolled in with lower cost domestic supplies.

"Bank" or "banking" are terms applied to certain allowable increased costs that are accumulated because the costs are not recoverable in the marketplace. Stated another way, "banks" are the difference between the maximum allowable price computed under the Federal energy guidelines and the market price. "Banked costs" are only accumulated when the price in the marketplace is less than the maximum lawful selling price.

Alternatives Under Consideration

DOE has under consideration three alternatives with respect to the pricing of propane:

(1) Continuation of the current regulatory concepts with minor modification. The advantages of this approach would be that relatively minor modifications can be made that would alleviate some of the operational problems and financial disincentives;

industry has learned to live with these regulations for 5 years and could probably continue to do so through October 1981 when controls end; and residential and agricultural users receive some degree of protection against price increases caused by crude oil price increases and some assurance of supply availability. The disadvantages of this approach are that the regulations; (a) do not recognize current replacement costs or create incentives to construct new processing facilities, (b) are overly complex and cause considerable administrative expense to the industry, and, (c) cause significant price disparities between various types of propane producers and result in implicit subsidies to some consumers, mainly in the natural gas producing areas.

This concept is the least favored, as prior modifications have not resolved all of the problems, and to correct all of the disparities and financial disincentives of these regulatory principles would require massive revisions to the current concepts.

(2) Implementation of a simplified concept of price controls under which DOE would set a single nationwide price that would be adjusted monthly to reflect cost increases. The advantages of this approach would be that it would create incentives for increased construction of gas processing facilities and for some refiners to sell propane, instead of using it as a refinery fuel (to the extent that proposed Federal Energy Regulatory Commission [FERC] incremental pricing rules do not result in propane being cheaper than natural gas); alleviate the greatest complexities of the regulations and eliminate substantial price disparities between propane derived from natural gas and that derived from crude oil; and provide a "cap" that propane prices could not exceed if a substantial supply/demand imbalance occurs.

The disadvantages of this approach would be that it would result in higher prices for historical low-cost consumers supplied primarily by propane derived from low-priced natural gas, allowing current average prices (40–42 cents/gallon) to increase somewhat over the next year when compared to what might be allowed under current regulations; does not address current limitations on wholesaler and retailer margins; and could delay adoption of a final rule as a more extensive regulatory analysis would be required.

Under this simplified concept, "banks" of unrecovered costs will be eliminated, the price of propane imports would not be controlled, classes of purchasers for propane producers will be eliminated, and future increases would be based on (a) increases in the average refinery crude oil acquisition cost as well as the domestic price of natural gas, (b) actual transportation and storage costs incurred by the producers to the point of sale, and (c) actual increased marketing costs allowed under current regulations for independent resellers and retailers of propane.

This approach would retain the concept of a ceiling on propane prices, while greatly simplifying producer pricing of propane by eliminating pricing disparities between types of producers.

(3) Decontrol. The advantages of this approach would be that it could create the greatest incentive for expansion of domestic production capabilities and reduction of imports; result in enhanced allocation efficiency and GNP increase, because the free market would better allocate supplies; reduce disincentives to conservation by consumers with anomalously low-priced supplies; and it could result in lower prices than Option (2), under which all levels of distribution would likely seek to obtain maximum allowable margins for fear of not being able to recover them in the future if the market softens.

The disadvantages fo this approach would be that it could result in higher prices than Option (2) if a supply/demand imbalance occurs; would be opposed by agricultural and residential users; and would reduce the British thermal unit (Btu) content of natural gas streams to the extent that more propane is extracted.

At present, market factors are generally controlling propane supply and demand. Because demand is fairly strong and there is upward price pressure caused by the high relative cost of competing fuels and feedstocks from crude oil, propane prices are probably now being somewhat constrained by DOE regulations. If propane were deregulated, there would likely be little short-term effect on supply or demand. Over the longer term, new demands could develop more easily because of the ability of suppliers to enter into long-term supply contracts based on new sources of supply. At the same time, these new supply sources would be more likely to be developed as corporate planners would be free of regulatory uncertainties in making investment decisions regarding new gas processing and recovery plants, import terminals, pipeline expansions, underground storage, and other facilities necessary to insure supplies to consumers.

We prefer Option (3), which is decontrol, as it will increase domestic production, reduce high-priced imports, spur conservation, and enhance the Nation's gross national product. Although Option (2), simplified pricing, would improve current market conditions, we believe the optimum solution to the problems to be full decontrol.

Summary of Benefits

Sectors Affected: Propane production; industrial users of propane, particularly petrochemical production in the industrial organic chemical industry; and residential and commercial users.

Either decontrol or a simplified refiner/gas processor pricing mechanism will remove current disincentives for increased production, encourage conservation, and eliminate market anomalies that have occurred over the past 7 years. The simplified pricing mechanism for refiners and gas processors, however, would be time consuming and would not address needed changes to the wholesalers and retailer's regulations.

Summary of Costs

Sectors Affected: industrial users of propane, particularly petrochemical plants in the industrial organic chemical industry; and commercial and residential users of propane.

Irrespective of which option is selected there would likely be some price increases because of the current price disparity between propane and alternate fuels on a Btu basis. However, these increases over the longer term would help to assure supplies by providing adequate price incentives to extract the propane from increasingly valuable "wet" natural gas streams. There would also be some tendency for the currently lower propane prices to exert some downward pressure on No. 2 oil prices because of the lower cost basis of propane. Moreover, the short-term availability of Canadian imports (which Canadian producers need to dispose of as gas production is increased) and the longer term forecast surpluses of propane from major world production areas, such as Saudi Arabia, Mexico, and the North Sea, will also tend to hold propane prices down worldwide through much of the 1980s.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Awaiting final decision on whether to proceed with an NPRM or Regulatory Analysis—

Available Documents

None reported.

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DOE-ERA

Decontrol of Synthetic Natural Gas Feedstocks (10 CFR 211.29)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

This proposed rule, which would decontrol propane and naphtha used for synthetic natural gas (SNG) feedstocks, is warranted by the increasing availability of natural gas, which has reduced SNG demand, and by the impending expiration of the Emergency Petroleum Allocation Act (EPAA) on September 30, 1981. In addition, naphtha has already been decontrolled for every other use.

Statement of Problem

The Federal Energy Administration (FEA) first issued the SNG petroleum feedstock regulations in 1974. "Feedstocks" refers to gas used as an ingredient of the end-product of production as distinguished from gas used to power machinery. The criteria for allocation of petroleum products to SNG plants were very restrictive, because the intent of the regulations was to minimize the construction of new SNG plants. Seven of the 13 existing plants have permanent allocations of petroleum products based on historical use. Six SNG plants, which were completed after 1974, do not have permanent allocations and have continually been before the agency in separate proceedings seeking allocations. The regulations had the effect of limiting their petroleum feedstock use during the period 1974–77. The National Energy Plan published in April 1977 recommended that a Federal task force be organized to revise the regulations. As a result of the task force's efforts the SNG regulations were revised, effective October 1, 1977. The revised regulations, which are currently in place, are somewhat less restrictive, but they continue to provide detailed criteria for the allocation of feedstocks.

The principal feedstocks for SNG plants are naphtha and the liquid petroleum gases (primarily propane and butane). FEA lifted price and allocation controls on naphtha, which is also used as a gasoline and petrochemical plant feedstock, except for the limitations on its end use as an SNG plant feedstock. Propane is still subject to price and allocation controls, as well as the SNG feedstock limitations. DOE decontrolled butane on January 1, 1980 and at the same time exempted it from the end-use controls on SNG feedstocks. Thus, only naphtha, an otherwise decontrolled product, and propane, are currently subject to the SNG plant feedstock limitations.

Alternatives Under Consideration

In an effort to minimize the impact on the marketplace of the final deregulation of SNG feedstocks in 1981, to end the discrimination against users of naphtha for SNG feedstock vis-a-vis other users of naphtha, and to reduce the current regulatory burden on the energy industry, DOE is considering the following alternatives to the current SNG feedstock regulations:

(A) The deregulation of all SNG feedstocks, which would have the advantage of eliminating compliance burdens from SNG plant operators, and should not result in higher SNG feedstock use since no new SNG plants are under construction.

(B) "Grandfathering," i.e. creating an exemption for all current SNG plants at allocation levels commensurate with full capacity production for each plant's historic operating period. This would effectively decontrol the allocation of SNG feedstocks for existing plants, but would leave in effect the outmoded regulations.

(C) Complete reevaluation of the SNG regulations with the intent of making substantial revisions to reflect the current energy situation. This would have the advantage of tailoring the regulations precisely to the existing energy situation, but would take more time than the other options and might produce a regulation which would be rapidly outmoded.

DOE proposes to deregulate propane and naphtha as SNG feedstocks because it is the most direct way of dealing with the changes in the energy supply situation which have occurred since the regulation of SNG feedstocks was implemented. Because natural gas is no longer in critically short supply, and no new SNG facilities can be brought on line before the expiration of the EPAA on September 30, 1981, DOE believes that the time expended by the agency under the present regulations in evaluating petitions and issuing orders is excessive in terms of the benefits derived from maintaining controls over SNG feedstocks.

Summary of Benefits

Sectors Affected: SNG plants in the industrial gas industry; and propane production.

The operators of SNG plants will be able to obtain feedstocks without the delay and costs inherent in applications for allocations from DOE. The elimination of the feedstock allocation program will allow adjustments in the propane market prior to full decontrol, and thus minimize its impact when the EPAA expires.

Summary of Costs

Sectors Affected: Petrochemical plants in the industrial organic chemical industry.

There may be an increase in demand for propane to be used as an SNG feedstock which could adversely affect supplies available for use by the petrochemical industry. However, developing world surpluses of propane and other gas liquids should result in adequate supplies for all users.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

NPRM—Second quarter, 1980
Draft Regulatory Analysis—Second quarter, 1980
Public Comment Period—60 days following NPRM
Final Rule—Third quarter, 1980
Final Rule effective—30 days after it is issued

Available Documents

None

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DOE-ERA

Entitlement Adjustments to Alaskan North Slope (ANS) Upper Tier Crude Oil (10 CFR 211.67*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et. seq.*

Reason for Including This Entry

This proposal would redress a current regulatory distortion in the retail gasoline market, which is causing severe competitive dislocations, and creating the potential for refiners of Alaskan North Slope (ANS) upper tier crude oil to realize greater profits on the volumes of such crude oil used to produce decontrolled products.

Statement of Problem

The domestic crude oil allocation (entitlements) program is the program the Federal Energy Administration (FEA) implemented in December 1974 to help equalize crude oil costs among U.S. refiners. Essentially, the entitlements program (subject to certain qualifications not here relevant), by requiring transfers of cash through purchases and sales of entitlements among refiners, achieves the same result as if FEA had directly allocated to each refiner a "mix" of lower tier, upper tier, exempt, and imported crude oil that reflected the national supply ratios for each of these price categories of crude oil.

Stated another way, the entitlements program means that lower tier crude oil, upper tier crude oil, and exempt and imported crude oil all have relatively equivalent effective acquisition costs to the refiner (subject to certain qualifications and assuming that crude quality and prices do not differ to a large extent). Because the entitlement transfers are computed nationally on the basis of total volumes of lower tier, upper tier, and uncontrolled oil, and on the basis of the national average prices of these broad classifications, the net payment by or to a given refiner depends not on the price or quality of an individual crude, but rather on these national averages.

It is important to note that, because the purpose of the entitlements program is to equalize refiners' costs rather than producers' revenues, entitlements values are based on average laid-in costs to refiners, inclusive of transportation costs. This distinction from DOE's crude oil ceiling price rules, which apply to wellhead prices exclusive of transportation, has considerable significance for the pricing of ANS production, as will be seen below.

As a consequence of the method of entitlement computation, and because regulated domestic crude oil prices are maximum prices rather than mandated levels, the incentive exists for refiners to shop competitively for crudes in order to minimize their total feedstock acquisition costs, comprised of delivered crude costs plus or minus the entitlements costs or benefits. Thus, for example, refiners contemplating the purchase of a new supply of crude will determine the price that they are willing to pay for that crude based on their average acquisition costs of existing crudes, the comparative quality of the crude, the difficulty of processing and the value of the petroleum products which can be produced from it, and the entitlement benefit or obligation associated with that tier of crude oil. In the case of ANS crude, therefore, the delivered price a given refiner will be willing to pay ANS crude producers for their oil will depend very heavily on whether DOE treats ANS crude for entitlement purposes as upper tier or as import/uncontrolled tier oil.

To take a specific example, suppose that a refiner regards ANS crude to have the same processing difficulty and to yield the same value of products as a certain alternate imported crude oil. If the ANS crude were treated as imported crude oil for entitlement purposes, then the refiner would get the same entitlement value for a barrel of ANS crude as for imports, and would therefore be willing to pay a delivered price for ANS crude roughly equivalent to the landed cost of the import. If, however, ANS crude were treated as upper tier oil for entitlements purposes, and the refiner had to purchase the entitlement obligation associated with upper tier crude oil, he would only be willing to pay a delivered price for ANS crude that would be less than the price of the import by the amount of the upper tier entitlement cost.

In August 1977, FEA adopted a rule treating ANS upper tier crude oil as imported crude oil under the entitlements program. This decision was based on an extensive analysis which showed that because of the extraordinary costs of transporting ANS crude to the continental United States, imported oil entitlements treatment was desirable to provide "the maximum monetary and psychological incentive for these other producers to explore aggressively elsewhere in the Arctic and in other frontier regions" (42 FR 41567, August 17, 1977).

The necessity for special entitlements treatment for ANS crude oil resulted from the unique circumstances identified in the rulemaking relating to transportation of ANS production to domestic refiners. Because of the Trans-Alaska Pipeline tariffs and shipping costs, extraordinary costs are associated with the transportation of ANS crude oil from the North Slope to domestic refiners compared with other upper tier domestic crude production. An analysis undertaken as part of the 1977 rulemaking concluded that the cost of transporting ANS crude oil to the continental United States was approximately $7 to $9 per barrel.

By giving ANS crude oil imported tier entitlements treatment, the ANS producers could sell the oil at a price delivered to the refinery of about $14 per barrel, competitive at the time with imported oil. After deduction of transportation costs, this yielded a wellhead price of about $5 to $7 per barrel, which was approximately the average ceiling price of lower tier oil and was well below ANS oil's upper tier ceiling price of about $12 per barrel. If ANS oil had been given upper tier entitlements treatment, it would have been sold at a delivered price equivalent to upper tier prices and, after subtracting transportation costs, would have yielded a wellhead price of only about $3 to $5 per barrel.

Currently, because of extraordinary increases in the foreign oil prices that determine the value of ANS crude, uncontrolled ANS crude oil released since January 1, 1980 under DOE's upper tier decontrol rule can be sold competitively with foreign crudes above $30 per barrel delivered. However, the bulk of ANS production is still subject to its upper tier wellhead ceiling price at approximately $14 per barrel. After adding transportation costs, ANS producers are constrained to charge no more than about $21 to $23 per barrel delivered (based on January entitlements data).

Thus, the treatment of ANS upper tier oil as imported crude oil under the entitlements program, at a time when ANS crude oil is constrained by ceiling prices, is causing anomalous effects in the refining industry. Refiners with access to significant volumes of ANS upper tier crude oil have the lowest cost domestic crude oil after entitlements adjustments and retain the full benefit of price controls that limit their acquisition costs. This has resulted in anomalies in the retail gasoline market, where lower crude costs must be reflected in lower selling prices. To the extent that ANS crude is refined into exempt products, the potential exists for refiners of ANS upper tier crude oil to realize substantially greater profits on these volumes than refiners that do not have access to ANS upper tier crude oil as a result of the current structure of the entitlements program.

Alternatives Under Consideration

We are considering two options to solve the problem:

(1) Create a separate entitlements category for ANS upper tier crude. This

approach has the advantage that refiners of ANS crude would pay reduced upper tier entitlements. The payment would generally allow ANS crude to continue to sell at its wellhead ceiling price.

(2) The second alternative proposal under consideration would require ANS crude oil to incur regular upper tier entitlements obligations reduced by a transportation cost differential established by DOE. The transportation cost differential could correspond to the estimated additional costs of transporting ANS crude oil from the North Slope to refineries in the lower 48 states.

Summary of Benefits

Sector Affected: Petroleum refining; wholesale and retail trade; and consumers of gasoline not containing ANS crude oil.

This rule change would affect the price of petroleum products sold in the United States. It would increase costs to the consumer of products produced by refiners processing ANS crude oil, but it would also reduce the prices of controlled products (i.e., gasoline) to the customers of refiners not processing ANS crude oil.

The adverse competitive impacts on the retail gasoline market that currently exists would be reduced.

Either proposed alternative would raise the price of gasoline refined entirely from ANS crude oil by about 18 to 20 cents per gallon. Gasoline refined domestically from all other crude oil will be reduced in prices to dealers by nearly 2 cents per gallon (based on January 1980 entitlements data).

Refiners producing decontrolled products would experience similar changes in crude oil feedstock cost. Therefore, the potential advantage to refiners on uncontrolled products resulting from ANS crude runs would be reduced.

Summary of Costs

Sectors Affected: Refining of ANS crude oil; wholesale and retail trade; and consumers of gasoline containing ANS crude oil.

The proposed change will result in no overall economic benefit to the petroleum industry, but the changes should remove regulatory-induced anticompetitive problems in the marketplace caused by wide variations in refiner crude oil acquisition costs. The impact on individual refiner's costs and prices has been previously discussed.

There will be no change in the total amount of costs which the industry in general can pass through in gasoline prices. While there will be an increase in entitlements costs to refiners of ANS upper tier crude oil, there will be an offsetting decrease in entitlements costs for all other domestic refiners. The impact that these shifts in costs will have on the price of gasoline at the pump is a function of the relative level of competition in the marketplace.

Related Regulations and Actions

Internal: Elimination or modification of the Equal Application Rule may reduce regulation-induced anomalies in the retail gasoline market.

External: None.

Active Government Collaboration

None reported

Timetable

NPRM—Second quarter, 1980
Public Comment Period—30 or 60 days following publication of NPRM
Final Rule—Second quarter, 1980
Regulatory Analysis—in preparation

Available Documents

None

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DOE-ERA

Gasohol Marketing Regulations (10 CFR Parts 211, 212)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) believes that amendments to the motor gasoline allocation and price regulations to clarify the rights and responsibilities of refiners and marketers who enter the gasohol market are significant because of the degree of public interest in the further development of gasohol.

Statement of Problem

Gasoline supplies can be stretched further if increased use is made of gasohol, which is a blend of ethanol (a kind of alcohol) and unleaded gasoline. Because the ethanol in gasohol can be produced from domestic resources such as grain, the President has set increased use of gasohol as a national goal. This would reduce our dependence on foreign oil.

Existing Federal regulations on the allocation of motor gasoline control the distribution of gasoline in the United States. Price regulations also control the ways in which refiners can allocate costs to gasoline in total and to individual grades of gasoline. Unless these rules are appropriate to the growth of the gasohol market, it will be difficult for new and existing businesses to plan production and distribution of gasohol. Therefore, DOE is considering amendments to the regulations which will clarify the criteria under which DOE will assign supplies of unleaded gasoline to blenders for gasohol production, clarify the responsibilities of gasohol producers in marketing gasohol pursuant to the regulations, and amend the ways in which refiners must allocate ethanol costs.

The current regulations do not specify criteria to be employed, or procedures to be followed, to assign unleaded gasoline to potential blenders. The only recourse under the current allocation regulations is to apply for an exception through DOE's Office of Hearings and Appeals (OHA). As the gasohol market grows, this is an inappropriate device for a caseload of the magnitude expected. Furthermore, unless the allocation regulations were amended, gasohol marketers would have to assume that gasohol would have to be allocated by applying the regulations to the unleaded gasoline which constitutes 90 percent of the gasohol blend. This, however, may be entirely inappropriate to the development of a strong and viable market for this product. Finally, applications of the current refiner price rules to gasohol would require that the refiner allocate ethanol costs among all barrels of a grade of gasoline (e.g., unleaded regular gasoline). This would unfairly depress the price of gasohol by attributing some of its costs to other gasoline. All of these problems must be corrected in order to supplement the strong position previously taken by DOE in support of the development of gasohol.

Alternatives Under Consideration

(A) DOE could do nothing at this time, in which case the Office of Hearings and Appeals would still provide an avenue of relief for firms entering the gasohol market. But there are major disadvantages in inaction, including continued uncertainty over rules applicable to gasohol, unleaded gasoline supply dislocation, and a possibly unmanageable caseload for OHA.

(B) Deregulation of gasohol must be considered as an alternative, because price and allocation controls on motor gasoline will expire on September 30, 1981. This would allow gasohol blenders and marketers to compete in the market

for the unleaded gasoline blend stocks they need to mix with ethanol, and would not require a large bureaucracy to implement. However, deregulation of unleaded gasoline for gasohol blending suggests enforcement problems with other unleaded gasoline continuing under controls, because suppliers of unleaded gasoline have a preemptory regulatory obligation to supply unleaded gasoline to their base-period purchasers first before they can sell it on the market.

(C) DOE could amend the allocation and price regulations to provide for an appropriate passthrough of ethanol costs to gasohol, specify the criteria by which DOE will assign supplies of unleaded gasoline to a potential marketer, and create new provisions for the allocation of gasohol within a refiner's system.

DOE believes that both options (B) and (C) are viable. The tentative preferred choice is option (C), providing new pricing and allocation rules for gasohol. This approach will substitute clear general rules for the present case-by-case approach, providing a desired certainty and predictability in the marketplace. While it largely avoids the enforcement problems suggested by deregulation, it results in a significant regulatory burden on a fledgling industry.

Summary of Benefits

Sectors Affected: Gasohol refining; ethanol production; gasohol wholesale and retail trade; and the general public.

Allocation of unleaded gasoline for blending with ethanol to produce gasohol could provide a regulatory framework within which ethanol fuel production could increase, perhaps from the present 60 million gallons per year to as much as 300 million gallons per year by 1982. Gasohol use may eventually reach 3 billion gallons per year, or 3 percent of present gasoline consumption, as a result of this and other measures. In addition, use of gasohol would also reduce dependence on foreign oil. (See the Report of the Alcohol Fuels Policy Review, DOE, June 1979.)

Summary of Costs

Sectors Affected: Refining of unleaded gasoline; and wholesale and retail trade of those refiners' unleaded gasoline production.

Allocation of unleaded gasoline to gasohol blenders reduces the amount of unleaded gasoline available to other distributors. Because we expect ethanol production and blending to occur primarily in the Midwest, near resources to produce ethanol, this rule could result in a shift of gasoline suppliers to the Midwest at the expense of other regions. DOE has not yet determined whether the gasohol, once blended, would flow back to the regions affected by reduced gasoline supplies. However, because the proposed amendments are expected to serve largely as a codification of certain procedures, or modification of those procedures, which are now undertaken by the Office of Hearings and Appeals to avert these costs, we are unable to state definitely that direct costs will occur or, if they do, in what magnitude.

Related Regulations and Actions

Internal: DOE has already provided certain price incentives for the marketing of gasohol. DOE price regulations permit gasohol resellers and retailers to passthrough as product costs the cost of nonpetroleum-based alcohol blended with gasoline (43 FR 24265, June 5, 1978). DOE has also issued a rule to permit refiners to allocate all of the costs of alcohol among the various grades of gasoline (44 FR 69594, December 5, 1979). DOE has issued a rule offering an entitlement benefit (a payment related to the difference in costs between imported and domestic crude) to alcohol producers or gasohol blenders (44 FR 63515, November 5, 1979). An environmental assessment is being prepared and will be used to determine whether an environmental impact statement (EIS) is required.

External: Gasohol marketing is encouraged by the National Energy Act motor fuel excise tax exemption on gasoline/alcohol blends, which is worth 4 cents per gallon of gasohol (at a 9 to 1 ratio) and 40 cents per gallon of ethanol if blended with gasoline. This is equivalent to $16.80 per barrel of ethanol. This exemption will continue through the year 1992 under the terms of the Crude Oil Windfall Profits Tax Act [Public Law 96-223, April 2, 1980, Section 232(a)]. Provisions of various State governments permit whole and partial exemptions from State motor fuel taxes for gasohol, in an attempt to ensure that gasohol is competitively priced.

Active Government Collaboration

DOE is cooperating actively with the Alcohol Fuels Commission on this issue.

Timetable

NPRM—second quarter, 1980
Regulatory Analysis—draft with NPRM, final with final rule
Environmental Assessment—within 30 days after NPRM
Public Hearing—about 45 days after NPRM
Public Comment—for about 60 days after NPRM
Final Rule—about 90 days after NPRM, and EIS if needed
Final Rule effective—30 days after final rule issuance

Available Documents

DOE's Report of the Alcohol Fuels Policy Review, June 1979 (prepared by the Office of the Assistant Secretary for Policy and Evaluation). This document is available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Printed copy—$7.25; microfiche—$3.00.

See the Regulatory Analysis bibliography for an extensive description of available literature.

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DOE-ERA

Incentives to Refine Lower Quality Crude Oil (10 CFR Part 212)

Legal Authority

The Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

There is a continuing decline in the available supply of premium crude oil. To the extent a refiner makes controlled products, there is no incentive under the pricing regulations to reduce dependence on these higher priced, premium crudes by installing new equipment or upgrading existing equipment. This proposal would provide such an incentive.

Statement of Problem

On August 30, 1979, the Department of Energy (DOE) issued a Notice of Inquiry (44 FR 50148) regarding adequate incentives for refineries. The notice was issued in response to requests that the price regulation be modified to provide refineries with an adequate return on new investments in order to promote increased capacity.

Respondents to the notice stated that (1) adoption of a rate of return regulation would be an indication that DOE's regulations were not really expected to expire on September 30, 1981, and (2) decontrol was the best method for encouraging new investments. They also noted that the

pricing rules do not allow refiners to retain the benefits of using lower cost crudes to produce controlled products, thereby discouraging investments and operating changes to increase the use of these crudes.

Currently, the refiner price regulations provide various mechanisms for the recovery of certain investment costs in order to encourage refiners to make needed investments in refineries. The following recovery mechanisms are presently in effect: (1) the capital costs of new refining investments can be depreciated and these depreciation costs can be passed through in higher product prices; (2) the interest cost of borrowed capital may be passed through in higher product prices; (3) the so-called gasoline "tilt" rule, adopted March 1, 1979, provides refiners with the opportunity to passthrough more of their costs of producing gasoline by increasing gasoline prices; and (4) refiners are permitted an additional increase in prices of gasoline that reflects their increased production of unleaded gasoline.

In addition, most refined products are now exempt from price controls, and, if market conditions permit, refiners can retain the benefits of reducing their costs to produce these products.

Comments from the public hearings and DOE's analysis indicated that any regulatory amendment to incorporate a rate of return to encourage investment is not advisable. Further, it is not certain that there is a need for any regulatory incentives to encourage the use of lower quality crudes. Because decontrol will occur in October 1981, there is a long lead time to bring investment projects on line, and market conditions may provide a sufficient incentive for such investments as the better quality crudes become more expensive and less available. We have determined that further investigation is necessary to define the extent and type of refinery investments currently underway.

Alternatives Under Consideration

Upon completion of DOE's investigation of refinery investments, to include consideration of the expiration of price controls by October 1981, a determination will be made whether a regulatory incentive to encourage the use of lower quality crudes is needed. Several alternatives could be adopted. One method would be to allow refiners an added cost passthrough for each additional barrel of lower quality crude oil that they refine. This added cost passthrough would enable refiners to realize some of the cost savings derived from using lower quality crude oil and thereby would provide an economic return on the investment to use such crudes. This method would provide an added value that is proportional to the increase in the volume of lower quality crude actually processed. The disadvantage of this method is that a single value for all refiners may not reflect the actual savings realized by each refiner.

Another alternative would be to allow refiners a credit against the cost saved by supplementing each barrel of high-valued crude oil with a lower quality crude. The credit would be treated as an increased cost under DOE regulations. This alternative would allow refiners to realize the full benefits of the lower cost crude. However, because the added cost would be based on the difference between the actual cost of the crude purchased and an estimated value for the cost of the crude that would have been purchased, it may be difficult to establish or verify.

Two procedural alternatives will be considered if an incentive is to be provided. First, Standby Regulations may be amended. Second, a recommendation may be made that post-Emergency Petroleum Allocation Act legislation include such an incentive program if controls were ever reimposed.

If it is determined that this incentive is not needed, no regulatory action will be taken.

Summary of Benefits

Sectors Affected: Extraction and refining of lower quality crude oil; consumers of petroleum products; and manufacturing of oil refining equipment.

Refiners will be encouraged to invest in new or retrofitted equipment to use lower quality crudes and lower the Nation's average cost of crude. The increased capability to process lower quality crude oil can lead to increased use of lower valued domestic crude oils (e.g., from California and Florida). It can also reduce dependence on, and therefore the cost of, premium imported crude oil. Product prices may respond to these lower crude costs, to the extent that competitive conditions cause refiners to pass on the savings of the lower cost crudes in product prices.

This incentive will create lower costs for refiners, and allow the refiners to retain some of the savings. A reduction of 1 degree API in the average gravity of all crude used in the United States would reduce refiner cost by about $300 to $350 million annually. A 1 percent increase in the average use of sour crudes would reduce refiner costs by $200 to $250 million annually. Under the present limited product control system, about half of these cost reductions would be retained by refiners, and the balance would be used to reduce the maximum lawful selling price of gasoline and propane. The incentive may cause added demand for equipment to upgrade refineries.

Summary of Costs

Sectors Affected: None.

Related Regulations and Actions

Internal: None.

External: Council of Wage and Price Stability Guidelines.

Active Government Collaboration

None.

Timetable

Completion of refinery investment investigation—summer 1980 (further action, if any, will depend on decisions made as a result of the investigation)

Available Documents

Notice of Inquiry—44 FR 50148, August 30, 1979.

Transcripts of Public Hearings: New York, NY, October 2, 1979; Houston, Texas, October 4, 1979.

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DOE-ERA

Motor Gasoline Allocation Regulations Revisions (10 CFR Parts 205, 211)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) motor gasoline allocation program has a significant influence on the energy sector of the Nation's economy. Changes to the overall regulatory scheme can have potential impacts upon every level of supply down to retail outlets and their customers. In addition, if the changes proposed succeed in avoiding future gasoline lines at retail stations, a direct impact will be felt by motorists as a result of the alleviation of adverse economic impacts, such as lost time from work and fuel waste from waiting in queues.

Statement of Problem

The Mandatory Petroleum Allocation Regulations apply to all domestic transactions in motor gasoline. The allocation regulations operate to smooth supply reductions by requiring continuation of historic supplier purchaser relationships. Priorities are formed by establishing allocation levels for all purchasers with reference to volumes supplied during the base period of November 1977 through October 1978.

An allocation system based on historic relationships cannot respond smoothly to recent shifts in demand. A principal means to reflect shifts in demand and changes in marketing techniques are the procedures available for assigning allocations for new retail outlets and adjusting base period volumes, or allocation entitlements. Additional flexibility in the program is provided by the state set-aside program through which governors can reallocate up to five percent of allocated product within their own states and by DOE and refiner redirection authority. However, the evidence to date suggests that these provisions have not been used to equalize regional impacts associated with gasoline shortages.

A contributing factor to some regional supply disparities has been the relative differences in supplier's allocation fractions. These are the primary measures of a supplier's ability to meet the needs of its customers. Areas primarily supplied by firms with low allocation fractions experience greater percentage cutbacks than those supplied by firms having higher fractions.

During the 1979 summer driving season, 18 states and the District of Columbia experienced moderately severe or severe gasoline lines at the retail level, according to DOE's Energy Emergency Information Center. The available evidence suggests that gasoline lines and actual shortages at the retail level occurred mainly in densely populated urban and suburban areas. These areas appear most prone to gasoline lines because travel and gasoline demand patterns appear to have actually shifted during last year's shortage. This shift apparently was the result of less intercity travel and travel to vacation and other rural areas by motorists who became concerned about the availability of gasoline. There was relatively less of a reduction of driving within urban regions, where a lower percentage of the driving is discretionary.

Our tentative view is that if the present allocation system remains unchanged, the same parts of the Nation which suffered most of the gas lines in 1979—mainly urban areas—may again experience lines during a future supply shortage. To date, the allocation system has not provided sufficient flexibility to respond to these apparent demand shifts, and motorists in urban areas have had to bear a disproportionate share of the hardships associated with gasoline shortages. We believe that it is prudent to identify and explore various options for improving the ability of our regulations to manage equitably any future shortages experienced by retail gas stations and their customers.

In addition, we have also become aware of certain unintended effects of our regulations. We are concerned that branded independent retail dealers may be experiencing competitive difficulties as a result of their relative inability to obtain increased allocations for increased demand as easily under our regulations as many reseller-retailer and refiner operated outlets. In our view, a rulemaking proceeding that would identify and explore such apparent inequities is needed to assure that the regulations operate as intended without interfering with the competitive balance existing within gasoline markets at the retail level.

Alternatives Under Consideration

Each of the alternative proposals that may be offered will be explored thoroughly, and extensive opportunity for public comment and discussion will be provided. On the basis of full consideration of each, DOE may determine to adopt some or all of the following proposals, or may determine that no action is warranted and terminate the proceeding.

Among the possible alternatives being explored presently for inclusion in a proceeding to review the overall motor gasoline allocation regulations are:

(1) More restrictive standards for making allocation assignments for new retail outlets, and methods of limiting present interim supply procedures.

(2) An allocation adjustment for use during shortages to make geographical shifts in product to reflect geographical shifts in demand.

(3) Protection of small retailers during a shortage by guaranteeing a minimum allocation level to stations with low base-period uses to maximize the number of stations having product during a shortage.

(4) Clarification of existing regulations to authorize state set-aside officials to require cross-branded deliveries (delivery of a gas from a supplier with one brand name to a seller with a different brand name).

(5) Authorization of reseller-retailers supplying more than one brand to maintain and base deliveries on separate allocation fractions.

(6) Substitution of a more equitable mechanism for the present "unusual growth" provision.

Consideration of the foregoing alternatives is at a preliminary stage of examination and each or all could be modified or deleted prior to issuance of an NPRM. Additional methods of improving the gasoline allocation regulations may also be developed and included within a rulemaking proceeding.

Summary of Benefits

Sectors Affected: Retail gasoline sales outlets in urban areas and their customers; small retail outlets and their customers; and urban gasoline consumers.

Because of the number of alternatives DOE is considering, the benefits and costs of each will be addressed in a regulatory analysis. This analysis is currently under preparation and will be issued in draft to accompany the NPRM. A final version will be issued with the final rule.

Summary of Costs

Sectors Affected: Retail gasoline sales outlets in rural areas and their customers; rural gasoline consumers; new retail outlets.

Related Regulations and Actions

Internal: An NPRM, "Motor Gasoline Allocations; Adjustments and Downward Certification" (44 FR 69962), was issued on December 5, 1979. On April 26, 1980, DOE issued a notice of intent not to adopt as a final rule its principal proposal on downward certification. The alternative proposals remain under consideration.

External: None.

Active Government Collaboration

DOE is actively cooperating with the Small Business Administration in the portions of this proposal concerning assignments for new retail outlets and adjustments for existing retail outlets.

Timetable

NPRM—Second quarter, 1980
Regulatory Analysis—draft with NPRM, final with Final Rule; draft is currently under preparation
Public Hearing—about 45 days after NPRM in Washington, D.C., and several other locations nationwide
Public Comment—for 60 days after NPRM
Final Rule—about 90 days after NPRM
Final Rule Effective—30 days after Final Rule

Available Documents

None.

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DOE-ERA

Natural Gas Curtailment Priorities for Interstate Pipelines (10 CFR Part 580)

Legal Authority

Natural Gas Act, Natural Gas Policy Act of 1978 (P.L. 95-621), §§ 401, 402, 403. Department of Energy Organization Act, (P.L. 95-91), §§ 301(b), 402(a)(1)(E), and 501, 91 Stat. 565. E.O. 11790 (39 FR 23185), E.O. 12009 (42 FR 46267).

Reason for Including This Entry

This rule will implement the curtailment priorities established by the Natural Gas Policy Act (NGPA) and will address, as indicated by our review, any other changes determined to be necessary in the general area of natural gas curtailments. Because of the potentially far-reaching effects of such a rule on interstate pipelines, local distributors, and their natural gas customers, we are including it in the Calendar.

Statement of Problem

Natural gas curtailment priorities deal with the manner in which natural gas will be allocated to customers of interstate pipelines. Under the Department of Energy Organization (DOE) Act, the Secretary of Energy is responsible for the establishment and review of priorities for curtailments. The Secretary of Energy has delegated this authority to the Administrator of the Economic Regulatory Administration (ERA). Under the DOE Act, the Federal Energy Regulatory Commission (FERC) administers and implements the curtailment policies developed by the ERA.

Historically, FERC's predecessor, the Federal Power Commission (FPC), had exclusive Federal jurisdiction concerning curtailment of natural gas in interstate pipelines pursuant to its authority under the Natural Gas Act (NGA). The FPC dealt with curtailment of natural gas on a case-by-case basis. From the rulings issued in these cases, a priority system developed which ranked end users of natural gas from high (last to be curtailed) to low (first to be curtailed). The FPC priority system generally placed residential and small commercial use in the highest priorities and interruptible large volume industrial users in the lowest, first-curtailed priorities.

Several considerations shaped FPC's approach to the curtailment priority system: first, the importance of gas used to protect health, safety, and other human needs; second, the operational difficulty of physically cutting off or reducing service to residential and small commercial customers; and third, the differences in the costs that different kinds of end-users would experience in converting to an alternate fuel.

This review and rulemaking process will reconcile the curtailment priority system that the FPC developed with the provisions of the NGPA that mandate the establishment of certain curtailment priorities. An additional reason motivating the rulemaking is that the existing policy on natural gas curtailment priorities, adopted by the FPC in 1973, has long needed review in the light of current circumstances and requirements.

Specifically, the areas which the review of curtailment priorities will select for focus are as follows:

(1) Essential agricultural uses. Section 401 of the NGPA requires the Secretary of Energy to prescribe a rule restricting interstate pipelines from curtailing the essential agricultural use requirements that the Secretary of Agriculture has certified as necessary for full food and fiber production (44 FR 15642, March 15, 1979). This rule was issued March 9, 1979. Essential agricultural uses may only be curtailed to meet needs of "high priority users" (e.g., schools, hospitals, residences) or when FERC determines, in consultation with the Secretary of Agriculture, that an alternate fuel is economically practicable.

(2) Industrial process or feedstock use. Section 402 of the NGPA directs the Secretary of Energy to prescribe a rule limiting the circumstances in which an interstate pipeline may curtail gas supplies used in an industrial process or as a feedstock. Use as a feedstock refers to gas employed as an ingredient of the end-product, as distinguished from gas used to power production machinery.

(3) Emergency allocation authority. Relevant sections of the National Energy Act (NEA) authorize the President to declare a natural gas supply emergency which would trigger various consequences related to this review. As an example, the President could authorize an interstate pipeline to make emergency purchases from intrastate pipelines under short-term contracts. This authority, while outside the scope of the curtailment priority system itself, must work in concert with it. Therefore, this inquiry will consider the effects of the NEA on the curtailment priority system.

(4) Development of supplemental supplies and reductions in oil imports. The question arises to what extent the ERA should use its curtailment authority to facilitate and encourage the development of supplemental gas supplies or alternative sources of fuel. Facilitation of the development of new energy sources would promote the objective of reducing oil imports.

Alternatives Under Consideration

ERA is considering several alternative approaches to a curtailment priority system. They are as follows:

(1) Maintaining the present system as developed by the FPC while making those changes required by the NGPA.

(2) Developing a curtailment system as in (1) but updating the base period from which requirements are measured in one or more ways.

(3) Relating the incremental pricing provisions of the NGPA to the curtailment priority system. Under this approach, low-priority users of natural gas would be among the first to pay the relatively high cost of additional units of natural or synthetic gas. High-priority users, by contrast, would continue to pay the lower average or "rolled-in" costs of additional increments of gas.

Consideration is also being given to whether the guidelines should apply strictly to all interstate pipelines which transport gas, or whether FERC should be allowed to depart from strict application of the general policy under the ERA rule to account for the differing circumstances of individual pipelines, making adjustments where they are necessary.

Summary of Benefits

Sectors Affected: Interstate pipelines; natural gas distributors; all direct users of natural gas, particularly high-priority users such as agricultural, commercial, and residential users; customers of direct gas users; and the general public.

The benefits and the costs of different curtailment priority alternatives will be presented in the Regulatory Analysis and Draft Environmental Impact Statement accompanying the NPRM to be issued as a result of this review.

Summary of Costs

Sectors Affected: Interstate pipelines; natural gas distributors; direct users of natural gas, particularly low-priority users, such as interruptible large-volume industrial users; and customers of direct gas users.

The costs of curtailments are greater than necessary when gas service is continued to one end user at the expense of another who values it more highly, because that user has to incur a greater expense to offset the effects of curtailment. However, because changes from the norm create confusion and uncertainty, even improvements in curtailment policy may result in added costs if unnecessary expenditures are undertaken to reduce apparent but not real risks, or if established supply patterns are upset. The Regulatory Analysis and EIS will weigh the different costs and benefits for each alternative examined.

Related Regulations and Actions

Internal: "Curtailment Priorities for Essential Agricultural Use," Final rule issued 44 FR 15642, March 15, 1979.

"Emergency Natural Gas Regulations," under consideration.

External: FERC—Incremental Pricing Rules issued under Title III of the NGPA.

FERC—Curtailment Implementation Rules issued under Title IV of the NGPA.

Active Government Collaboration

The Federal Energy Regulatory Commission staff is kept informed of Economic Regulatory Administration activities. The Commission will formally review the DOE/ERA rule, as provided in § 404 of the DOE Act.

Timetable

NPRM—second quarter, 1980
Public comment—60 days following publication of NPRM
Public Hearings—third quarter, 1980 in Washington, D.C., Atlanta, GA, Chicago, IL, Houston, TX, and San Francisco, CA
Final Rule—fourth quarter of 1980
Final Rule Effective—immediately on publication in the **Federal Register**
Regulatory Analysis and Draft Environmental Impact Statement—DOE is preparing and will issue these documents with the NPRM

Available Documents

Final Rule—"Curtailment Priorities for Essential Agricultural Uses," 44 FR 15642, March 15, 1979.

Notice of Inquiry Concerning Review of Natural Gas Curtailment Priorities, 44 FR 16954, March 20, 1979.

Notice of Inquiry Concerning Use of Natural Gas Authorities to Increase Coal and Other Non-Petroleum Fuel Usage and Heavy Oil Production, 44 FR 61243, October 24, 1979.

Public comments on the above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE-ERA

Powerplant and Industrial Fuel Use Act of 1978; Implementing Regulations (10 CFR Parts 500-515)

Legal Authority

Powerplant and Industrial Fuel Act of 1978, 42 U.S.C.A. § 8301 *et seq.* (FUA or Act)

Reason for Including This Entry

The Department of Energy (DOE) believes that these regulations are important because they will have an annual effect of $100 million or more on the economy.

Statement of Problem

The Fuel Use Act (FUA) requires DOE to adopt regulations requiring electric powerplants and major fuel-burning installations ("MFBI" or "installation") above a certain size to reduce or eliminate their use of natural gas or petroleum. The Act contains three general statutory prohibitions:

- New electric powerplants may not be constructed without the capability of using coal or another alternate fuel (a fuel other than natural gas or petroleum) as their primary fuels.
- Existing electric powerplants are prohibited from using natural gas after January 1, 1990, and are, in the interim, prohibited from increasing their proportional use of natural gas above certain specified historic levels.
- New major fuel burning installations and powerplants are prohibited from using natural gas or petroleum as their primary energy source unless an exemption to do so is granted under the Act.

DOE is given the authority to prohibit, at its discretion, certain additional existing powerplants and installations from using oil and gas if these facilities are capable of using coal or another alternate fuel as their primary energy source.

Under FUA, DOE may grant exemptions, based on certain specified criteria, from the statutory prohibitions. In granting exemptions, DOE may consider the cost of compliance and the type of fuel-burning equipment that will be used.

Interim rules were adopted by DOE May 9 and July 11, 1979. Because of the complexity of the subject matter, additional comments were solicited with respect to the definitional and procedural rules, the criteria upon which owners and operators of facilities may petition for exemptions from the Act's prohibitions, and the procedures and criteria pursuant to which DOE will exercise its discretionary prohibition authority. After review of the comments received and experience gained during almost one year of operation of the program, DOE is revising the interim rules and expects to issue final rules in the near future.

Alternatives Under Consideration

DOE is exploring alternative means of simplifying the regulations and reducing the regulatory burden placed upon petitioners. One alternative being considered is an increase in the number of exemptions which could be granted upon certification by the petitioner that he meets the eligibility requirements, rather than requiring a detailed demonstration of evidence. A second alternative DOE is considering is the elimination of the extensive fuel search and accompanying Fuels Decision Report required by the interim rule for certain of the exemptions. DOE is also considering publication (in the future) of a presumptive matrix of alternate fuels and technologies which would identify various fuels and their feasibility on such basis as industry, geographic location, unit size or type, and other criteria. Once such a matrix is published, petitioners would examine only the alternate fuels which are included in that part of the matrix which applies to them.

DOE also proposed for comment and is reviewing alternative cost comparison methodologies for use in calculation of the cost of using alternate fuel compared to the cost of using imported oil. This comparison, known as "the substantially exceeds cost test," is the standard by which a petitioner qualifies for an exemption on the basis of cost under the Act. DOE is considering revising both the standard and the methodology used in this computation in order to simplify the exemption and reduce the regulatory burden placed upon the petitioner and DOE. DOE is exploring the following alternatives:

(1) *Cost Calculation Procedure Adopted in the Interim Rules.* The cost calculation procedures adopted for the Interim Rules require computation of a ratio of the cost of using an alternate fuel to the cost of using imported oil (or

the British thermal unit [Btu] equivalent of natural gas). If this ratio exceeds a specified index, the cost of using alternate fuel substantially exceeds the cost of using imported oil. The costs of using alternate fuel and imported oil are based upon the petitioners' current price of alternate fuel and oil (the latter is subsequently adjusted to reflect imported oil price). For the purposes of these cost calculations, these fuel prices are the same, in real (uninflated) dollars, for the life of the facility. Our judgment as to the change in the future prices is embedded in the index itself.

For the Interim Rules, DOE has set the index at 1.3. As discussed in the preamble to the Interim Rules published on May 17, 1979 (44 FR 28953 and 29603), DOE set this index at 1.3 based upon our judgment as to the social benefits associated with increased alternate fuel use and future increases in the gap between oil and coal prices.

(2) *Variant #1—Ratio with Explicit Trajectory.* Under this variant, DOE would specify an explicit price difference trajectory—the annual percentage rate at which the gap between imported oil and coal prices would increase. The applicant would then adjust the annual cost of imported oil to appropriately reflect the specified increase in the imported oil/coal price gap. The index would then be restricted solely to reflect our judgment of the social benefits associated with increased alternate fuel use.

(3) *Variant #2—Net Present Value with Explicit Trajectory.* Under this variant, rather than computing a ratio of the cost, as in the Interim Rules, the applicant would compute the difference in the cost of using alternate fuel and the cost of using oil. An exemption would be allowed when the cost of using alternate fuel is greater than the cost of using oil; the imported oil price would be adjusted by a specified dollar increment to reflect our judgment of the social benefit of increased alternate fuel use. In addition, as in variant #1, the oil price would reflect the imported oil price, adjusted on an annual basis for specified projected increases in the imported oil/coal price gap.

Summary of Benefits

Sectors Affected: The general public; and coal mining and other alternate fuel industries.

The benefits of the alternative regulations are measured in terms of reductions in oil and gas consumption and the concomitant benefits realized by the Nation's economy.

The purposes of the Act include a reduction in the importation of petroleum, and an increase in the nation's capability to use indigenous alternate energy resources and move toward a goal of national energy self-sufficiency. Other purposes include the conservation of natural gas and petroleum for uses other than electric or other industrial or commercial generation, the encouragement of the use of coal and other alternate fuels as primary energy sources, the conservation of our Nation's supplies of natural gas and petroleum for the benefit of present and future generations, and a reduction in the vulnerability of the United States to energy supply interruptions.

Benefits to be realized by the program involve four primary areas: (1) the effect of an increased use of coal in reducing demand for petroleum and concomitant decreases in the world price of oil; (2) effect of an increased use of coal on United States balance of payments and the domestic rate of inflation; (3) the effect of an increased use of coal on our national security; and (4) the impact of the implementation of the Act on accelerating the use and development of alternate fuels and alternate fuel technologies.

DOE expects the Act to accelerate the use of other alternate fuels besides coal. At this time we cannot quantify these benefits, but increased use of alternate fuels would clearly reduce oil imports, in particular displacing oil where direct burning of coal is environmentally limited. A significant benefit resulting from such a reduction in the U.S. demand for imported oil is the anticipated reduction in world oil prices, or what is more likely, the reduction in the rate of increase in world oil prices. Any reduction in the world oil price path will benefit the United States (and other consuming nations as well) as all crude oil may be obtained at lower prices. Thus, the economic costs that are saved by importing less oil are measured, not solely by the price per barrel at which saved imports would have been imported, but also by the resultant reduction in the price of the barrels that are imported.

Summary of Costs

Sectors Affected: Electric services, and major fuel-burning installations in manufacturing industries which have the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or any combination of two or more such units which have a capability of consuming any fuel at an input rate of 250 million Btu's per hour or greater; and consumers of the products of these industries.

The total costs imposed on firms directly affected by the FUA are generally expected to increase as the level of stringency of the regulations increases as well as over time.

Related Regulations and Actions

Internal: Special Rule for Temporary Public Interest Exemption for Use of Natural Gas (44 FR 21230, April 9, 1979); Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting (44 FR 27606, May 10, 1979). Certification of Use of Natural Gas to Displace Fuel Oil (10 CFR Part 595)

External: FERC—Powerplant Design Capacity (44 FR 38837, July 3, 1979). FERC Order No. 30, Docket No. RM79-34, Transportation Certificates for Natural Gas for the Displacement of Fuel Oil.

Active Government Collaboration

None

Timetable

Final Rule—on definitions, administrative procedures, and new facilities—second quarter, 1980
Final Rule—on existing facilities, third quarter, 1980
Regulatory Analysis—under preparation

Available Documents

NPRM—43 FR 53974, November 17, 1978; 44 FR 5808, January 29, 1979
Comments in response to NPRM
Transcript of hearings from NPRM
(See 44 FR 43176 for listing of notices and rules issued under the Act)

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room 6A-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE-ERA

Proposed Amendments to the Equal Application Rule (10 CFR § 212.83(h))

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

Changes in the gasoline-pricing regulations are necessary to (1) reduce the price disparities between gasoline marketers at the retail level of

distribution and (2) remove the current regulatory constraints which require company operated retail outlets to underprice independent gasoline retailers. These two actions result in serious competitive problems.

Further, E.O. 12044 requires all departments to review existing regulations. The equal application rule has been a regulation subjected to much discussion and some criticism. Accordingly, DOE considers it appropriate to review this rule in light of current market conditions and eventual gasoline decontrol which will occur in October 1981.

Statement of Problem

The Department of Energy (DOE) is proposing to eliminate the equal application rule with respect to, (1) retail sales of gasoline, (2) all sales of gasoline, or (3) all sales of gasoline as long as the price differential between retail prices and other prices does not decrease.

On July 16, 1979 (44 FR 42541, July 19, 1979), DOE issued a final rule concerning the pricing of motor gasoline by independent retailers. The rules adopted for these retailers established simplified means of calculating the maximum lawful selling price of each type or grade of gasoline. In effect, the new retailer price rules state that the maximum lawful selling price for each type or grade of gasoline is the acquisition cost, plus a 15.4 cents fixed cents per gallon markup, plus applicable taxes. The equal application rule with respect to independent retailers' retail sales of gasoline was no longer operative and therefore was deleted.

To prevent price distortions in the retail gasoline market, on July 30, 1979, DOE issued amendments to the refiner and reseller-retailer price rules which limited the maximum lawful retail selling price for gasoline sold by refiners and reseller-retailers at their own retail outlets to an amount approximately equal to that permitted independent retailers. Under this rule, refiners and reseller-retailers may not charge a price at their own retail outlets which exceeds the most recent dealer tank-wagon selling price charged by the refiner or reseller-retailer to the nearest independent retailer, plus 15.4 cents per gallon, plus applicable taxes. Accordingly, the current rules prevent any segment of the retail market from charging inflationary prices and price gouging during a shortage situation.

The equal application rule in some instances may provide a regulatory incentive for certain refiners and reseller-retailers to maintain their selling prices in retail sales of gasoline substantially below those of independent retailers. This creates competitive imbalances in the marketplace which possibly could have serious effects in the long run on the independent sector of the industry.

Accordingly, in the September 17, 1979 NPRM, we proposed alternatives to deal with this possible problem. The limited exception to the equal application rule for refiners' sales at retail and other levels of distribution would be increased. A similar exception would be given to reseller-retailers. The proposed rule would require that any increases in retail prices would be offset by reductions in the prices charged for other sales or the drawdown of "banked" costs.

At the public hearings many refiners and other marketers stated that the proposed rules would not completely remove the regulatory disincentive for them to increase retail prices to avoid undercutting independent retailer competition. This is because, while they would not be required to apply costs equally between retail and other sales within the retail sales category, they would still be deemed to recoup any increase in one retail sale on all other retail sales. Because competition would generally not allow them to raise all retail prices by the same amount, the disincentive to increase retail prices under the proposed limitation to the equal application rule would still occur.

Although the NPRM would not address all competitive problems with the equal application rule, DOE has issued a final rule adopting the proposed changes as an interim measure to allow many refiners and reseller-retailers to raise retail prices and thereby mitigate the anticompetitive effects of the previous regulations. This rule, however, will not increase refiners' overall revenues.

Many commenters specifically suggested that the most effective method of meaningfully addressing this problem would be to eliminate the equal application rule in its entirety with respect to all gasoline sales, or at a minimum do so at the retail level. As a result of these comments, and our further analysis of this issue, a further NPRM is being developed.

Alternatives Under Consideration

Under the first alternative, the equal application rule would only be eliminated for retail sales of gasoline. This would allow firms to raise retail prices for some retail sales without being deemed to have recouped increased costs for other retail sales.

The advantage of the alternative is that firms would be less constrained by the regulations from increasing particular retail prices, thus increasing competition with independent retailers. The disadvantage is that it would postpone price adjustments for all other sales (the vast majority of most refiner sales) that will occur after deregulation and will continue the anticompetitive impacts of the current regulations until decontrol occurs.

The second alternative would eliminate the equal application rule with respect to all sales by refiners, resellers, and reseller-retailers. The elimination of the equal application rule in its entirety would be advantageous because it would permit firms to allocate increased costs at the various levels of distribution without regard to historic differentials between or within classes of purchaser (in other words, firms would be free to alter the price differentials between or within classes of purchaser without being deemed to have recouped with respect to all customers the highest increased cost passed through to any customer); allow price adjustments to markups that have been frozen since May 1973; allow cost-justified price adjustments for changed marketing practices; allow refiners to adjust their downstream prices (at dealer tank wagon [DTW] or company operated stores) to match prices that are allowed their branded wholesale or retail competitors; prevent claims of underpricing and customer piracy by those competitors (who strongly support allowing refiner direct sales prices to increase at DTW and retail levels); increase reseller-retailers competitive position and viability to the extent that increased costs are used to increase prices at company-operated retail stores and fewer costs will be available to be passed through in resales; diminish the possibility of gasoline lines forming at company-operated retail outlets that have lower prices dictated by the regulations; and reduce public confusion at wide price differentials. The proposed changes would not allow any greater recovery of increased costs by refiners than they would otherwise be entitled to recover.

Disadvantages of this alternative are that it would allow a faster passthrough of banked costs to the extent they are not otherwise constrained by other government programs or agencies, such as the Council on Wage and Price Stability. However, it would lessen the possibility of future radical price increases to the extent banks do not continue to build and would allow refiners to recover increased costs as market conditions allow.

The third alternative is to eliminate the equal application rule for all gasoline sales, provided that the increased flexibility is not used to decrease the price differential between retail sales and other sales. The advantages of this alternative are that it would allow refiners to increase retail prices (only) to roughly match those of their independent retail competitors; not raise concerns of wholesalers or retail chain operators that refiners will use price to force them out of business by under-pricing retail sales; improve the competitive position of wholesale customers to the extent refiners use increased costs at retail making fewer costs available to increase wholesale prices; encourage more realistic retail prices and conservation of gasoline; and give independent retailers a better chance to realize their maximum allowable margins, as refiners would be able to pass through more of their increased costs at retail.

The disadvantage of this alternative is that it may postpone other inevitable price adjustments that will occur after deregulation.

Summary of Benefits

Sectors Affected: Independent gasoline retailers (including retail operations of independent refiners and resellers); chain retailers; refiners; reseller-retailers (wholesaler-retailers); and wholesalers.

The effect of the proposal would be to ameliorate price distortions in the retail gasoline market by preventing regulatory induced undercutting by refiners and reseller-retailers of their independent competitors. This would have the effect of enhancing competition, permitting independent retailers a better chance to receive margins currently permitted by DOE regulations.

Summary of Costs

Sectors Affected: Purchasers of gasoline at retail.

The effect of such a rule would be to allow refiners and reseller-retailers to pass through greater increased costs at retail than at other levels, or pass through greater increased costs in some retail markets than in others, without having the differences deemed to have been recouped.

The proposed rule would not increase the potential revenues of refiners and reseller-retailers because it would not increase the total amount of increased costs that could be passed through under the current regulations. Rather, the rule would permit refiners and reseller-retailers to recoup their increased costs in a different and more flexible manner, and to establish their prices to better reflect market conditions.

Any monetary effects of the proposed regulations are currently under study by DOE, but are only considered significant to the extent refiners may be able to recover banked costs at a greater rate, and that independent retailers may be able to increase their current margins.

Related Regulations and Actions

None reported

Achive Government Collaboration

None reported.

Timetable

Final Rule—second quarter, 1980
Further NPRM—third quarter, 1980
Public Comment—following further NPRM
Draft Regulatory Analysis—under development by DOE

Available Documents

NPRM—44 FR 54902, September 21, 1979
Public Comments on above NPRM
Transcripts of Public Hearings

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA–142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE–RESOURCES APPLICATIONS

Outer Continental Shelf (OCS) Sequential Bidding Regulations (10 CFR Part 376)

Legal Authority

Department of Energy Organization Act, §§ 302(b)(1) and 303(c), 42 U.S.C. §§ 7152(b)(1) and 7153(c); and the Outer Continental Shelf Lands Act, as amended § 8(a)(1), 43 U.S.C. § 1337(a)(1).

Reason for Including This Entry

This entry is included because sequential bidding would improve the competitive position of smaller firms for Outer Continental Shelf (OCS) oil and gas leases.

Statement of Problem

The present cash bonus-fixed royalty bidding system for OCS leases requires the Federal government to offer all drilling areas (tracts) included in an OCS lease sale to bidders at the same time. All bids must be sealed and accompanied by one-fifth of the cash payment the bidder intends to pay for the lease (cash bonus). Bids are opened, announced publicly, and recorded, but no bids are accepted or rejected, and no leases are awarded at that time. Within sixty days of the opening of bids, the Department of the Interior (DOI), which administers this program, decides whether to accept the bid from the highest qualified bidder for each tract. Bids that DOI does not accept within the 60–day period, it rejects. The Department returns the money that was deposited on rejected bids.

The present bid-opening system requires a substantial commitment of cash resources by firms to particular OCS lease sales; this may strain the ability of some firms to participate in the OCS leasing process. Bidders must be prepared to support each bid immediately with a deposit of one-fifth of the total cash payment. Opening all the bids at the same time may limit the number and magnitude of bids that an individual firm is able to submit. In addition, a firm might win on a greater number of tracts in an OCS lease sale than it had anticipated, which could call for bonus payments that exceed the firm's financial resources, forcing it to search for additional sources of capital.

The Department of Energy (DOE) expects that smaller firms are more subject to constraints of this type than larger firms. Some small companies may have withdrawn from competition for tracts because of financial barriers. In addition, the simultaneous nature of the bidding process may tend to preserve an informational advantage that larger firms may have over smaller ones because they can afford more extensive exploration in advance of a lease sale.

Under § 302(b)(1) of the Department of Energy Organization Act, DOE has authority to promulgate regulations which foster competition for Federal leases, to ensure the public a fair return on its resources. Thus, DOE is interested in alternative bidding mechanisms which may improve the ability of smaller companies to compete in these lease sales.

Sequential bidding would address these problems by dividing an OCS lease sale into at least three bidding sessions, separated by a minimum of 48 hours. Tracts would be assigned to bidding sessions through a random selection procedure; each bidding session would consist of an approximately equal number of tracts. Cash bonus deposits accompanying the highest bid on each tract would be retained by DOI until it made a decision

on awarding leases. DOI would return all other cash bonus deposits to the bidders that submitted them immediately after the conclusion of each bidding session. Arrangements for disclosure of bids are presently being discussed within DOE and DOI; they include no information release, announcement of the highest bidder, and disclosure of all bidders and amounts of bids at the end of each bidding session.

Alternatives Under Consideration

Possible alternatives to sequential bidding which we have been considering include a "bid limit" option, which would allow bidders to set a "maximum aggregate winning cash bonus limit" for the lease sale. This would enable a firm to bid on tracts with the assurance that its winning bids would not exceed an amount which it had stipulated.

Another possible approach that might achieve results similar to sequential bidding would be to hold lease sales at shorter intervals, each sale with approximately the same number of tracts. However, in order to reduce a bidder's financial exposure as effectively as we think sequential bidding could do, 18 to 24 lease sales would be necessary each year compared with five to six lease sales now being held annually. The administrative burdens on DOI associated with this alternative would be severe.

Retention of the present bid opening system is another alternative. This alternative would preserve a maximum degree of simplicity in administrative matters, but would not address the problems we have discussed above.

DOE has proposed that sequential bidding be tested on an experimental basis. This will allow bidders to become familiar with the process, and allow DOE and DOI to study bidder reactions. This experimental approach is an innovative alternative to an immediate move to an unproved new bidding process.

Summary of Benefits

Sectors Affected: Off-shore oil and gas extraction (including independent producers and joint business ventures), particularly small firms; and the general public.

DOE expects sequential bidding to foster competition for Federal OCS leases, partially by easing financial barriers to participation, and partially by reducing informational advantages that major OCS participants currently have. Returning cash bonus deposits of unsuccessful bidders after each session would allow them to use returned funds in the subsequent bidding session. Announcing the amount of the high bid for each tract will provide information on the value other bidders have placed on tracts as a result of their exploration. These changes will tend to equalize the informational and financial position of smaller firms participating in leasing competition.

DOE estimates that the application of sequential bidding to an OCS lease sale would yield greater revenue to the Government because of increased competition for OCS leases.

The use of sequential bidding primarily affects current and prospective bidders for OCS leases. DOE anticipates that smaller firms would benefit more from sequential bidding than would the major participants in OCS lease sales.

Summary of Costs

Sectors Affected: DOE, DOI.

The use of sequential bidding imposes a relatively minor administrative cost on DOE and DOI in performing additional analyses and extending the actual conduct of the sale over a minimum of three days.

Related Regulations and Actions

Internal: Final OCS bidding system regulations, published at 45 FR 9536, February 12, 1980 (10 CFR Part 376).

External: Current OCS lease sales bidding procedures, administered by DOI (43 CFR 3300).

Active Government Collaboration

Department of the Interior. The Department of Justice and the Federal Trade Commission are advising on competition issues.

Timetable

Final Rule—second quarter, 1980
Final Rule Effective—60 days after it is issued

Available Documents

Draft Regulatory Analysis, "Increasing Competition for Federally-Owned Mineral Fuels by Altering the Present Bidding Process to Allow for Sequential Bidding," (September 2, 1979).

NPRM—44 FR 52842, September 11, 1979

Public comments in response to NPRM.

All documents are available in the DOE Freedom of Information Reading Room, Room GA-142, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Agency Contact

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DOE-RA

Profit Share Bidding System Regulations for Federal Outer Continental Shelf (OCS) Oil and Gas Leases (10 CFR Parts 376 and 390)

Legal Authority

Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. § 1331 *et seq.*), as amended by Outer Continental Shelf Lands Act Amendment of 1978, 92 Stat. 629. Department of Energy Organization Act, P.L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 *et seq.*).

Reason for Including This Entry

This entry is included because the adoption of the profit share bidding system would improve the competitive position of smaller firms for OCS oil and gas leases.

Statement of Problem

The Department of the Interior (DOI) currently leases Outer Continental Shelf (OCS) oil and gas tracts to developers. The Department of Energy (DOE) is authorized to promulgate regulations to foster competition for OCS leases and implement alternative bidding systems. The present cash bonus-fixed royalty bidding system places a heavy reliance on large front-end cash payments by bidders (the cash bonus) as the principal means of selecting a winning bidder and obtaining a fair price on the public's property. The requirements for large cash bonus payments may inhibit competition for OCS leases by preventing smaller firms from participating as fully as they might in OCS development. The fixed net profit share bidding system is designed to shift government return away from initial cash bonuses into deferred payments which, in the case of this bidding system, would be based on net profits from the actual production of oil and gas.

In connection with a fixed net profit share bidding system, we must establish rules to govern the calculation of net profits. Any regulations will, therefore, include accounting procedures designed to permit lessees to calculate net profits in a uniform manner, as well as procedures for audits by the Federal government and challenges to any adjustments the government might make as a result of such audits.

Alternatives Under Consideration

A net profit share bidding system requires a procedure for measuring revenue from oil and gas produced from a lease. In addition, a means to identify and measure the costs of lease operations must be specified, and those costs must be subtracted from revenues to determine the net profits attributable to a lease. The need to identify costs makes the fixed net profit share system considerably more complex than bidding systems that have been previously used for OCS lease sales.

DOE is now examining several different profit sharing systems. All of these basic systems set rules for adding up costs and for subtracting these costs from production revenue to determine net profits. The systems differ primarily in the method by which each allows the successful bidder to recover money invested during the exploration and development stages of a lease term. Those differences involve technical accounting issues. A complete description and comparison of these systems is available elsewhere (see "Available Documents").

We have chosen the proposed accounting procedures to conform, as closely as practicable, with the accounting procedures for joint off-shore operations developed by the Council of Petroleum Accountants Societies of North America (COPAS). The COPAS procedures are an appropriate base for the cost identification portion of the accounting system because: (1) the net profit share lease relationship is analogous to a joint working interest agreement between private parties (i.e., an agreement that shares at a fixed rate all costs and revenue); (2) COPAS procedures identify, measure, and allocate costs for direct billing of joint interest partners; hence, the procedures are not complicated by rules for capitalization or other guidelines for disposition of costs that would be contained in a complete financial accounting procedure; and (3) the COPAS procedures or minor variations on them, are in widespread use; thus, their adoption by DOE would minimize the accounting burden and interpretation problems for the industry.

Summary of Benefits

Sectors Affected: Off-shore oil and gas extraction (including independent producers and joint business ventures), particularly small firms; and the general public.

The profit share bidding system should make it possible for smaller firms to compete more effectively for OCS leases and to free funds for exploration that previously have been tied up in cash bonuses. Because the system will normally require smaller payments from less productive OCS leases than would be the case under a fixed royalty system, we believe that the regulation will foster the development of smaller oil and gas fields, maximize production of oil and gas from the OCS, and increase the total revenue to the public from the lease of public OCS property.

Summary of Costs

Sectors Affected: Offshore oil and gas extraction (including independent producers and joint business ventures); and DOI–USGS.

The administration of the regulation is the responsibility of the U.S. Geological Survey (USGS) within DOI. Use of this bidding system will result in greater administrative responsibilities for the USGS, which will have to make determinations on the allowability of certain costs, and perform periodic audits.

Firms seeking leases under the net profit share system will be required to comply with the accounting and reporting procedures established by these regulations. A preliminary study of industry account practices indicates that most firms that might participate in profit share leasing already use internal accounting procedures that can identify and assign costs to individual OCS tracts they have leased. Thus, the profit share system would impose periodic reporting requirements, but would not substantially alter internal accounting operations.

Related Regulations and Actions

Internal: Final OCS bidding regulations, (10 CFR Part 376)

External: Regulations of the Department of the Interior regarding OCS leases (43 CFR 3300).

Active Government Collaboration

As required by § 303(b) of the DOE Act, we consulted with the Secretary of the Interior on these proposed regulations and gave him 30 days to comment formally on them. The Secretary of Interior made preliminary comments on initial drafts of these regulations, and formally reviewed the final draft.

Timetable

Final rule—May 15, 1980
Regulatory Analysis—

Available Documents

Public comment period closed March 7, 1980; comments available.

NPRM and draft Regulatory Analysis, 44 FR 70390, December 6, 1979.

"Evaluation of Profit Share Leasing System," draft, dated March 1979.

This document is available from the Leasing Policy Development Office, Room 2317, Federal Building (Mail Stop 3344), Department of Energy, 12th St. & Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Agency Contact

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DOE–RA

Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales. (10 CFR Part 378)

Legal Authority

Department of Energy Organization Act, §§ 302(b)(2) and 303(c)(1), 42 U.S.C. §§ 7152(b)(2) and 7153(c); Mineral Lands Leasing Act, §§ 2(a), 7(a) and 32, 30 U.S.C. §§ 201, 207 and 189, and the Mineral Leasing Act for Acquired Lands, §§ 3 and 10, 30 U.S.C. §§ 352 and 359.

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because the regulations it is proposing are intended to increase competition for Federal coal leases, and thereby encourage the development of coal resources in an efficient and timely manner. The regulation affords smaller companies opportunity to compete successfully in coal lease sales, and encourages bidding on tracts that would not otherwise receive bids under the traditional system.

Statement of Problem

On August 4, 1976, Congress enacted the Federal Coal Leasing Amendments Act of 1976 (FCLAA, P.L. 94–377, 90 Stat. 1083) which amended the Mineral Lands Leasing Act of 1920 (30 U.S.C. § 181 *et seq.*). The legislation addressed eight major problems of the then existing Federal coal leasing program. These problem areas were: (1) speculation; (2) concentration of holdings; (3) inadequate return to the public; (4) need for environmental protection, planning and public participation; (5) adverse social and economic impacts; (6) need for information; (7) need for maximum economic recovery; and (8) military lands.

One of the nation's most abundant sources of energy is coal. However, there has not been general leasing of Federal lands for coal production since

1971. Under regulations published by the Department of Interior (DOI) on July 19, 1979 (44 F.R. 42585), Federal coal leasing is scheduled to resume in January 1981.

The proposed regulations address some of the above noted problems, goals, and changes in the law by establishing coal bidding systems and procedures to be used by the government at coal lease sales. These bidding systems and procedures can be used to achieve some of the goals of the FCLAA (i.e., to discourage speculation and concentration of holdings and to ensure receipt of a fair return to the government) and the National Energy Plan.

On August 4, 1977, Congress enacted the Department of Energy Organization Act (DOE Act, 42 U.S.C. § 7101 *et. seq.*). Section 302(b) of the DOE Act gave DOE a role in Federal coal leasing by transferring to the Secretary of Energy the functions of the Secretary of Interior to promulgate regulations for among other things, the implementation of alternative bidding systems authorized for the award of Federal leases. Accordingly, DOE is proposing promulgation of these regulations pursuant to section 302(b) and 303(c) of the DOE Act, sections 2(a), 7(a) and 32 of the MLLA, and §§ 3 and 10 of the MLAAL.

Alternatives Under Consideration

DOE has proposed three alternative bidding systems: (1) cash bonus bid with a fixed royalty; (2) royalty bid with a fixed bonus; and (3) cash bonus bid with a sliding-scale royalty.

The first bidding system proposed is the cash bonus bid with a fixed royalty. Under this system the Department of the Interior (DOI) fixes the royalty rate in advance of the lease sale at not less than 12.5 percent, and firms competing for coal leases bid a cash bonus (a lesser royalty rate may be allowed in the case of coal removed by underground mining operations). The highest cash bonus bid for a tract wins the lease, provided the bid exceeds a minimum level established by the U.S. Geological Survey prior to the sale. This bidding system is the one historically used in competitive sales of Federal coal leases. It places heavy emphasis on initial commitment of capital by the bidder, although this requirement has been somewhat alleviated by the provision for deferred payment of the bonus. However, it can discourage participation by smaller companies, which may reduce competition and limit the number of bids per tract. Primarily for these reasons, bidding systems using larger contingency (royalty and profit share) payments have received considerable attention as alternatives to the cash bonus system.

The second proposed bidding system is the royalty bid with a fixed cash bonus. Under this system, DOI fixes the cash bonus at a nominal level prior to the sale and the bid variable is the royalty rate that will apply if the lease is productive. Because royalty bidding de-emphasizes the cash bonus, it encourages greater participation by smaller companies. There is no immediate penalty to the bidder for increasing this royalty bid. However, there is a danger inherent in this system that a bidder will increase his royalty bid in an attempt to win the lease only to find that the royalty rate is too high to permit him to develop the resource economically. In sum, while this system reduces initial financial requirements for engaging in the bidding process, there is a substantial risk that winning royalty bids will be "too high," and will prevent resource development for smaller or marginal reserves.

The third bidding system which DOE is proposing is the cash bonus bid with a sliding-scale royalty. This system uses a cash bonus bid variable, but the royalty rate that applies for each time period is based on the value of production from the lease during the time period. Several methods are available for calculating the applicable royalty rate. When compared with the cash bonus and fixed royalty system under similar conditions, the sliding-scale system tends to reduce the expected cash bonus required to win a lease. Also, when compared to the royalty bid system, the sliding-scale system tends to reduce the risk that smaller reserves will not be developed. The reduced cash bonuses should encourage bidding by smaller companies and could entice firms to bid on tracts that would not otherwise receive bids under the traditional system.

No single system is invariably superior to all other systems given the wide range of economic, geological, and engineering conditions which might be experienced. In individual sales, specific sale and tract conditions and the relative importance placed on the various (and often competing) legislative and energy policy objectives will dictate which is the most appropriate bidding system.

In addition to the three bidding systems outlined above, intertract competition, a bidding procedure, is also being proposed in these regulations. Under the intertract competition bidding procedure DOI offers a greater number of tracts for lease sale than are to be leased. Bids are received on all tracts offered for lease sale and are submitted on a standard measure of value, e.g., dollars per ton of coal reserves. Leases are awarded to the highest bidders until the desired level of leasing is achieved, e.g., 1 million tons of coal. Because only a fraction of the total tracts offered will be leased, bidders are placed in competition not only with each other for the same tract, but also with the highest bidders on all tracts that are part of the lease sale. DOE believes that an intertract competition procedure will increase competition in coal leasing and provide a means of selecting tracts for leasing. However, this procedure may cause DOI additional administrative problems, including larger lease sales, more costly environmental impact statements, and tract evaluations for a much larger number of tracts.

Summary of Benefits

Sectors Affected: Coal mining; and the general public.

DOE anticipates that the regulations will improve the coal leasing program. They are designed to serve several purposes:

(1) increase return to the Federal government for its resources;

(2) increase competition for Federal leases;

(3) encourage development of coal resources in an efficient and timely manner;

(4) discourage speculation; and

(5) discourage concentration of lease holdings.

In addition they will carry out the intent of the DOE Organization Act, the Mineral Lands Leasing Act, and the Mineral Leasing Act for Acquired Lands, because they will foster competition and implement alternative bidding systems for Federal leases. The public will also benefit if the revised bidding system regulations do a better job of meeting the stated objectives because coal production and availability will increase while costs are held at reasonable levels.

Summary of Costs

Sectors Affected: DOI.

DOE anticipates no significant additional costs to the government as a result of this regulation. DOI's administrative costs may increase slightly if the intertract competition bidding procedure is used. Also, the Department of the Interior has indicated that the U.S. Geological Survey, prior to actual use of a sliding scale royalty bidding system in a lease sale, will analyze the administrative costs associated with that system.

Related Regulations and Actions

Internal: Coal production goals have been developed by the Leasing Policy

Development Office, and are currently being updated to reflect development of synthetic fuels.

External: Regulations of the Department of the Interior regarding coal leasing, 43 CFR Part 3500.

Active Government Collaboration

The Departments of the Interior and Justice have reviewed the proposed regulations, in accordance with the provisions of the DOE Act.

Timetable

NPRM publication—late May 1980
Public Comment—within 60 days after NPRM
Final Rule—August 31, 1980
Final Rule Effective—60 days after issuance of Final Rule

Available Documents

We have prepared a draft regulatory analysis entitled "Coal Bidding Systems Regulations" and it is available, along with the proposed regulation, from the agency contact listed below.

All documents are also available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GB-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Agency Contact

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhood Voluntary Associations and Consumer Protection

DEPARTMENT OF ENERGY

Conservation and Solar Applications

Energy Performance Standards for New Buildings

Please see text of joint HUD and DOE entry under DOE–CS on page 36856.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Fuel Economy Standards for Model Year 1983–85 Light Trucks (49 CFR Part 533*)

Legal Authority

Motor Vehicle Information and Cost Savings Act, § 502(b), 15 U.S.C. § 2002.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks this rule is important because of its impact on the automotive industry, the public, and energy consumption.

Statement of Problem

In 1978, roughly half of the total petroleum consumed in the United States was used for transportation. The light truck fleet, which includes vehicles such as conventional pickups and vans, consumed approximately 20 percent of that amount. During the past ten years, light truck sales have grown dramatically. Sales recently have declined, in part because of the poor gasoline mileage of these vehicles and the rising price of gasoline. Nevertheless, we expect light trucks to account for 20 percent of all vehicle sales annually because of the demand for multi-use vehicles. Such sales mean that light trucks will continue to consume substantial amounts of fuel.

Congress set fuel economy standards for passenger cars for model years 1978–80 and 1985 and thereafter, and directed NHTSA to establish standards for model years 1981–84. Without similar fuel economy standards for light trucks, the gap between the improving fuel efficiency of passenger cars and the low fuel efficiency of light trucks would widen, contrary to the national objective of fuel conservation. In response to the Congressional mandate of Title V, Improving Automotive Efficiency, of the Motor Vehicle Information and Cost Savings Act (the Act), NHTSA already has established fuel economy standards for light trucks in the 1979–82 model years. NHTSA published the 1982 model year standard in the **Federal Register** on March 31, 1980 (45 FR 20871) and has proposed ranges of possible standards for 1983–85.

Alternatives Under Consideration

The final fuel economy standards for light trucks for model years 1983–85 must satisfy the statutory criterion for maximum feasible average fuel economy and must reflect technological feasibility, economic practicability, the impact of other Federal standards for motor vehicles, and the Nation's need to conserve energy. Based on the results of the Agency's preliminary regulatory analysis, we have proposed the following ranges of possible performance standards for 1983–85 model years. The final standards will most likely be within these ranges. Manufacturers can decide how they want to meet the standards.

Proposed Fuel Economy Standards for Light Trucks in 1983–85 Model Years

Model year	Vehicle miles per gallon (mpg)	
	2-wheel drive	4-wheel drive
1983	18.0–20.0	15.6–18.0
1984	18.8–21.4	16.1–19.3
1985	19.7–22.4	16.2–19.9

Summary of Benefits

Sectors Affected: Buyers of new light trucks; the general public; and suppliers of materials and components that improve fuel efficiency.

NHTSA estimates that the new fuel economy standards for model year 1982 light trucks and the standards proposed for light trucks in the 1983–85 model years will save between 11 and 17 billion gallons of gasoline more than the standards for model year 1981 light trucks. The Nation could save between $3.5 billion and $5.1 billion in 2005 (at the July 1979 price of $23 per barrel for imported oil). The buyer of a 1985 model year truck meeting the proposed fuel economy levels would save between $510 and $1,120 (in 1979 dollars) over the life of the vehicle compared to a buyer of a truck meeting the 1981 model year standards.

Summary of Costs

Sectors Affected: Manufacturing of light trucks; suppliers of materials and components which reduce energy efficiency; buyers of new light trucks; petroleum production and refining; and State and local governments.

NHTSA is currently developing detailed information on the costs associated with these fuel economy standards. Based on preliminary information, the Agency estimates that the average retail price of a model year 1985 vehicle compared to a model year 1981 vehicle would increase by $350 to $615 per vehicle. However, the two major economic issues in this rulemaking are the marketability of new, more fuel-efficient models and the financial capability of the industry to produce these new models.

The general economic effect would probably be as follows. Vehicle manufacturers would incur increases in capital expenditures and variable manufacturing costs to implement technologies for fuel efficiency. The absolute amount of such increases depends upon the level of the standards. Material suppliers would experience changes in demand. For example, the substitution of aluminum for steel would

increase the demand for aluminum and reduce the demand for steel. Components for new vehicles, such as computerized controls to improve engine efficiency, may be installed. Thus, there would be a greater demand for these items. The petroleum industry would face a reduced increase in demand for gasoline. State and local governments would face a lower rate of increase in revenue from gasoline taxes due to a decrease in the rate of growth of the demand for gasoline. The initial purchase price of light trucks may increase due to potentially higher manufacturing costs.

NHTSA does not anticipate that the standards will have a significant effect on employment. The effect of the standards on the gross national product (GNP), inflation, and urban areas will depend directly on the price and availability of gasoline, and on the level of fuel economy set in the standards.

Related Regulations and Actions

Internal: NHTSA has already issued standards for fuel economy for light trucks in model years 1979–82 (49 CFR 533).

External: The Environmental Protection Agency (EPA) has issued regulations governing how fuel economy in motor vehicles is to be measured (40 CFR 600). EPA also has issued regulations governing emissions from light trucks in 1983 and later model years (44 FR 40784, July 12, 1979). The Federal Trade Commission has issued guidelines governing the advertising of fuel economy for motor vehicles (16 CFR 259).

Active Government Collaboration

NHTSA coordinates its program for fuel economy standards principally with the Department of Energy and the Environmental Protection Agency. NHTSA also reviews the program with the Council on Wage and Price Stability.

Timetable

Regulatory Analysis—will accompany Final Rule
Final Rule—December 1980

Available Documents

NPRM—44 FR 77199, December 31, 1979
Draft Regulatory Analysis
NHTSA Docket No. FE 78–01; Notice 1
All documents are available for review in the Docket Section, NHTSA, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590.

Agency Contact

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FEDERAL ENERGY REGULATORY COMMISSION

High-Cost Natural Gas Produced from Tight Formations (18 CFR Parts 271*, 273*, and 274)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301 *et seq.*

Reason for Including This Entry

The Federal Energy Regulatory Commission (Commission) thinks that this rule is important because it encourages production of natural gas from unconventional sources. So-called "unconventional" or "high-cost" gas represents an important and abundant domestic energy resource and can help in our national efforts to become energy self-sufficient.

Statement of the Problem

Unconventional gas, while abundant, can be discovered and produced only at extraordinary risks or costs.

The purpose of this rule is to encourage the development and production of one type of unconventional gas—"tight formation gas"—by means of a high incentive price. President Carter expressly urged the establishment of such a new incentive rate for tight formation gas in his energy address to the Nation on July 16, 1979.

Tight formation gas is found in a fairly common geological structure known as a "tight formation" or "tight sands." This geological formation is characterized by low permeability—the hydrocarbon-bearing rock is extremely dense and tightly packed, not loose or sandy—causing wells drilled into gas-bearing tight formations to produce generally at very low rates.

The interim regulations promulgated in this rule implement the Congressional authorization to the Commission in § 107(b) of the Natural Gas Policy Act of 1978 (NGPA) to set a "special price" which is "necessary to provide reasonable incentives for the production of . . . high-cost natural gas." The regulations also contain guidelines for jurisdictional agencies and the Commission to identify and formally designate tight formations, and define which wells drilled into tight formations will qualify for the incentive price. Under the interim rule most new wells drilled into designated tight formations will be eligible for the incentive price.

One threshold problem is distinguishing, on the basis of geological data, true tight formations from other types of formations. The interim regulations provide that the appropriate agency in each State may recommend formations within that State that meet Commission specifications, and therefore may be eligible to be designated by the Commission as tight formations. With the recommendations, the jurisdictional agency must submit supporting geological and engineering data, information locating all wells which have produced from the recommended formation, and other relevant data. After public comment, the Commission will formally designate the eligible formations.

The guidelines for identifying tight formations set forth in these interim regulations focus on permeability, gas productivity, and production of associated oil. Eligibility of a formation under the permeability and production standards need not be proven on a well-by-well basis. Formal designation of a specific tight formation will be based on a jurisdictional agency's and this Commission's assessment of the general characteristics of the formation.

In order to qualify for the incentive price, a well drilled into a designated tight formation must have been commenced on or after July 16, 1979. This date was selected in recognition of the President's policy initiative on tight sands.

The Commission has decided initially to set the maximum lawful price for natural gas produced from a new well in a tight formation at 150 percent of the Congressional ceiling price, set in the NGPA, for gas from a new, conventional onshore production well.

Alternatives Under Consideration

The Commission is soliciting further comments on the incentive price for this tight formation gas and may raise the price ceiling when more information concerning supply elasticity and availability of drilling rights is available. If comments or further information show that higher prices are necessary to encourage development of tight formations, the Commission will increase the price ceiling. However, the Commission does not intend to decrease the ceiling price for tight formation gas produced from new wells below 150 percent of the maximum lawful price established in § 103 of the NGPA unless the Commission finds it necessary to

reduce the incentive price for prospective infill drilling.

The interim rules apply to new wells. However, substantial amounts (at least 100 trillion cubic feet) of tight formation gas may be trapped "behind-the-pipe" in reservoirs penetrated by old wells but never tapped. Although new wells would not have to be drilled to produce this gas, an incentive price may be required to encourage production of this gas.

Accordingly, the Commission is considering an additional related proposal to create a special incentive price for production of this incompletely or partially developed gas. The price would equal the incentive price which Congress fixed for conventional development under § 103 of the NGPA. The Commission is also soliciting comments on this proposal.

The Commission also has proposed to permit a ceiling (equivalent to the price ceiling described in § 103 of the NGPA) on tight formation gas produced from an old well which did not produce from the tight formation prior to July 16, 1979, and which is subject to a negotiated contract price.

Most of the comments to the NPRM on these interim regulations suggested that the Commission adopt a commodity value price-setting approach. This means that the maximum lawful price would be tied to the price of comparable, alternative fuels, such as Mexican or Canadian gas, or OPEC oil imports.

The comments did not, however, provide information to demonstrate that such a price is in fact necessary to encourage production—the standard enunciated in § 107 of the NGPA. Despite urgings in comments submitted by the Environmental Protection Agency and the Council on Wage and Price Controls, the Commission has not been able to make the finding of necessity which is needed to adopt the suggested commodity value pricing. Moreover, the Commission also is concerned that commodity-based price-setting might divert production activities from conventional formations, leading to the production of less gas on a nationwide basis than would occur if a more moderate price ceiling were adopted.

Summary of Benefits

Sectors Affected: Natural gas production; natural gas users; and the general public.

If the adopted ceiling price is appropriate, it should encourage production of more gas from tight formations without discouraging optimal production from conventional fields.

In addition, the special incentive price for certain tight formation gas produced from old wells should encourage the production of gas without the drilling of new wells.

Increased production from tight formation wells will yield additional gas which may be used to displace significant amounts of imported oil by making additional gas available from domestic sources.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas consumers; and the general public.

If the ceiling price adopted is lower than that reasonably necessary to encourage production, producers will be discouraged from recovering the tight sands gas, less foreign imports will be displaced, and less gas will be available to consumers. Conversely, if we choose a higher than necessary price, consumers will also pay higher than necessary prices to encourage additional production of tight formation gas. Finally, if the price goes too high and the availability of drilling equipment is limited, producers will be encouraged to produce gas from tight formations *instead* of producing gas from conventional, cheaper, and higher producing fields. If the proper price is chosen, the price of the gas will be higher than that otherwise permitted, but it may displace even higher priced imported oils.

Related Regulations and Actions

Internal: Other categories of gas which may be high-cost and high risk are currently being considered by the Commission. However, they do not affect the regulations concerning gas produced from tight formations.

External: None.

Active Government Collaboration

The Environmental Protection Agency worked with the Commission in preparing an environmental analysis of the rule. The Council on Wage and Price Controls also submitted comments on the NPRM.

Timetable

Final Rule—Considered by Commission late 1980
Final Rule Effective—late 1980
Regulatory Analysis—Part of Final Rule

Available Documents

NPRM–44 FR 52255, September 7, 1979 (Docket No. RM79–76)

Interim Rule and Request for Further Comments—45 FR 13414, February 28, 1980 (Docket No. RM79–76)

NPRM—45 FR 13427, February 28, 1980 (Docket No. RM79–76)

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FERC

Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978 (18 CFR Parts 2,* 271*)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. § 3301 *et seq.;* Department of Energy Organization Act, 42 U.S.C. § 7107 *et seq.;* Natural Gas Act, as amended, 15 U.S.C. § 717 *et seq.;* E.O. 12009, 3 CFR, 1977–78 Comp., p. 142

Reason for Including This Entry

This proposed regulation would encourage producers of three categories of natural gas to undertake new production or production enhancement projects not otherwise economically feasible.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) established a maximum lawful price (MLP) for any first sale of natural gas. The proposed regulations are important because they would implement the Federal Energy Regulatory Commission's (Commission) authority under the NGPA to set prices higher than the MLP for three categories of gas sales, namely: first sales of gas committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, first sales of gas under rollover contracts, and first sales of gas not covered by any MLP under any other section of the NGPA.

In the past, ceiling prices for sales of natural gas were set by the Commission or its predecessor, the Federal Power Commission, on an area—later a nationwide—basis. These prices were set to cover classes of producers (large or small) and vintage (when the well was drilled or production began). In some instances, however, the ceiling price did not permit a producer to earn a fair profit or, in the extreme case, recover his cost of production. This put the producer face-to-face with two alternatives: continue production at an economic loss, or abandon the well. Neither of these alternatives was in the public interest, as the first effected the

producer and would likely discourage further business ventures, and the latter affected the consumer because it made less gas available. Therefore, regulations called "special relief procedures" were adopted; they allowed producers to apply for prices higher than those set at area or nationwide ceilings.

Passage of the NGPA fundamentally removed the responsibility for establishing ceiling prices from the Commission. The MLP for a particular sale now depends on when the well is drilled, where the gas is produced, and whether it was priced under the earlier practices of the Commission. As part of its general regulatory scheme, however, the NGPA provides that the Commission may set a price higher than that stated in the NGPA for certain types of producer sales; in other words, the Commission may continue to grant "special relief" under the NGPA.

The Commission believes that it is necessary to continue providing producers with the opportunity, in special or unusual situations, to obtain relief from the MLPs. To this end, the Commission has proposed new regulations for granting such relief. The new regulations describe the circumstances under which a producer-seller of natural gas may seek a "special relief" rate, the manner in which the seller may apply for the rate, the process by which the Commission will consider an application, and the cost standards that the Commission will use to determine a special relief rate.

Alternatives Under Consideration

In providing regulations to govern the application for and the granting of special relief under the NGPA, the Commission must determine which of the various categories of natural gas that are priced under the NGPA will be eligible for the relief, and on what basis it will grant the relief. There are alternatives for both of these questions.

The Commission has the authority to grant special relief for the three above-discussed categories of natural gas sales. It does not, however, have authority to grant special relief for the remaining five categories of natural gas sales, defined in the NGPA, namely: new natural gas and certain natural gas produced from the outer continental shelf; natural gas produced from new, onshore production wells; natural gas sold under existing intrastate contracts; certain high-cost natural gas; and stripper well natural gas. However, the NGPA could be read to permit a price higher than the MLP for these categories under circumstances which might be considered as warranting "special relief." The Commission is, therefore, considering other rulemaking procedures to encompass some or all of these categories.

Also under consideration is the advisability of an upper limit ("cap") on special relief. The Commission has requested comments on this issue, and a related one: If a "cap" is indeed advisable, what should it be?

One of the more complex problems in establishing a rule for special relief is the criteria by which the Commission should grant it. Under the old special relief rules, a producer could recover either out-of-pocket expenses, or a rate sufficient to provide a fair return on past and future costs, including any extra investment he had to make. The new regulations, while simplifying the standards by providing a formula approach, also distinguish between a producer who must undertake an important investment to make his well economically productive, and one who requires no such investment. There are criteria for each, the major difference being the treatment of the producer's return on investment. The Commission could treat both situations in the same way by providing for a return on total investment.

The relative pros and cons of alternative standards are extremely complex. In deciding among them, the Commission must balance the impact of each alternative against the practicalities of producer regulation, the supplies affected, the administrative difficulty (or simplicity) of the regulations, and the intent of the NGPA.

Summary of Benefits

Sectors Affected: The Commission; natural gas and natural gas liquids production; natural gas pipelines; and users of natural gas.

This proceeding will directly benefit producer-sellers of natural gas. It will provide the sellers with an opportunity to petition for maximum lawful prices greater than those explicitly set forth under the NGPA. This is important for those sellers who might incur real economic harm, or hesitate to undertake new projects because the cost to produce their gas exceeds the MLP they could get for the gas under the NGPA.

In addition, the proceeding will benefit the pipelines that purchase the gas and the ultimate consumers. The benefits will be in the form of added supplies of natural gas which would otherwise never reach the market and which would have to be replaced with fuel oil or other expensive or scarce alternatives.

Summary of Costs

Sectors Affected: The Commission; natural gas producers-sellers; natural gas pipelines that purchase the gas; and users of natural gas.

The procedures to allow special relief applications will place upon the Commission an administrative burden that will add an administrative cost. The number of petitions for special relief that may be filed cannot be determined at this time and will depend upon many variables, including general economic trends and the particulars of individual cases. About 50 to 60 cases per year were administered under the old special relief procedures. This would be a realistic estimate for cases filed under the proposed regulations.

The new procedures of the proposed rule should result in a more economical use of the Commission's time. Thus, administrative costs should be lower than under prior practices. However, about 130 requests for special relief are now pending. These cases, originally filed under the old procedures, form an immediate backlog for administrative action under the new procedures.

The granting of a special relief rate means that a producer-seller can receive a higher price for the sale of his gas. This higher price can be passed through to the ultimate consumer. The exact magnitude of this effect is unknown but could well reach into the millions of dollars.

Related Regulations and Actions

Internal: Regulations implementing the Natural Gas Policy Act.
External: None.

Active Government Collaboration

None.

Timetable

Final Rule Issued—mid-1980
Final Rule Effective—mid-1980
Regulatory Analysis—part of Final Rule

Available Documents

NPRM—44 FR 49468, August 23, 1979 (Docket No. RM 79-67)

Notice Granting Extension of Time to Comment—44 FR 53759, September 17, 1979 (Docket No. RM79-67)

Notice of Public Hearing, issued October 13, 1979 under Docket No. RM79-67

Notice of Request for Public Comments and Notice of Public Discussion, 45 FR 5321, January 23, 1980 (Docket No. RM 79-67)

Transcript of Public Hearing and Public Discussion, and written comments. All of these documents are available at the Commission's Office of

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FERC

Regulations Governing Applications for Major Unconstructed Projects (18 CFR Part 4*)

Legal Authority

Federal Power Act, 16 U.S.C. § 791(a) *et seq.;* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.*

Reason for Including This Entry

This rulemaking is important because it simplifies and clarifies licensing requirements and procedures for major unconstructed projects built for the generation of electric energy by means of water power, thereby making the development of new sources of hydroelectric power generation—a renewable energy resource with great undeveloped potential—more attractive and efficient.

Statement of Problem

This rulemaking is the third phase of the Federal Energy Regulatory Commission's (Commission) licensing reform program for all projects built for the generation of electric energy by means of water power that are within the Commission's jurisdiction.

Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) charges the Commission with establishing simple licensing procedures for water power projects which are connected with existing dams, and have a capacity to generate 15 megawatts (20,000 horsepower) or less of electricity at any one time. The Commission is extending the benefit of the § 405 reform to all water power projects. As a result, this rulemaking proposes licensing reforms which deal with all "major" projects (those with a generating capacity of more than 1.5 megawatts or 2,000 horsepower) (1) for which there is no dam or impoundment (body of water impounded by a dam) at the time of the application, (2) which would result in a significant increase in the normal surface elevation of an existing impoundment, or (3) which are otherwise determined, pursuant to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), to have a potentially significant environmental impact.

The current regulations governing major water power projects are scattered in various sections of the Commission's regulations. An applicant may be required to submit information in as many as 23 different exhibits within each application. Frequently, the existing regulations do not explain in sufficient detail what information applicants must submit. This can result in duplicate filings or deficient applications. The revision of the regulations governing major unconstructed projects, where no dam or impoundment has been built, will consolidate and simplify the exhibits required of any applicant in a way which elicits only that information which is relevant to an informed decision on the application.

Projects of the magnitude covered by this rulemaking naturally result in more significant environmental disturbances than other, smaller water power projects. The Commission will, therefore, require any applicant for a major unconstructed project to file an Environmental Report of considerably greater depth and detail than it will require for smaller projects or projects at existing dams. The Commission is also revising its NEPA regulations that set forth the specifications of an Environmental Report for all projects, and is tailoring the requirements for such reports to the type of water power project for which the applicant seeks a license. The need for relatively greater detail concerning such projects will also extend to the submission of information relating to their structural and financial integrity.

Alternatives Under Consideration

The Commission is not required by PURPA to reform its licensing procedures for hydroelectric projects that are not connected with existing dams. Nevertheless, we have previously reformed hydroelectric licensing procedures outside the scope of PURPA, and this rulemaking accordingly extends to major unconstructed projects the benefits of the simplified licensing program.

The Commission also must choose how it will revise the licensing procedures, and decide which of the current reporting requirements we will simplify and consolidate, while still requiring relevant and necessary information. For example, how extensive must an Environmental Report—submitted by any applicant—be for such projects? Because construction of a dam involves new inundation of land and the impacts of extensive construction activity, more environmental detail will be needed to assess the impact of such a project than is needed for projects where the dam pre-exists. As a result of the extensive impacts of such a project, the Commission will also revise its NEPA reporting requirements to require an Environmental Impact Statement for all such projects.

Summary of Benefits

Sectors Affected: The Commission; State, municipal and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission; consumers of hydroelectric power; and the general public.

Better licensing procedures should expedite the licensing of water power projects, thus encouraging more hydroelectric development. This in turn will help replace costly imported energy supplies with a cheap, renewable energy resource.

Additional hydroelectric facilities will mean that more consumers will have access to hydropower. This may create greater stability in the cost of electricity to consumers. It may even result in lower rates for electric power.

The improved regulations will help conserve the manpower and financial resources of both the Commission, and the hydroelectric facility applicants, because the regulations will be more understandable and more reasonable in their requirements. As a result, industry may file fewer deficient applications which require upgrading, and both industry and the Commission will waste less time interpreting and litigating the regulations.

By obtaining more complete environmental data, the improved regulations should also enable the Commission to better fulfill its obligations under NEPA to identify and minimize adverse environmental disturbances. The public will benefit because development of hydropower will be more attractive and its adverse side effects will be minimized.

Summary of Costs

Sectors Affected: State, municipal, and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission.

This proposal will require an applicant for a major unconstructed project to file with the Commission a

more detailed Environmental Report than is required for smaller projects or for projects at existing dams. The Commission will also require greater specificity regarding the structural and financial integrity of these projects. This will create an additional reporting burden for major project developers. The burden should not discourage them from applying for licenses, however, in light of the significant improvements in the other licensing procedures.

Related Regulations and Actions

Internal: The first phase of the licensing reform program revised the licensing regulations for all "minor" projects (installed capacity of 1.5 megawatts or less) (FERC Order No. 11, 43 FR 40215, September 11, 1978). The second phase revised the regulations for "major" projects (more than 1.5 megawatts of installed capacity) where at least a dam and impoundment are in existence at the time of the application (FERC Order No. 59; 44 FR 67645, November 27, 1979). In conjunction with these reforms, the Commission also revised its procedural regulations governing licenses and preliminary permits for all water power projects (FERC Order No. 54; 44 FR 61328, October 25, 1979).

The Commission proposed new Regulations Implementing the National Environmental Policy Act of 1969 governing the collection, evaluation, and dissemination of environmental information concerning Commission actions. (NPRM; 44 FR 50052, August 20, 1979, Docket No. RM79-76)

External: None.

Active Government Collaboration

None

Timetable

NPRM—third quarter 1980
Final Rule Issued by Commission—late 1980
Regulatory Analysis—part of NPRM and Final Rule

Available Documents

FERC Order No. 11; 43 FR 40215, September 11, 1978
FERC Order No. 59; 44 FR 67645, November 27, 1979
FERC Order No. 54; 44 FR 61328, October 25, 1979
NPRM; 44 FR 50052, August 20, 1979; Docket No. RM79-76

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FERC

Regulations Governing the Safety of All Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act (18 CFR Part 12)

Legal Authority

Federal Power Act, 16 U.S.C. § 792a *et seq.*

Reason for Including This Entry

Recent dam failures demonstrate a need for more stringent examination of the structural soundness of project works, and for the establishment of well-conceived plans to protect life and property if a dam is breached. The purpose of this rule is to reassess old and possibly outdated dam safety rules, as recommended by a Presidential review panel and other authorities, and revise them appropriately.

Statement of Problem

Under § 10(c) of the Federal Power Act, the licensee of any water power project within the jurisdiction of the Federal Energy Regulatory Commission must comply with regulations that the Commission may prescribe "for the protection of life, health, and property."

On December 27, 1965, the Commission's predecessor agency, the Federal Power Commission (FPC), issued Order No. 315, establishing regulations under 18 CFR Part 12 for complete safety inspections of dams and other water-power-project works by independent consultants at regular 5-year intervals, or more frequently if necessary. The inspection procedures the FPC established by Order No. 315 were designed to supplement routine prelicensing inspections supervised by an independent consultant. The FPC chose to apply the inspection requirements to only those licensed projects that have a dam exceeding 35 feet in height above the streambed, or projects with a gross storage capacity of more than 2,000 acre-feet.

These existing dam safety regulations provide only for the 5-year inspection of project structures and equipment, under the guidance of an independent consultant. The inspection provisions, including the consultant's report on the inspection, are highly generalized. These regulations make no provision for procedures to be followed by the licensee in the event of an emergency, for warning or safety devices, for periodic testing of spillways, or for other measures that experience has shown to be important for protecting the public safety.

This rulemaking accordingly revises these existing 18 CFR Part 12 dam inspection procedures, and replaces them with new practices and procedures that encompass dam inspections by independent consultants, and other procedures for a successful dam safety program.

This rulemaking also expands the safety regulations to include any dam with a high-hazard potential, as defined by the Corps of Engineers, if the Commission's regional engineer determines that such a dam needs a consultant's inspection. The rule-making is also intended to improve the quality and efficiency of the Commission's inspections, to improve guidance for the 5-year inspections, to increase use of the dam inspection career training plan, and to make other managerial improvements.

Alternatives Under Consideration

Among various alternatives under consideration are these: Should all dams be subject to the new rules, or only those exceeding a specific height or volume capacity? In addition to dams meeting the specified physical criteria, the Commission is inclined to apply the rule to other dams which may, for various reasons, have a high-hazard potential. Also under consideration is the cost, benefit, and desirability of a "damage reporting" requirement: For example, should licensees have to report heavy slides on their dikes? If so, within what time period and to which local, State, or Federal agencies? What other kinds of injuries or events might weaken the structure? Should they be reported also?

Summary of Benefits

Sectors Affected: State, municipal, and private hydroelectric power projects within the jurisdiction of the Commission with a gross storage capacity of more than 2,000 acre feet, or which have a dam with a high-hazard potential or a dam which exceeds 35 feet in height above the streambed; employees at these projects and persons in surrounding communities; independent engineering consulting services; the Commission; and the general public, particularly users of hydroelectric power.

A more comprehensive dam safety program should result in increased public safety. It will help ensure a high degree of quality in the design, construction, and maintenance of water power projects, by improving the quality and efficiency of the Commission's inspections. The rulemaking should help increase public confidence in dam safety, and further encourage the

increasing development and maintenance of hydroelectric power, a reliable and presently underutilized source of energy that is based on renewable resources.

Summary of Costs

Sectors Affected: State, municipal, and private hydroelectric power projects which have potentially high-hazard dams.

The costs incurred under the proposed rulemaking should not be any greater for dams that are now subject to the existing 18 CFR Part 12 regulations. Dams that have never been subject to these regulations—namely, certain high-hazard dams—may incur an additional cost because of the requirement that outside consultants be used in assessing the structural safety of a facility. Overall, the Commission believes that the proposed regulations should not appreciably increase the costs of dam safety.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

NPRM—May 28, 1980
Final Rule—August 1, 1980
Regulatory Analysis—See NPRM and Final Rule above

Available Documents

Federal Dam Safety Report of the Office of Science and Technology Policy Independent Review Panel, Executive Office of the President, December 6, 1978. Copies of this document are available at the cost of reproduction from the Chief of Federal Dam Safety, Federal Emergency Management Agency, 909 Premier Building, 1725 I Street, N.W., Washington, D.C. 20472.

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CHAPTER 2—ENVIRONMENT AND NATURAL RESOURCES

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed Protection and Flood Prevention Program (7 CFR 622)*

Legal Authority

Watershed Protection and Flood Prevention Act of 1954, 16 U.S.C. § 1001 *et. seq.*

Reason for Including This Entry

The Department of Agriculture believes this regulation is important to improvement of program performance so as to achieve maximum reduction in upstream flood damages in an economically and environmentally defensible manner. Emphasis will be given to minimizing adverse impacts on wetlands and prime farmlands as well as to the integration of nonstructural alternatives and water conservation measures into the program.

Statement of Problem

The Watershed Protection and Flood Prevention Act authorizes the Secretary of Agriculture to give technical and financial help to sponsoring local organizations to plan and install watershed projects to prevent erosion, sedimentation, and floodwater damage; to further the conservation, development, use, and disposal of water; and to further the conservation and proper use of land. Sponsoring local organizations consist of units of State and local government; the sponsoring local organizations for a watershed project must have the ability under State statutes to obtain lands for project works of improvement, bear their share of the cost of installation, and operate and maintain the project—such as a dam—after installation. Some watershed projects benefit urban areas, but most are located in rural areas. Projects provide benefits such as flood damage reduction, erosion reduction, recreation, irrigation, and water supply and conservation to rural communities and agricultural areas.

The Watershed Protection and Flood Prevention Act of 1954 indicates that works of improvement installed with program assistance are to yield benefits in excess of their costs. Program activities are to be governed by rules and regulations issued by the President. Among other things, E.O. 10584 states that the Secretary of Agriculture shall establish criteria for the formulation and justification of plans for works of improvement and criteria for the economic and engineering soundness of works of improvement consistent with the provisions of the Act and with policies, rules, and regulations issued by the President.

Executive Order 12044 and the Secretary of Agriculture's Memorandum 1955 require that the rules and regulations for all programs be systematically reviewed at regularly specified intervals. In keeping with this requirement, as well as the President's initiatives, and other concerns, the Department of Agriculture (USDA) has scheduled for review the rules and regulations governing the formulation, implementation, and operation of watershed projects.

Alternatives Under Consideration

USDA will develop and consider alternatives to help resolve issues in each of the problem areas (environment, economic evaluation, equity aspects, and safety aspects), and to improve the performance of the program in achieving its objectives.

The review will consider such things as the appropriate mix of structural and nonstructural alternatives to achieve flood control, appropriate levels of protection to achieve national flood damage objectives, and appropriate levels of soil and water conservation and measures to be used to achieve conservation objectives.

Summary of Benefits

Sectors Affected: People living in existing or potential watershed project areas; and State and local governments.

A change in the rules and regulations for the Watershed Protection and Flood Prevention Program could affect people living in rural and urban watersheds of up to 250,000 acres that have erosion, sediment, flood, drainage, irrigation, recreation, or water supply problems. The units of local government that might sponsor a watershed project, and therefore be affected, include the following: soil and water conservation districts; conservancy districts; boards of county commissioners; county councils; water districts; natural resource districts; city, town, and village councils; State departments of natural resources; State fish and wildlife departments; and State park departments.

USDA will analyze the benefits of each regulatory alternative considered for each problem area as a part of the regulatory analysis process. The sectors of the economy and groups to whom the benefits are expected to accrue will also be identified.

Summary of Costs

Sectors Affected: People living in existing or potential watershed project areas; and State and local governments.

Those who pay the costs of watershed projects, both monetary and nonmonetary, are generally the members of the same sectors and groups who receive the benefits of the program.

USDA will analyze the costs of each regulatory alternative considered for each problem area as a part of the regulatory analysis process. The sectors of the economy and groups to whom the costs are expected to accrue will also be identified. Alternatives considered in the regulatory review will include those which would allocate costs specifically to those who benefit from the program.

Related Regulations and Actions

Internal: 1. Compliance with NEPA (National Environmental Protection Act), Procedures for SCS-Assisted Programs, 7 CFR 650.1

2. Compliance with NEPA, Related Environmental Concerns, Flood Plain Management, 7 CFR 650.25

3. Support Activities, Compliance with NEPA, Protection of Wetlands, 7 CFR 650.26

4. Procedures for the Protection of Archaeological and Historical Properties Encountered in SCS-Assisted Programs, 7 CFR 656

5. Prime and Unique Farmlands, 7 CFR 657. Describes prime and unique farmlands and states policy for protecting and preserving them for agricultural use.

External: 1. Principles and Standards for Planning Water and Related Land Resources—Water Resources Council (WRC)

2. Procedures for Evaluation of Natural Economic Development Benefits and Costs in Water Resources Planning—WRC

3. Executive Order 10584, "Rules and Regulations Relating to Administration of the Authority of the Watershed Protection and Flood Prevention Act."

Active Government Collaboration

During the study of rules and regulations for the watershed program, USDA will coordinate applicable changes with the Water Resources Council.

Prior to initiating review of the program, USDA will develop a plan for public participation by the public groups, State and local governmental groups, and other Federal agencies.

Timetable

USDA will not complete the review of rules and regulations for the watershed program until the Water Resources Council has finalized new procedures for planning and evaluating water resource projects. The present schedule is as follows:

Environmental Quality Manual—September 1980

Supplement to National Economic Development Manual—September 1980

Review of the rules and regulations for watershed projects (7 CFR Chapter VI, Part 622) is scheduled to begin in August 1980. USDA will publish notice of the start of this study in the **Federal Register** at that time.

NPRM—February 1981

Final rule—July 1981

Draft and Final Regulatory Analyses—will be available for public inspection.

Available Documents

Watershed Projects, 7 CFR 622; 40 FR 12475, March 19, 1975

Revision of "Principles and Standards for Planning Water and Related Land Resources," December 1979

Procedures for Evaluation of National Economic Development Benefits and Costs in Water Resources Planning, December 1979

Related Regulations and Actions Cited Above.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations Implementing a Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Reason for Including This Entry

We believe these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the Mid-Atlantic Fishery Management Council. The regulations are expected to result in increases in productivity and profits of some groups of U.S. fishermen.

Statement of Problem

Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976 (Act), as amended, established a national fishery management program for the conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal state and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMPs by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority. (A fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the Act, including the provisions of approved FMPs and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The Act established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP. The National Standards require that FMPs be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the

needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. The MSY is an average, over a reasonable length of time, of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the OY of a fishery which will not be harvested by U.S. fishermen. To participate in a U.S. fishery in the FCZ, a foreign fishing vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

Before a foreign nation may obtain a U.S. fishing permit, it must sign a Governing International Fishery Agreement (GIFA). This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the Act. Any existing international agreements, other than GIFAs, are considered valid only if they were in effect before the Act and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary of Commerce, determines the allocation of the total allowable surplus the applicant nation will receive.

The Butterfish FMP

The Mid-Atlantic Fishery Management Council (the Council) has developed an FMP for the butterfish fishery of the Northwest Atlantic Ocean to provide a framework for controlling the catch levels of U.S. and foreign fishing fleets. In 1978, the United States began to export significant quantities of butterfish to Japan. The development of this export market was partially caused by reductions in the total allowable level of foreign butterfish catches in the FCZ from an annual average level of 9,146 metric tons (mt) between 1967–1976, to 5,500 mt in 1977, and 4,000 mt in 1978 and 1979. The Council anticipates that the growth of the U.S. butterfish fishery, coupled with foreign catches, can eventually lead to overfishing and depletion of the resource if it does not place limits on the total harvest. In addition, the Council is concerned about the foreign catch of butterfish in the FCZ because it is an unavoidable bycatch in a directed fishery for Atlantic squid. An uncontrolled incidental catch of butterfish could adversely affect the harvesting costs of U.S. fishing vessels by reducing butterfish stock densities.

At present, the butterfish fishery is being managed by regulations implemented through a Preliminary Fishery Management Plan (PMP) for Foreign Trawl Fisheries of the Northwest Atlantic developed by the Secretary. Under a PMP, however, regulations may be implemented to cover only foreign fishing operations in the FCZ. By preparing an FMP, the Council can more effectively specify optimum yield and management measures for both domestic and foreign fishing to provide a stable and comprehensive management regime for butterfish. Specific management objectives the Council identified for this fishery are as follows: (1) promote the growth of the U.S. butterfish export industry; (2) minimize the cost of harvesting butterfish; (3) increase employment opportunities for U.S. commercial fishermen; (4) prevent exploitation of the butterfish resource beyond the level that produces the maximum sustainable yield; and (5) minimize costs of enforcement and management of the butterfish resource.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options to attain the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings and public comments, the advice and recommendations of interested persons, including States, and commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

Alternative management options the Council considered for the butterfish FMP were as follows:

(1) *Optimum Yields of 11,000 mt or 16,000 mt.* The Council proposed an optimum yield of 11,000 mt. The Council estimated U.S. harvesting and processing capacity at 7,000 mt, and set the total allowable level of foreign fishing (TALFF) at 4,000 mt. The TALFF remains unchanged from the 1978 and 1979 PMPs. Because the U.S. fishery is in its initial stages of development, the Council believes that an OY of 16,000 mt, with U.S. capacity set at 7,000 mt and a TALFF of 9,000 mt, might hinder U.S. export opportunities. In this case, foreign fleets could catch Atlantic butterfish rather than purchase it from U.S. processors. In addition, the Council believes that a TALFF of 4,000 mt is sufficient to allow foreign fleets to harvest their squid allocations, as specified in the FMP for Atlantic squid.

(2) *Continue the 1979 PMP.* Under this alternative the 1979 PMP prepared by the Secretary would remain in effect. This PMP proposed an optimum yield of 16,000 mt, a U.S. harvesting and processing capacity of 12,000 mt, and a TALFF of 4,000 mt. The continuation of the PMP would probably result in a large reallocation of butterfish to foreign fleets at the end of the 1979–1980 fishing season. This reallocation would come from any uncaught portion of the U.S. allocation. We expect such a reallocation to have an adverse impact on the U.S. export market for butterfish because foreign fleets could catch the butterfish instead of purchasing it from U.S. firms.

(3) *Different Fishery Management Units.* The Council considered the following management units: (a) butterfish within the FCZ north of Cape Hatteras (3–200 miles); (b) butterfish within all U.S. waters north of Cape Hatteras (0–200 miles); and (c) all butterfish under U.S. jurisdiction north of Cape Hatteras. The Council proposed option (c) because it covers the entire range of the butterfish stock (territorial waters, the FCZ, and Canadian waters). The proposed OY is based on this option in anticipation of a U.S.-Canadian bilateral fishing agreement. If the United States and Canada fail to achieve an agreement during the 1979–1980 fishing season, then the management unit is the same as option (b).

(4) *Fishing Gear, Fishing Area, and Fishing Season Restrictions.* The Council believes that these management measures for domestic fishermen are not necessary at this time because overfishing is not a serious problem.

Summary of Benefits

Sectors Affected: U.S. commercial fishing and processing.

The FMP will ensure conservation of the butterfish fishery in the Northwest Atlantic Ocean. We also expect this FMP to increase U.S. exports of fishery products and employment opportunities for U.S. commercial fishermen. U.S. processors reported that exports were negligible in 1977 but in 1978 increased to 2,400 mt. The exvessel (dockside) value of the exported butterfish was approximately $2 million. The estimated value of the processed exports ranges between $3 to $4 million. Estimates of exports for the 1979/1980 fishing season are not yet available.

Under the FMP, the proposed TALFF is 4,000 mt. The current poundage fee for butterfish is 3.5 percent of $626 per

metric ton as specified in the 1980 Foreign Fishing Fee Schedule (44 FR 76295, December 26, 1979) established pursuant to the Act. The TALFF is expected to yield $87,640 in revenues to the U.S. Treasury.

Summary of Costs

Sectors Affected: The Mid-Atlantic Council; NOAA's National Marine Fisheries Service; and the Coast Guard.

Management costs incurred by the Mid-Atlantic Council and NOAA's National Marine Fisheries Service will be limited to collecting and processing basic fishery data for monitoring and revising the FMP. These costs are expected to range between $10,000–$30,000 annually (1980 dollars).

The Coast Guard will incur enforcement costs, although it is not possible to specify the actual costs for enforcement of the butterfish FMP because of the Coast Guard's concurrent responsibilities for other FMPs and PMPs. Most of the Coast Guard's enforcement costs will be attributable to surveillance and inspection of foreign fishing vessels.

Related Regulations and Actions

Internal: Regulations implementing the FMP for the squid fishery of the Northwest Atlantic are related to the butterfish FMP because of the potential by catch of butterfish in a directed fishery for squid. The FMPs for Atlantic herring, Atlantic mackerel, Atlantic groundfish, and the PMP for silver and red hake are also related to the butterfish FMP, because these fisheries are part of the same general geophysical, biological, social, and economic setting. Regulations for a particular fishery may have an impact on the other fisheries by causing transfers of fishing effort. Moreover, the fisheries of the Northwest Atlantic are interrelated because of the high potential for bycatches of nontarget species in a directed fishery for another species.

External: The Council reviewed the Coastal Zone Management Programs of Massachusetts and Rhode Island for conflicts with the butterfish FMP and found no conflicts currently exist.

Active Government Collaboration

The Council has requested comments on the butterfish FMP from the Departments of Interior, State, and Transportation; the Environmental Protection Agency; the coastal States of Maine through North Carolina; the New England and South Atlantic Fishery Management Councils; and various individuals and organizations.

Timetable

Final Rule—June 1980
Final Rule Effective—July 1980

Available Documents

NPRM (45 FR 21307, April 1, 1980).
Final Environmental Impact Statement/Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean.
Draft Regulatory Analysis for the Butterfish Fishery Management Plan
All documents are available for review at the National Marine Fisheries Service, Office of Resource Conservation and Management, Plan Review Division, 3300 Whitehaven Street, Washington, D.C. 20235.

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DOC–NOAA

Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Reason for Including This Entry

We believe these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the North Pacific Fishery Management Council. The regulations are expected to provide the framework for development of underutilized species of fish, and to rebuild fishery stocks or maintain them at productive levels.

Statement of Problem

Background Information on Fishery Mangement Plans

The Fishery Conservation and Management Act of 1976 (Act), as amended, established a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal state and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils, or under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMPs by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority. (A fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the Act, including the provisions of approved FMPs and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The Act established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP. The National Standards require that FMPs be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory among residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize the costs of conservation and management measures. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery modified by relevant economic, social, or ecological factors. The MSY is an average, over a reasonable length of time, of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which will not be harvested by U.S. fishermen. To participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

Before foreign nations may obtain a U.S. fishing permit, it must sign a Governing International Fishery Agreement (GIFA). This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the Act. Any existing international agreements, other than GIFAs, are considered valid only if they were in effect before the Act and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary of Commerce, determines the allocation of the total allowable surplus the applicant nation will receive.

The Bering Sea/Aleutian Island Groundfish FMP

The North Pacific Fishery Management Council (the Council) has developed an FMP for the groundfish fishery of the Bering Sea/Aleutian Island area off the coast of Alaska. The stocks covered by this FMP include Pacific Ocean perch, Alaska pollock, Pacific cod, yellowfin sole, turbots, sablefish, other flounders and flatfish, atka mackerel, squid, and other species.

The FMP for the groundfish fishery in the Bering Sea/Aleutian Island area would replace the current Preliminary Fishery Management Plan (PMP). This was necessitated by the PMP's lack of coverage of a domestic groundfish fishery and by the potential for incidental catches of halibut in a directed fishery for groundfish.

The FMP addresses four problems: maintaining stocks currently at levels of MSY; rebuilding depleted stocks to levels of abundance producing MSY; controlling the incidental catch of species of commercial importance to U.S. fishermen; and establishing an environment conducive to development of a U.S. groundfish fishery.

(*1*) *Maintaining or rebuilding of stocks.* We have conducted stock assessment studies on the following categories of Bering Sea/Aleutian Island groundfish species: Alaska pollock, Pacific halibut, yellowfin sole, turbots, other flatfishes, Pacific cod, rockfishes, sablefish, atka mackerel, squid, and other species. With the exception of Pacific Ocean perch, Pacific halibut, and sablefish, we believe all other groundfish species in the Bering Sea/Aleutian Island area to be at levels of abundance equal to or greater than those that would produce MSY.

We consider Pacific Ocean perch stocks to be at relatively low levels of abundance because of a continuous decline in catch per unit of effort (CPUE) since 1968, a drastic reduction in the availability of all sizes of ocean perch between 1969–72, a heavy dependence of the fishery on younger fish, and the lack of any evidence of a strong incoming year class. We defined the target level which would serve the development of a stock-rebuilding program as being equal to MSY (107,000 metric tons [mt]) in the FMP. Therefore, to promote rebuilding, we set the allowable biological catch (ABC=10,750 mt) of Pacific Ocean perch at half of the current equilibrium yield (EY=21,500 mt). The ABC is a seasonally determined catch that may differ from MSY for biological reasons. The EY is the annual or seasonal harvest which allows the stock to be maintained at approximately the same level of abundance, apart from the effects of environmental variation, in successive seasons or years.

Pacific halibut stocks have declined sharply in the eastern Bering Sea since the early 1960s. Recent surveys indicate an increase in the abundance of juveniles; however, abundance is still below early 1960's levels. An allowable biological catch for Pacific halibut was not set in the FMP because the fishery is currently regulated by the International Pacific Halibut Commission (IPHC). Instead, the Council specified OY for species other than halibut covered by the FMP to accommodate rebuilding of halibut stocks. Further, the Council proposed halibut savings areas (closed areas) to reduce the incidental catch of halibut. It is important to note that the rebuilding program of the IPHC is governed by a philosophy rather than a mandate to achieve a specified stock size. Specifically, the IPHC's concern is focused on rebuilding stocks back to levels which can support the maximum catch, given the biological and economic conditions of the fishery.

Analyses of CPUE data for sablefish by both U.S. and Japanese scientists show a declining trend. They have interpreted the declining trend in CPUE, coupled with catch data, as indicating that sablefish stocks in the eastern Bering Sea/Aleutian Region are at reduced levels of abundance. The Council set the allowable biological catch for sablefish (5,000 mt) at 38 percent of the estimated MSY (13,200 mt) to facilitate rebuilding of the stock.

(*2*) *Incidental catch.* Current fishery activity directed at Bering Sea groundfish resources is dominated by foreign fishing fleets. While foreign vessels target on groundfish, substantial numbers of halibut and crabs (king and Tanner) are taken as an incidental catch. Although regulations require that these species be released, most die from injuries received during capture. In the eastern Bering Sea, we estimated the annual yield loss of halibut due to the incidental catch by foreign vessels to be 5,000 mt. On the basis of 1978 exvessel (dockside) prices, we estimated the potential market value of the lost halibut to be $11,550,000. We estimated the incidental catches of king and Tanner crab during 1977 to be about 0.6 million and 17.5 million crabs, respectively. The magnitude of halibut and crab losses indicates that optimum yields, total allowable levels of foreign fishing, and domestic allowable harvests established in the FMP can affect several important domestic fisheries.

(*3*) *Development of a U.S. groundfish fishery.* Many U.S. fishing interests perceive the presence of fleets of large foreign trawlers as an impediment to the development of a domestic groundfish trawl fishery in the Bering Sea because of the possibility of: (a) preemption of favored grounds by concentrations of foreign vessels that are two to three times the size of the largest U.S. trawlers, and (b) competition for fish by foreign vessels that can apparently operate successfully at levels of abundance and average fish sizes that are less than those required for economic operation of domestic trawlers.

Management objectives for the groundfish fishery in the Bering Sea/Aleutian Island area are as follows:

(a) Continue rebuilding the halibut resource so that a viable halibut longline (a type of gear with hooks attached to a long rope suspended from buoys) fishery is again available to American fishermen;

(b) Rebuild depleted groundfish stocks to, and maintain healthy groundfish stocks at, levels of abundance that will produce MSY;

(c) Provide an opportunity for U.S. involvement in the Bering Sea/Aleutian Island groundfish fishery, limited only by the OY of individual species and objectives (a) and (b) above; and

(d) Allow foreign participation in the fishery, consistent with objectives (a), (b), and (c), above.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options to attain the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings and public comments, the advice and recommendations of all interested persons, including States, and

commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

(*1*) *Continue the 1979 PMP.* Under this alternative, the 1979 PMP would be extended to cover the 1980 fishing season. However, a PMP can only regulate foreign fishing. As a result, the North Pacific Fishery Management Council would not be able to develop regulations to permit the rebuilding of depleted stocks or to control the incidental catch of species of commercial importance to U.S. fishermen (halibut, king crab, and Tanner crab).

(*2*) *Develop an FMP.* The FMP developed by the North Pacific Fishery Management Council contains management measures specifying OY for the total fishery (1,559,226 metric tons [mt]), domestic allowable harvest (56,100 mt), reserves (73,324 mt), and the total allowable level of foreign fish (TALFF) (1,429,802 mt). The Council set optimum yields for Pacific Ocean perch and sablefish at levels which should result in rebuilding these stocks to MSY levels. The Council also set the domestic allowable harvest at a level consistent with the production expectations of both U.S. harvesters and processors.

To prevent the OY from being exceeded without hindering unexpected domestic fishery development (an unanticipated increase in U.S. catching capability and intent), 500 mt or 5 percent of the OY (whichever is greater) of each species will be held in "reserve" for allocation later in the fishing season on the basis of domestic need. Unless specifically withheld by the National Marine Fisheries Service Alaska Regional Director, acting with the advice of the North Pacific Council, up to 25 percent of the reserve of each species can be released to TALFF every two months, beginning with the end of the second month of the fishing year. Initial TALFFs for each species were determined by subtracting the sum of domestic allowable harvest and reserve from optimum yield.

Additional management measures selected by the Council included: (1) seasonal area closures for U.S. trawlers in fishing grounds where juvenile halibut are known to concentrate; (2) statistical reporting requirements; and (3) permit requirements and area closures for foreign fishing vessels.

(*3*) *Areas Closed to Foreign Fishing.* The Council considered several area closure alternatives applicable to foreign fishing fleets. These areas cover the "Winter Halibut-savings areas," the Petrel Bank, and fishing grounds off the western portions of the Aleutian Islands. If we allowed foreign fishing in these areas during the specified time periods, there would be a continuation of incidental halibut catches. Although these areas are known to contain large concentrations of juvenile halibut, we are unable to quantify the halibut yield losses.

Summary of Benefits

Sectors Affected: U.S. commercial fishing, processing, and exporting in Alaska; and the general public.

The optimum yield of 1,559,226 mt set by the 1980 FMP represents an increase of 133,156 mt over the OY of 1,426,070 mt specified in the 1979 PMP. There were also increases in the domestic allowable harvest (46,100 mt), reserves (71,224 mt), and the TALFF (15,832 mt). We have estimated that foreign nations could pay $11.9 million in vessel and privilege fees to fish in the Bering Sea/Aleutian Island area in 1980.

At present, there is insufficient information to quantify the economic effects of this FMP on U.S. fishermen and processors. Projections of domestic catches are not reliable for the fishery because there has been only a limited amount of effort directed at the harvesting of groundfish by U.S. fishermen in the Bering Sea/Aleutian Island area. However, the preferential U.S. allocation of groundfish allows opportunity for expansion of U.S. harvests as rapidly as the private sector is willing to invest in the fishery. The U.S. allocation will permit the continued harvest of groundfish, which are used as crab bait, as well as the implementation of pilot projects for food-fish production. If these projects are successful, there may be an opportunity for expansion of U.S. exports of seafood products.

This FMP will ensure the conservation of the groundfish fishery for the Bering Sea/Aleutian Island area.

We also expect economic benefits from the rebuilding of stocks to levels of high abundance or to MSY levels. There are potential reductions in the cost of harvesting fish because of larger CPUE (i.e., greater productivity). Additionally, there is a strong consumer demand for halibut products. A rebuilt stock, under proper management, will enable the catch of the fishery to expand and increase the supply of halibut for the U.S. consumer.

A biological benefit of rebuilding depleted fish stocks is the maintenance of a large amount of genetic variability in the stock to increase its chances of adapting to changes in the environment. Also, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in the harvest.

Summary of Costs

Sectors Affected: The State of Alaska; NOAA; and the Coast Guard.

We project the annual cost of implementing the FMP at $5,574,000 (1979 dollars). Of this total, the cost of the foreign fishery observer program of $370,000 will be reimbursed to the U.S. Treasury by foreign governments. The remaining $5,204,000 is divided among the National Oceanic and Atmospheric Administration ($493,000), for administrative and data collection costs, the State of Alaska ($11,000) for data collection costs, and the Coast Guard ($4.7 million) for ship and aerial patrols.

Related Regulations and Actions

Internal: Provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. § 1361 *et seq.*), have a bearing on this FMP through restrictions on killing or harvesting seals and sea lions (50 CFR Part 216), which may prey on fish already captured in nets. The FMP for Groundfish in the Gulf of Alaska (43 FR 17242, April 22, 1978) has implementing regulations designed to minimize the incidental catch of halibut. In addition, the directed catch of halibut is controlled by the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (5 U.S.C. 5).

External: The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue regulations which control the harvest of fishery resources in State territorial waters (0–3 miles) off the coast of Alaska.

Active Government Collaboration

We requested comments on this FMP from the Environmental Protection Agency; the Marine Mammal Commission; the Departments of Agriculture, Interior, State, and Transportation, as well as several State governments.

Timetable

Final Rule—May–June 1980
Final Rule Effective—June–July 1980

Available Documents

NPRM—(44 FR 66356, November 19, 1979)

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island area

Draft Regulatory Analysis for the FMP

All documents are available for review at the National Marine Fisheries Service, Office of Resource Conservation and Management, Plan

Review Division, 3300 Whitehaven Street, Washington, D.C. 20235.

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DOC–NOAA

Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Reason for Including This Entry

We believe these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the Gulf of Mexico Fishery Management Council. These regulations are expected to increase productivity in the shrimp fishery.

Statement of Problem

Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976, as amended, established a national fishery management program for the conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal state and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMPs by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority. (A fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the Act, including the provisions of approved FMPs and promulgated regulations, is the joint responsibility of the Secretary and the Secretary of Transprotation (who oversees the operations of the Coast Guard).

The Act established seven National Standards to be applied by both the Councils and the Secretary in the preparation and review of an FMP. The National Standards require that FMPs be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory among residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in the harvesting techniques or strategies; (6) take into account the variability of fishery resource and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. The MSY is an average, over a reasonable length of time, of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the OY of a fishery which will not be harvested by U.S. fishermen. To participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

Before a foreign nation may obtain a U.S. fishing permit, it must sign a Governing International Fishery Agreement (GIFA). This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the Act. Any existing international agreements, other than GIFAs, are considered valid only if they were in effect before the Act and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary of Commerce, determines the allocation of the total allowable surplus the applicant nation will receive.

The Shrimp FMP

The Gulf of Mexico Fishery Management Council (the Council) has developed an FMP for the U.S. shrimp fishery in the Gulf of Mexico. Target species comprising the shrimp fishery include brown shrimp, white shrimp, pink shrimp, and royal red shrimp. Seabobs and rock shrimp are caught incidental to the target species.

Shrimp is the single most valuable fishery in the United States measured by the exvessel value of the reported catch (the value of the catch at dockside). In 1979, the U.S. fleet landed 93,722 metric tons (mt) of shrimp in the Gulf of Mexico with an exvessel value of $378 million. Total value of all U.S. landings in 1979 (exclusive of catches off foreign coasts) was $2.08 billion (2.68 million mt).

The Gulf Council identified the following major problems in the shrimp fishery.

1. Conflict Among User Groups on Fishing Areas and Harvest Size of Shrimp. The commercial shrimp fishing fleet consists of small boat operations restricted to inland bays and shallow water offshore areas, and larger vessels which can fish in the territorial seas and the FCZ. In these fleets, some vessels prefer small-size shrimp while other vessels focus on the larger size (higher valued) shrimp. Gulf State regulations control the shrimp catch in the territorial sea; however, there are no regulations in the FCZ to reflect the size preferences of the different segments of the shrimp fishing fleet.

2. Discard of Shrimp by Culling. Several states have laws which restrict the size (i.e., the number of shrimp per pound) at which shrimp can be legally landed and marketed. Often, illegal size shrimp are inadvertently caught and subsequently discarded (culled). There is a high mortality of these discarded shrimp, and this lowers the yield from the shrimp fishery.

3. *The Continuing Decline in the Quality and Quantity of Estuarine and Associated Upland Habitats.* The alteration of the natural environment has destroyed some of the habitat of shrimp in their postlarvae and juvenile stages. Alterations include: (1) impoundments which prevent the movement of shrimp; (2) bulkheading, which seals off critical marsh water or mangrove water interface; and (3) diversion of freshwater which changes the salinity factor of natural areas. Most of these physical areas are outside the FCZ and, therefore, not under the direct jurisdiction of the Council. However, the Council is encouraging State and Federal government agencies to protect these critical habitat areas, and has

established a special committee to monitor and research this problem.

4. Lack of Basic Data Needed for Effective Management. Although statistical data covering the shrimp fishery of the Gulf of Mexico is more complete than for many other Gulf fisheries, a shortage of information regarding the optimum harvest sizes, seasons, marketing information, and marketing sector analysis still exists.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options to resolve the problems in the shrimp fishery. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings and public comments, the advice and recommendations of all interested persons, including States, and commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation. The following alternatives are a partial listing of the options considered in the shrimp FMP.

(1) *Permanent Closure of the "Tortugas Shrimp Sanctuary."* This option would close to fishing the Tortugas Shrimp Sanctuary which serves as a sanctuary for pink shrimp in the Tortugas and Sanibel shrimping grounds. The State of Florida has closed part of the Tortugas sanctuary in its territorial waters to shrimp fishing; however, the sanctuary also extends into the FCZ where Florida does not have jurisdiction over fishing vessels of other States. The objective of this option is to eliminate the capture and subsequent mortality of undersized shrimp. As a result, the average size and availability of shrimp is expected to increase in the fishing grounds beyond the sanctuary.

(2) *Closure of the Territorial Sea of Texas and the Adjacent U.S. FCZ to Shrimp Fishing.* The Department of Commerce will close the FCZ at the same time that the State of Texas closes its territorial sea. Closure normally occurs June 1 to July 15; however, the effects of environmental conditions on shrimp growth may necessitate a 15-day flexibility in the closing and opening dates. We expect this option to increase the yield of shrimp and to eliminate waste due to discarding of undersized brown shrimp in the FCZ. Studies indicate that closure would protect the smaller shrimp until they have grown to a more valuable size.

(3) *Seasonal Closure of the FCZ off the Texas Coast out to either 20 Fathoms or 30 Nautical Miles.* The State of Texas usually closes its territorial sea from June 1 through July 15. Extension of the closed season to either 20 fathoms or 30 nautical miles is intended to reduce the discard (biological waste) of small brown shrimp in the territorial sea and the FCZ associated with Texas during the May through August period.

(4) *Spawning Area Closures.* The Council considered several management measures which would protect shrimp from being harvested during spawning periods. These measures included area and seasonal closures and the establishment of sanctuaries. However, the Council did not propose any of these measures because our data did not support a biological advantage from protecting spawning shrimp. Our scientists have not established a strong relationship between the number of spawners and number of recruits into the fishery.

(5) *Other Management Options.* The Council considered a wide range of management measures concerning minimum sizes, different seasons, entry restrictions, and different gear types. These measures were rejected because they could result in high enforcement costs, impose economic burdens on fishermen, or have no biological benefits.

The two major management measures selected by the Council are closure of the Tortugas Shrimp Sanctuary and the closure of the U.S. FCZ at the same time that Texas closes its territorial sea to brown shrimping.

Summary of Benefits

Sectors Affected: U.S. commercial fishing and processing; and the general public.

We have determined jointly with the Council that management of the shrimp stocks in the FCZ is expected to provide a higher yield of shrimp in both weight and value than by taking no action. In the absence of an FMP, there would continue to be waste from culling and discarding of small shrimp, conflicts among users, and inadequate statistical information to monitor the fishery.

We expect that the expansion of the Tortugas Shrimp Sanctuary beyond the Florida territorial sea will result in an increase in pink shrimp landings of 1 million pounds. This increase is due to a combination of two factors: (1) growth in undersized shrimp (smaller than 69 tails to the pound); and (2) reductions in discarded (culled) shrimp. We estimate the total exvessel value of the increased landings at $2.43 million (1978 dollars). In addition, we expect a positive effect on the economic efficiency of the shrimp fleet; i.e., landings per vessel should increase, assuming effort remains constant. However, as revenues increase, more shrimp vessels could be attracted into the fishery and have a negative impact on economic efficiency in the long run.

Closure of the FCZ off the Texas coast, when a substantial portion of the brown shrimp weigh less than a count of 65 tails to the pound, is expected to result in an increase in landings of 2.1 million pounds. This increase includes 0.5 million pounds from the growth of smaller shrimp and 1.6 million pounds due to use of previously discarded shrimp which now can be marketed. The exvessel value of the increase in landings is estimated at $7.1 million (1978 dollars). The reason for the large increase in value is that the Texas closure shuts down the fishery for 45 days, which allows the shrimp to attain a larger, more valuable size. In the short run, we expect the economic efficiency of the fleet to increase as a result of the availability of more and larger sized shrimp for a given level of effort.

The Council did not propose the 20 fathom and 30 nautical mile closure alternatives. Although these measures would reduce biological waste, they would create substantial enforcement problems for the Coast Guard and National Marine Fisheries Service in monitoring the limited closure areas. Closure of the FCZ was the least expensive enforcement alternative.

Summary of Costs

Sectors Affected: U.S. commercial and recreational fishing and processing; and the Federal government.

We estimate the government's costs associated with the implementation and enforcement of the shrimp FMP at $1.7 million (1980 dollars). These cost estimates include $543,000 for enforcement, $374,000 for data system development, and $782,000 for annual data system operation.

The statistical reporting system involves surveys of fishermen and processors. We have not yet established the sampling strategy for the surveys and, therefore, do not have estimates of reporting burdens.

Related Regulations and Actions

Internal: The shrimp FMP is related to the stone crab FMP which establishes a seasonal boundary line to resolve gear conflicts. The shrimp FMP is also related to the draft coastal migratory pelagic resources (mackerel) FMP and the draft reef fish FMP through the incidental catch of groundfish and reef fish by shrimp fishing gear. The incidental catch

of sea turtles, which are taken by shrimp trawling operations, is regulated by the Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq*). The shrimp FMP also attempts to be consistent with the Marine Mammal Protection Act of 1972, (16 U.S.C. § 1361 *et seq*).

External: The States of Texas, Louisiana, Mississippi, Alabama, and Florida regulate the catch of shrimp in their respective territorial seas.

Active Government Collaboration

We have requested comments on the draft FMP from Federal and state agencies, Regional Fishery Management Councils, Fisheries Associations and Commissions, Sea Grant Advisory Services, and the general public. We also work closely with the U.S. Fish and Wildlife Service to protect sea turtle populations.

Timetable

NPRM (Assuming FMP Approval)—May 1980
Final Rule—August 1980
Final Rule Effective—September 1980

Available Documents

Draft Regulatory Analysis for the Shrimp Fishery Management Plan

Draft Environmental Impact Statement and Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

Final Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico

All documents are available for review at the National Marine Fisheries Service, Office of Resource Conservation and Management, Plan Review Division, Washington, D.C. 20235.

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DOC-NOAA-OFFICE OF COASTAL ZONE MANAGEMENT

Channel Islands Marine Sanctuary Regulations (15 C.F.R. Part 935)

Legal Authority

Marine Protection, Research and Sanctuaries Act of 1972, § 302(f), 16 U.S.C. § 1432(f).

Reason for Including This Entry

The Office of Coastal Zone Management (OCZM) believes these proposed regulations are important because the regulations are of great public interest. The area involved has significant ecological and recreational values and may have considerable oil and gas development potential, resulting in particularly complex management questions.

Statement of Problem

The waters immediately around the northern Channel Islands and Santa Barbara Island off the coast of California support an extraordinary assemblage of marine mammals; numerous seabirds, including the endangered brown pelican; and important fishery resources, including kelp and shellfish. Until recently, these waters have been left relatively untouched by human activity because of their distance from the populous mainland. Transportation and recreation use of the Santa Barbara Channel is increasing, however, placing pressure on these natural resources.

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, (16 U.S.C. §§ 1431–1434) authorizes the Secretary of Commerce, after consultation with appropriate Federal agencies, and with Presidential approval, to designate ocean areas having distinctive conservation, recreational, ecological, or aesthetic values as marine sanctuaries, and issue necessary and reasonable regulations to protect the resources in these areas.

Based on different recommendations submitted by the Resources Agency of the State of California, the National Park Service, and the County of Santa Barbara, and on hearings held by the California Coastal Commission, the Office of Coastal Zone Management (OCZM) of the National Oceanic and Atmospheric Administration (NOAA) is considering designating a marine sanctuary in the waters around the northern Channel Islands and Santa Barbara Island. This would be the first sanctuary designated since 1975, and since the President's Environmental Message of 1977, which directed expansion of the program. We prepared a Draft Environmental Impact Statement (DEIS) on the proposed action in November 1979, and are now preparing a Final Environmental Impact Statement (FEIS). The FEIS will discuss the integrated management program which designation of a marine sanctuary will provide. If we designate the area as a sanctuary, we will institute programs for research, assessment, and monitoring of the important resources of the site, programs for education of the public about the value of the resources and the potential for harm from certain activities; engage in long-term planning and coordination of programs; and issue necessary regulations. We published an NPRM in the **Federal Register** on December 5, 1979, and are evaluating comments from the public. These comments, the FEIS, and consultations with other Federal agencies may affect the final scope and content of the regulations. The regulations we discuss here represent NOAA's current position.

The alternative we prefer for a sanctuary extends 6 nautical miles (nmi) (11.1 kilometers) seaward from the mean high tide line around the Channel Islands (San Miguel Island, Santa Rosa Island, Santa Cruz Island, Anacapa Island, Santa Barbara Island, Castle Rock, and Richardson Rock). We have proposed that we regulate the following activities within the sanctuary that have potentially harmful impacts on the resources of the area:

oil and gas operations

discharging or depositing any substance into the sanctuary waters

alteration of or construction on the seabed

navigation and operation of vessels (other than fishing and kelp harvesting vessels)

disturbing marine mammals and birds by aircraft overflights below 1,000 ft. (305 meters)

removal or otherwise deliberate harm to cultural or historical artifacts

Generally we would prohibit these activities throughout the sanctuary except for navigation which would be prohibited only for limited types of vessels, such as cargo and offshore supply vessels, and only within 1 mile of the islands. Construction is prohibited within 2 miles of the islands only.

Although many agencies currently regulate or have authority over aspects of these activities and over the natural resources of the waters, the focus of their responsibilities differs from that of the marine sanctuary program, which is to protect the area's ecosystem. Further, individual agencies evaluate individual impacts of various activities which might affect the resources, and cumulative impacts may be overlooked. Moreover, without marine sanctuary regulations, certain activities which could potentially be damaging, such as the disposal of trash in sanctuary waters, are not subject to any regulatory authority. Finally, as a result of designation as a marine sanctuary, additional enforcement resources could become available for the area.

Alternatives Under Consideration

The major alternatives are to (1) designate or (2) not designate a marine sanctuary. The effects of designation are explained above. Nondesignation could

result in environmental degradation because of the projected increase in use of these waters and the lack of any specific protective mechanism for this area. A number of restrictions which apply under existing State and Federal laws would continue to apply to the activities in question (see Related Regulations and Actions); however, lack of coordination could reduce their effectiveness.

Another alternative would be to designate a smaller or larger sanctuary than that proposed, which could range from a sanctuary extending 3 nmi from the limit of the territorial waters around the Channel Islands to an area including the entire Santa Barbara Channel and extending 12 nmi around the islands. A smaller area would not provide adequate protection to sensitive resource areas. Providing adequate management for any larger area is considered unfeasible as well as economically unrealistic. Within any area proposed, there are a number of alternatives for the activities subject to regulation and the nature of the restriction placed on each activity.

Summary of Benefits

Sectors Affected: Channel Islands and the Santa Barbara Island; commercial fishing; recreational fishers, boaters and other users of the area; nearby tourist industry; general public; and endangered species and marine life.

Marine sanctuary designation would result in enhanced preservation of ecological, recreational, and esthetic resources, particularly endangered species, marine mammals and birds, and the habitats of these populations. Fishing and recreation activities, two major sources of income for the region, also depend on the continued health of the marine resources of the area. In 1975, commercial fishermen landed 12,248,000 pounds of fish and shellfish from the waters around the northern Channel Islands and Santa Barbara Island. The California Department of Fish and Game reported that 187,500 angler days occurred in the Channel (from partyboats) in 1970, with a catch of over 500,000 fish and estimated, related expenditures of nearly $2.3 million in 1973. Most of these expenditures occur on the mainland rather than on the islands. The designation of a marine sanctuary in these waters would help assure protection for the natural resources upon which these economic activities partially depend.

Our proposed prohibition of petroleum operations on any leases in the proposed sanctuary area acquired on or after the effective date of the sanctuary designation will ensure a partial buffer of 6 nmi between petroleum development and nearshore marine mammal and fish habitats, recreational, and other resources. The buffer would provide increased time and distance for natural forces to weather and volatilize oil spills and for at-sea cleanup and oil spill containment. The buffer also reduces the visual and acoustic disturbances of petroleum development which affect both the marine mammals and seabirds, and the aesthetic qualities of the islands.

The proposed prohibition of discharges and littering will enhance the area's aesthetic features and will reduce the threat to living marine resources in the sanctuary from such deposits. The suggested restrictions on alteration of or construction on the seabed and on navigation and operation of vessels and aircraft will reduce disturbance of marine mammals and seabirds, which could affect their behavior and possibly their reproductive success. The proposed prohibition on removing or harming historical or cultural artifacts will preserve these resources for future study.

Summary of Costs

Sectors Affected: Federal government; the State of California; and oil and gas extraction.

These proposed regulations will impose minimal costs except for those caused by the prohibition on oil and gas operations under any lease if executed after the effective date of the regulations. The extent of these costs is unclear for the following reasons:

First, reliable data on the hydrocarbon reserves within the sanctuary is not available. Approximately half of the proposed sanctuary has never been considered for leasing and NOAA has no resource estimates in these areas. In the remaining half, there are 54 tracts. The 54 tracts include 11 which are leased already, and thus, not subject to the proposed regulations; and 43 unleased tracts, 24 of which the Department of the Interior's Bureau of Land Management considered for Lease Sale No. 48, and then withdrew, and 19 tracts on which the leases have expired due to insufficient attempts at development. For the 24 withdrawn tracts, the U.S. Geological Survey has estimated reserves of 5.7 million barrels of oil and 8.9 billion cubic feet of gas. These figures are the only available indication of the total oil and gas resources in the proposed sanctuary area.

Secondly, the extent to which the United States will forego any resources, whatever their potential, as a result of the proposed prohibition is questionable. At least some of the available reserves could be recovered by slant drilling from outside the sanctuary, despite any prohibition. Furthermore, in many areas where recovery of oil and gas will be unfeasible under the prohibition, it might be blocked by other agencies independent of any sanctuary regulation. For instance, the State of California prohibits oil and gas development within its waters surrounding the five islands in the proposed sanctuary. The Department of the Interior has already withdrawn 24 tracts in response to comments by the State of California. The number of tracts it would actually offer for lease cannot be predicted.

Finally, to the extent that the capital available for the development of oil and gas reserves in the Southern California Bight can be directed to other tracts outside the sanctuary, the costs attributable to the prohibition would be minimal. No effect on supply would be felt until such time as excess capital is available. The reserves in the sanctuary would not be destroyed or permanently lost because of the proposed regulation; they could be available in the future if modifications in regulations are instituted.

The petroleum industry would forego any profits it could otherwise realize from the development of the affected tracts. Oil companies that have leased tracts in the area include Texaco, Chevron, Exxon, Mobil, Continental, Union, Phillips, and Champlin. However, as discussed above, in the short term this prohibition will impose only minor losses, if any, on the industry, because operators can channel their capital for exploration and development to other areas of the Southern California Bight in which industrial interest appears stronger.

Other primary sectors affected are the Federal government and the State of California because of the loss of possible revenue from lease sales. It is likely that the industry will not bid on affected tracts located completely within the sanctuary if BLM offers those tracts in future lease sales, and will either not bid or will offer reduced bids on tracts located partially within the sanctuary. As we explained above, we cannot estimate the actual loss of revenues at this time. The Department of the Interior estimated the social value of the 24 tracts removed from Sale 48 to be $1 million based on the reduced USGS resource estimates. The social value is the saving gained by producing oil

domestically rather than importing it. The Federal government obtains most of these savings through leases, royalties, and taxes. As oil prices rise, the social value of hydrocarbon reserves will rise as well.

Finally, development on tracts and portions of tracts within six nmi of the Islands which industry has already leased would have to meet certain provisions for oil spill containment equipment in excess of those imposed by USGS. However, because it is likely that in many cases the California Coastal Commission would also require identical equipment, NOAA's minimum may not impose any additional cost.

Related Regulations and Actions

Internal: None.

External: A number of State and Federal agencies have regulatory authority over the activities and resources subject to the proposed regulations. The major ones are:

State

(A) The California Coastal Act of 1976, Cal. Publ. Res. Code § 3000 *et seq.* establishes comprehensive policies for the protection of coastal resources and the management of orderly economic development. These policies apply to activities within State waters and to Federal activities and federally licensed or funded activities with requisite effects on the coastal zone.

(B) The California Fish and Game Code, § 1580 *et seq.*, establishes ecological reserves in a portion of the proposed sanctuary. Within these reserves, the State can control activities that threaten the resources.

(C) The Water Quality Control Act, Cal. Water Code § 13300 *et seq.*, regulates water quality in State waters, particularly in Areas of Special Biological Significance which the State designates within 1 nmi from the islands.

(D) The Cunningham-Shell Tidelands Act, as amended, Cal. Pub. Res. Code § 6850 *et seq.*, establishes State regulation of offshore oil and gas development. The California legislature has created an oil and gas sanctuary generally prohibiting oil and gas development within 3 nmi of the islands, except for Santa Barbara Island.

Federal

(A) The Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, provides for fishery management between 3 and 200 miles.

(B) The Endangered Species Act, 16 U.S.C. §§ 1531–1543, provides protection for listed species, several of which are located within the proposed sanctuary.

(C) The Marine Mammal Protection Act, 16 U.S.C. § 136 *et seq.*, provides for the protection and management of marine mammals.

(D) The Clean Water Act, 33 U.S.C. § 1342, authorizes the Environmental Protection Agency to issue National Pollution Discharge Elimination System (NPDES) permits regulating the discharge of any pollutant into navigable water from a point source.

(E) The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, gives the Secretary of the Interior primary responsibility for managing OCS oil and gas activities, while requiring a variety of measures to mitigate impacts and protect living marine resources.

Active Government Collaboration

The Office of Coastal Zone Management (OCZM) has worked closely with the State of California on the development of this proposal. We have written an Issue Paper at the request of the State, and a DEIS as the direct result of the recommendation of the State. We sent two representatives from State and local governments copies of the Issue Paper, preliminary draft chapters of the DEIS, the DEIS, the NPRM, and all other applicable documents. OCZM has contracted with the State for the State to study appropriate management measures, including joint State/Federal sanctuary management.

OCZM met with Federal agencies on January 23 and April 13, 1979, in accordance with the directions of the Council on Environmental Quality, to determine the issues involved. OCZM invited the Departments of Energy and Interior, the Environmental Protection Agency, the Coast Guard, and the Navy to be cooperating agencies in the preparation of the DEIS.

OCZM regulations require active consultation with all relevant agencies throughout the remaining process (15 CFR 922.24(b), 922.25, and 922.26(a)) (44 FR 44831, July 31, 1979).

Timetable

Notice of Availability of Final Environmental Impact Statement—May 1980.
Final Rule—June 1980.
Final Rule Effective—July 1980.
Regulatory Analysis—not required.

Available Documents

Transcripts of the following meetings are also available from the Agency Contact noted below:

Public workshop in Santa Barbara, California—April 1978
Public comment on Issue Paper (California Coastal Commission hearings)—February, March, April, 1979
Issue Paper on Possible California Marine Sanctuary Sites, December 1978.
NPRM—44 FR 69971, December 5, 1979
Draft Environmental Impact Statement—December 5, 1979

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Surface Management of Mining Claims Located on the Public Lands (43 CFR 3809)

Legal Authority

Revised Statutes, § 2319, 30 U.S.C. § 22.
Revised Statutes, § 2478, 30 U.S.C. § 1201.
The Federal Land Policy and Management Act of 1976, §§ 302(b) and 603(c), 43 U.S.C. § 1701 *et seq.*

Reason for Including This Entry

The Department of the Interior (DOI) believes that these rules and regulations are important because they will afford the public lands a degree of protection from activities carried on pursuant to the 1872 Mining Law, while at the same time imposing the least possible burden on the mining public.

Statement of Problem

The 1872 Mining Law gave individuals the right to go on the public lands to explore for and develop hard rock minerals. This right has gone unregulated since it was granted in 1872. In the period since 1872, thousands of mining claims have been located and developed on the public lands with little or no regard for their environmental impact on the public lands.

The objective of these regulations is to ensure environmental protection to the public lands and their resources by preventing undue and unnecessary degradation of the public lands that may be caused by careless mining practices, while having a minimal effect on the legitimate mining industry.

Alternatives Under Consideration

At the heart of the question of how much control the Department of the

Interior can exercise over the mining of hardrock minerals on the public lands is the right granted by the 1872 Mining Law to anyone who wishes to enter the public lands for the purpose of exploring for and developing hardrock minerals. The alternatives the Department of the Interior is considering vary from the present non-control to the most stringent control possible without denying an individual the right of entry that the 1872 Mining Law grants.

The primary method the Department is considering as a method of regulation is setting a threshold or level of permissible mining activity that will be allowed without requiring an individual to obtain a permit from the Bureau of Land Management to engage in mining activity. The principal alternatives have to do with the level of the threshold for the allowed activity. Once it determines the allowed level, the Department of the Interior will require a permit for all mining activity that exceeds that level. Since the Department has never regulated this activity before, we have no estimate of the number of individuals the regulations will affect. It is clear that the lower the level of activity that the Department allows without a permit, the higher will be the number of individuals the regulation will affect.

The aim of the regulations is to balance the right of entry permitted by the law against the need to protect the public lands, to the greatest extent possible, from unnecessary degradation.

In determining the level of mining activity that the Department of the Interior will allow without imposing a requirement for a permit, the Department has worked closely with all sectors of the mining industry, State and local governments, and environmentalists.

Summary of Benefits

Sectors Affected: The general public.

This regulation will benefit all members of the public who use the public lands for general purposes, particularly those in the public land states of the West.

The resultant benefits of this action could include reduced air pollution, cleaner water, acceptable landscape management, and better road locations and designs. There also could be improved protection of soils; plants; animals; survey monuments; areas of critical environmental concern; and cultural, historical, and scientific resources. In addition, there could be improvements in waste disposal, and fire prevention and control.

Summary of Costs

Sectors Affected: Professional and nonprofessional hardrock mineral mining; and the general public.

This regulation will directly affect all members of the public who engage in mining of hardrock minerals on the public lands either as a profession or as a hobby, and the general public.

The Department of the Interior cannot estimate the extent of the economic effects, because this activity has never been regulated and there is no basis for determining the number of individuals, number of mines, or areas that the regulations will affect. The costs involved can be balanced against the worth of environmentally protected public lands and the increased costs of minerals that the protection extended by the implementation of regulations will cause. Rough estimates of the costs per operation for reclamation have ranged from less than $5,000 to over $12,000. The general public will be affected to the extent these compliance costs are passed on to the public.

Related Regulations and Actions

None

Active Government Collaboration

There have been consultations with the Department of Agriculture so that the Department of the Interior regulations will be as consistent as possible with those published by the Forest Service. The Environmental Protection Agency will be involved through the review of an environmental impact statement related to the preparation of these regulations.

Timetable

Final Environmental Impact Statement—August 1980
Final Rulemaking—September 1980

Available Documents

Surface Management of Public lands under the Mining Laws, NPRM—December 6, 1976, Department of the Interior, Bureau of Land Management.

Surface Management of Public Land Under the Mining Laws, NPRM—March 3, 1980, Department of the Interior, Bureau of Land Management.

Draft Environmental Assessment of the Impact of Proposed Regulations for Surface Management of Public Land Under the Mining Laws as noted in the **Federal Register** of March 3, 1980.

Draft Regulatory Analysis of the impacts of the proposed regulations for Surface Management of Public Lands Under the Mining Laws, Bureau of Land Management, March 1980.

The above documents are available at Office of the Bureau of Land Management, Washington, D.C., address below.

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DOI-HERITAGE CONSERVATION AND RECREATION SERVICE

Rules and Regulations for the Protection and Conservation of Archaeological Resources located on Public and Indian Lands (36 CFR 1215).

Legal Authority

The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470 aa–11.

Reasons for Including This Entry

The Department of the Interior believes these rules and regulations are important because they will significantly affect most archeological investigations on public and Indian lands by providing an equitable decisionmaking process within the permitting procedure and thereby ensuring greater accountability among Federal agencies. Furthermore, the regulations will improve management of the archaeological resources, detail procedures for civil penalties, and benefit authorized users by reducing or eliminating procedural differences within and among agencies.

Statement of Problem

In the past, the administration of the American Antiquities Act of 1906 (Public Law 59–209; 16 U.S.C. 431–433) was subjected to legal challenges in the courts. The challenge was based on the statute's vagueness, resulting from its failure to inform the public in lay terms what constitutes an "object of antiquity." Consequently, the criminal sanctions of this statute were easily avoided by those individuals who were destroying, excavating, and removing objects of antiquity without authorization from federally owned or controlled lands. In addition, Public Law 59–209 did not foster cooperation from all segments of society to protect and conserve such resources, for its focus was directed toward institutionally initiated research only. By 1974, it became obvious that the permitting sections of the Act were outdated because they did not provide adequate criminal penalties for violations.

As a result of the above, the Archaeological Resources Protection Act of 1979 (Public Law 96–95) was enacted providing adequate criminal penalties, clear definitions, new civil penalties, and the promotion of greater public involvement in the decisionmaking process connected with the permitting procedure. This law, as is Public Law 59–209, is administered by the Heritage Conservation and Recreation Service (HCRS) on behalf of the Secretary of the Interior. Although HCRS exercises overall policy direction, each of the land-managing bureaus of the Department is responsible for field-level program operations on those lands under their immediate jurisdiction. This statute applies to all Interior land-managing bureaus, the Departments of Defense and Agriculture, the Tennessee Valley Authority, and all other independent land managing or holding agencies of the Federal government.

These regulations establish procedures for enforcing the Act. The regulations will place limitations on the use of archaeological resources located on all public and Indian lands. The regulations will have a direct impact on the activities of collectors, treasure hunters, and other users of the public domain. These rules will also have a direct impact upon the activities of professional archaeologists undertaking either institutionally initiated field research investigations or work directly related to survey, clearance, and mitigation investigations for energy projects. These regulations will also impose new responsibilities upon the Native American community, resulting in their direct authority to provide protection for such resources as a part of their immediate cultural heritage.

Permits for archaeological investigations are either issued or denied after an institutional and professional review procedure is completed in response to each application received. This process is managed and administered by the HCRS on behalf of the Secretary of the Interior. The review system constitutes a formal analysis of the applicant's ability to undertake the work, provide adequate curatorial facilities for the archaeological resources recovered, and several other requirements which demand professional objectivity by the Federal government. Today, the success of many small professional archeological businesses and the livelihood of thousands of employees depends upon responsible and objective review.

Therefore, the Federal Antiquities Program is one of the few such programs centralized to maintain uniform policy direction within the Department of the Interior and to ensure professional full accountability within the permitting authority. Applications are received from potential permittees and placed within a comprehensive review system which includes internal review, review by the affected land managing bureau, scholars who are familiar with the archaeology of the proposed land area, and representatives of the appropriate American Indian community. Permits are normally issued within four to six weeks after an application is received. In addition, an emergency permitting procedure may be imposed when specific archaeological resources are in immediate danger from erosion or man-made terrain altering activities, or when such investigations may delay energy-related projects if not allowed to commence immediately.

On Indian lands, the specific individual Indian land owner or the recognized Indian tribal authority with jurisdiction over such lands owns the archaeological resources located thereon. Such lands are administered jointly by the Bureau of Indian Affairs and the appropriate tribal authority.

Alternatives Under Consideration

No major alternatives were considered because uniform regulations are specifically imposed by the Congress under law. However the law did not specify all the details necessary for full implementation, and requires further clarification, definitions, and explanation to the public of its responsibilities and of the Federal obligation to the public.

Summary of Benefits

Sectors Affected: Federal land managers; professional archaeologists; educational and scientific institutions; numerous small businesses in the private sector (professional archaeology firms); Native Americans; collectors and treasure hunters; and public and Indian lands throughout the United States (approximately 800 million acres) with major emphasis in the 13 Western States where the majority of such lands are located.

The major benefit of the proposed rules will be to inform the public of what is expected of them, and to clarify obligations of the Federal land managers to the public. The rule will include a systematic permitting procedure, an appeals process for parties denied permits and a procedural approach for civil penalties imposed by the Secretary of the Interior and the other major Federal land managers for those persons who violate the statute in a noncriminal manner. This approach leaves a measure of Secretarial discretion in educating the public rather than using only criminal sanctions as the single effective deterrent to resource degradation. Archaeological research and the resource base benefit because the program procedures are simpler to understand, and thereby inform the public in a clear, concise manner while affording a systematic and equitable permitting procedure for legitimate field investigations. The Native American community also benefits greatly because these regulations provide greater control of archaeological resources to the Indian landowners, and afford all Indian tribes an opportunity to provide comment on all undertaking proposed to occur on non-Indian public lands which may be their traditional tribal lands. This rule also clarifies the enforcement procedures of each land-managing bureau of the Department. The most important single benefit to the public in this rule lies in its implicit intent to foster greater and improved involvement and cooperation among the professional archaeological community, Native Americans, and collectors nationwide.

The Department of the Interior strongly believes one of the most important aspects of the Archaeological Resources Protection Act and its regulations lie in their authority to bring about a greater national sensitivity for the protection and conservation of archaeological resources. Accordingly, through a nationwide public awareness program, the Interior Department is confident that public educational programs will enhance and safeguard that which remains of our national patrimony as represented by the tangible remains of man's prehistory and history in America.

These regulations seek Federalwide uniformity in program administration and management policy direction. The Department of the Interior, as the lead Federal agency in the field of historic preservation, seeks to provide national leadership in this effort.

Summary of Costs

Sectors Affected: Federal land managers; professional archaeologists; educational and scientific institutions; numerous small businesses in the private sector (professional archeaology firms); Native Americans; collectors and treasure hunters; potentially affiliated industries, such as the metal-detecting industry; and Federal agencies.

It is difficult to provide reliable estimates for the direct and indirect costs of the regulations to the sectors

they affect. However, we anticipate only minimal costs. Increases will occur in the costs to the Federal government of administering the Federal Antiquities Program, especially through policy direction at the national level by HCRS on behalf of the Secretary of the Interior. Such expenses as recordkeeping, inspections of curatorial facilities, on-site field investigations, and overall program monitoring of project-specific activities by the land-managing bureaus will obviously bring additional costs. These same bureaus will incur slight increases in funds for law enforcement efforts, not by increasing the number of field agents, but by providing greater coordination among existing facilities at the State and local levels and increased coordination among Federal law enforcement agencies.

HCRS has requested $425,000 for FY 1981 for implementation of the program at the national policy direction level. The funding level for FY 1980 was $58,000 with a request for supplemental funding of $124,500. Such funds as are necessary to implement the responsibilities of the several land-managing bureaus of the Department will be sought as needed by those bureaus, as well as the other Federal land managing departments and independent agencies. We anticipate the needs of the Interior land managing bureaus not to exceed $400,000 per fiscal year (Bureau of Land Management, $220,000; Fish and Wildlife Service, $75,000; National Park Service, $50,000; Bureau of Indian Affairs, $35,000; and Water and Power Resources Service, $20,000).

Figures for the Department of Defense are anticipated to be approximately $110,000 per fiscal year for full program implementation for all lands under its immediate jurisdiction. However, as in the past, we anticipate that program policy authority will be delegated from Defense to Interior, and thus reduce fiscal needs of the Defense Department substantially. Figures for full implementation by the Department of Agriculture are anticipated not to exceed $200,000 per fiscal year, because only one land-managing bureau exists within that Department (Forest Service). The Tennessee Valley Authority will require approximately $60,000 for full implementation.

Cost estimates provided above for the Departments of Defense and Agriculture, and the Tennessee Valley Authority should only be regarded as estimates subject to those agencys' internal needs as recognized by each.

Related Regulations and Actions

Internal: American Antiquities Act of 1906 (43 CFR 3)—The Department of the Interior published proposed rulemaking on the "Definition of an Object of Antiquity" on April 10, 1978 (43 CFR 14975). We will publish final regulations on the definition of an "object of antiquity" relative to Public Law 59–209 immediately subsequent to publishing final regulations for Public Law 96–95.

External: None.

Active Government Collaboration

The Department of the Interior, through HCRS and under the auspices of the Federal Antiquities Program, initiated an interagency task force to write the rules and regulations immediately prior to the President's signing House Bill 1825 (Archaeological Resources Protection Act), on October 31, 1979. On March 24, 1980, the Secretary of the Interior formally created the Interagency Rulemaking Task Force for the Implementation of Public Law 96–95. This task force is comprised of representatives of each Interior land-managing bureau, the Departments of Defense (Navy, Air Force, and Army) and Agriculture, and the Tennessee Valley Authority. In addition, several other smaller land-managing and holding independent agencies will be affected by these uniform regulations, and expected to issue agency-specific guidelines and procedures. This interagency task force will remain active through publication of final uniform regulations in the **Federal Register.**

These rules and regulations are the first in a three-tier rulemaking process. Subsequent to the publication of final regulations in the **Federal Register** of the uniform regulations, each Federal land manager (department or independent agency) is required to publish the next level of regulations specific to that department or agency's overall mission. Procedurally each may vary in scope and applicability within the framework of the uniform regulations. Subsequent to the publication of final departmental land regulations in the **Federal Register,** each bureau of a department may issue bureau mission specific guidelines or procedures which may take the form of regulations within the scope of that particular bureau's departmental regulations.

Timetable

NPRM—June 15, 1980
Public Comment Period—90 days following NPRM, ending approximately September 15, 1980
Public Hearings—July 15, 1980–September 15, 1980 (Albuquerque, New Mexico; Anchorage, Alaska; Sacramento, California; Denver, Colorado; Chicago, Illinois; and Atlanta, Georgia)
Final Rule—January 30, 1981

Available Documents

"Archaeological Resources Protection Act of 1979; Notice of Permitting Procedures Pending Publication of New Regulations", **Federal Register,** January 23, 1980 (45 CFR 5302).

"Archaeological Resources Protection Act of 1979; Public Hearings Prior to Publication of Proposed Rulemaking", **FEDERAL REGISTER,** March 19, 1980 (45 CFR 17622).

Transcripts and recordings of early input public hearings held in Denver, Colorado (March 22, 1980); Phoenix, Arizona (March 29, 1980); Portland, Oregon (April 12, 1980); and Knoxville, Tennessee (April 19, 1980).

The above documents are available at offices of the Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343–7105.

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DOI–HCRS

Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program (36 CFR Part 1228)

Legal Authority

Urban Park and Recreation Recovery Act of 1978, 16 U.S.C. 2501–2514.

Reason for Including This Entry

The Department of the Interior (DOI) has determined that these rules are significant because they explain procedures for a new grant program which may have an annual effect on the national economy of over $100 million.

Statement of Problem

In 1977, the Heritage Conservation and Recreation Service (HCRS) of DOI completed a National Urban Recreation Study, mandated by Congress, which described and assessed the current condition of urban recreation in the country. The Study indicated that the quality of life in urban areas is closely related to the availability of fully

functional park and recreation systems, and that city residents need close-to-home recreation opportunities that meet specialized urban demands. The greatest recreational deficiencies are in large cities, especially at neighborhood levels. In addition, inadequate local financing of urban recreation programs, because of the fiscal difficulties of many large cities, has led to the deterioration of facilities, lack of recreational services, and an inability to adapt recreational programs to changing circumstances. Over the past decade, the share of municipal spending devoted to parks and recreation has declined by as much as 26 percent. There is no existing Federal assistance program which fully addresses the needs for physical rehabilitation and revitalization of these park and recreation systems.

In his policy message of March 27, 1978, President Carter proposed a new Federal grant program whereby urban communities could compete for funds to revive and rebuild their parks and recreation facilities. On October 13, 1978, Congress passed the National Parks and Recreation Act of 1978, and on November 10, 1978, the President signed the bill into law. Title X, the Urban Park and Recreation Recovery Act (UPARR) of 1978, authorized the Secretary of the Interior to establish a five-year program to provide Federal grants to economically hard-pressed communities, specifically to help rehabilitate critically needed recreation areas and facilities and develop improved recreation programs. The Secretary of the Interior has delegated the responsibility for developing the Urban Park and Recreation Program to the Director of the Heritage Conservation and Recreation Service.

Beginning in fall 1979, this new program has operated under interim rules to provide grants to local governments to rehabilitate existing indoor and outdoor recreation facilities, to demonstrate innovative ways to enhance park and recreation opportunities, and to develop local Recovery Action Programs, which are documents that identify community needs, objectives, action priorities, and strategies for revitalizing the total public and private recreation system. Congress authorized a total of $725 million to be spent on the UPARR Program over the next five years, $150 million for FY 1979–1982, and $125 million for FY 1983. Congress appropriated a supplementary budget of $20 million for FY 1979; the House passed an appropriation for FY 1980 of $125 million. As of the first two grant rounds (FY 1979 and FY 1980—Round 1), the UPARR Program has already offered awards totaling $53 million to 151 jurisdictions.

The program aims to develop linkages between cities and States; between urban recreation, physical resource, and human services programs; between the Federal government and the States; and between the Department of the Interior and other Federal agencies that will help ensure the long-term success of the overall urban revitalization effort.

There are three types of project grants under the UPARR Program. Rehabilitation grants are matching capital grants (70 percent Federal–30 percent local) to local governments for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor recreation areas and facilities. Funds may be used to improve park landscapes, buildings, and support facilities. Funds may not be used for routine maintenance and upkeep activities, nor may they be used for acquisition.

Innovation grants are matching grants (70 percent Federal–30 percent local) to local governments to cover costs of personnel, facilities, equipment, supplies or services designed to demonstrate innovative and cost-effective ways to enhance park and recreation opportunities at the neighborhood level. Innovation proposals should demonstrate solutions to common problems in system management and the delivery of recreation services. These funds may not be used for routine operation and maintenance activities. Innovation grant awards are limited to ten percent of the total annual authorization for the UPARR Program.

Recovery Action Program grants are matching grants (50 percent Federal–50 percent local) to local governments for the development of local park and recreation system recovery plans. They may be used to fund preparation of resource and need assessments, coordination, citizen involvement, and policy development activities which contribute to public definition of recovery goals and priorities.

Rules for the UPARR Program have been published as three separate sections of 36 CFR Part 1228. Rules regarding eligibility and the list of eligible jurisdictions are Appendix A and B of Part 1228, and were published as final rules in 44 FR 58088, October 9, 1979. Rules regarding the preparation of local Recovery Action Programs are Subpart B of Part 1228, and were published as final rules in 45 FR 15456, March 10, 1980. The remaining rules, consisting of Subparts A, C, and D, are entitled the Grant Procedure regulations, which consist of the administrative procedure requirements and selection criteria for grant proposals. Only the Grant Procedure regulations were determined to be "significant" rules by the DOI.

This entry outlines the program content of the final Grant Procedure rules and responses to comments which DOI will publish.

Alternatives Under Consideration

Alternatives which we considered for distributing funds under this program included the following: (1) first-come, first-served, (2) allocation by jurisdiction, and (3) competition for funds based on a series of specific criteria. On a first-come, first-served basis only those jurisdictions with enough money to initially hire staff and prepare a Recovery Action Program more quickly than their economically distressed neighboring communities, would receive grants. Because this program is meant for distressed communities, according to the legislation, it would not be fair to accept the first completed programs and applications without allowing ample time for other hard-pressed and/or inexperienced jurisdictions to acquire the resources to plan their programs.

DOI feels that allocations of a specific fund amount to eligible jurisdictions would also not be fair, because each jurisdiction is unique, with different needs and priorities. Some jurisdictions may need only one rehabilitation grant to improve a small distressed area, while others may need both rehabilitation and innovation grants to help revitalize a recreation system which has a history of financial problems.

The DOI rejected these two alternatives, because they did not satisfy the intent of the President's message to Congress on the National Urban Policy. The message stated that these grants would be "challenge grants." Therefore, the intent of the program would not be served if funds were allocated without equal competition, or without considering the quality of local planning and commitment on a case-by-case basis.

The third alternative we considered was a competitive program for selecting proposals. The DOI decided to use this method, by developing a set of criteria for judging the quality of proposals. This method will allow us to consider a larger variety of factors. Emphasis will be on the existing conditions that are unique to each community, on the quality of the specific projects it proposes, and on its overall commitments to improvement in planning, design, coordination and

support for recreation. Three sets of criteria were established for each of the three types of grants available and are based on the priority criteria listed in the UPARR Act, 16 U.S.C. 2501, § 1005. The criteria are targeted to disadvantaged populations, condition of existing facilities; neighborhood recreation deficiencies, public participation and overall community revitalization.

Summary of Benefits

Sectors Affected: State and local urban governments; users of urban parks and recreation areas, particularly low and moderate-income groups, minorities and populations under 18 and over 60; the general public; and the urban environment.

The UPARR Program will have the largest beneficial effect on low- and moderate-income groups, minorities, and populations under 18 and over 60 who live in urban areas. All members of the public who use the areas, facilities or programs improved with UPARR grant money will also benefit. The general public will be affected to the extent that it will enjoy the overall social and economic benefits of an improved and upgraded community.

This program will improve the quality of life for residents of large, distressed urban areas where deteriorating and obsolescent community facilities are usually located. Many of these neighborhoods are racially mixed and densely populated, and have low-income, unemployed residents. UPARR will also upgrade parks and facilities to improve areas, both environmentally and aesthetically. It will encourage urban jurisdictions to rehabilitate existing recreation areas and develop plans and programs for long-term operation and maintenance. Some money for innovative projects, otherwise unfundable because of budget restraints, will also be available. The rehabilitation of park and recreation areas and facilities will encourage careful and creative use of existing resources and historic facilities. Energy costs should decrease as neighborhood residents stay near home to enjoy recreation facilities and areas.

The UPARR Program may not change the composition of minority groups in cities, but it could help to stabilize neighborhoods so that more people may choose to stay in the areas. Many urban jurisdictions must also serve a growing senior citizen population, and provide specialized programs for the handicapped. Because the UPARR Program is designed to involve all groups in the planning and development of local programs, the program would have a positive impact on these special population groups, and will be a means to meet their needs. Through this program of coordinated public and private effort, diverse groups of urban residents can at least revitalize one segment of their community service needs. People who are involved in local planning will also take pride in their neighborhoods. They would, in turn, discover ways to improve housing, schools, and other public services, and attract new industrial and commercial establishments, which would increase the tax base and provide more jobs.

Because expressions of ongoing commitments to planning, rehabilitation, operation and maintenance are required as a condition for grants under this program, Recovery Action Programs will be prepared, by the jurisdictions, emphasizing local goals and priorities, coordination with other community programs, and the desires of citizens. Involvement of elected officials, businesses, and private groups will also increase commitments of public and private resources to revitalize local areas, and operate and maintain programs.

As stated in the Act, the Secretary of the Interior will coordinate this program with other Federal urban assistance efforts. This will produce the positive impact of complementing other Federal programs, while targeting efforts to identified recreation needs. DOI has already established active collaboration with three other Federal agencies.

This program will improve environmental quality through the provision of rehabilitated recreation facilities, which will be highly visible as definite improvements in distressed areas. Beauty, health, and well-being will again be available to residents of distressed urban areas. These rehabilitation projects will encourage careful and creative re-use of existing resources and historic facilities, as opposed to massive clearance and redevelopment.

This program will have the indirect impact of providing both skilled and unskilled jobs for the actual park rehabilitation projects, and subsequent provision of recreation service and programs. In the private sector, it is difficult to estimate the number of jobs, because coordination will be taking place with local park and recreation agencies and other Federal job programs, such as the Comprehensive Employment and Training Act (CETA).

The private sector jobs should be located in the distressed areas, and because many of the program applicants will have high unemployment levels based on the eligibility criteria, we will give consideration to employment opportunities for local low- and moderate-income residents. Blue-collar and professional jobs will be required to do the actual ground work and administer the program on a local level. In the public sector, some jobs will be needed to help administer and coordinate the overall initiative of this program, with the majority of these jobs located at the city and regional levels.

Summary of Costs

Sectors Affected: DOI; and State and local governments.

We anticipate few adverse effects from the program, and we expect minimal negative environmental impacts. DOI administrative functions will increase only to the extent that this is a new program and requires staff for its administration. Grant applications require applicants to do minimal paperwork. Most local administrative and planning costs can be counted as a portion of a local matching grant, if the locality is selected for a rehabilitation or innovation grant award. Those communities which prepare a 5-year local Recovery Action Program but do not receive grant awards must bear the cost. However, their Recovery Action Program will prove to be a valuable component of local planning programming efforts.

The State Action Incentive provision of the program is aimed at enabling States to effectively share in the financial responsibilities, while providing technical advice and coordinating local projects with State plans and programs. Many States have expressed the desire to aid their own cities. Therefore, by matching funds, they not only help the cities, but provide overall improvements for the entire State.

Income will be an indirect cost impact as a result of increased employment opportunities and neighborhood revitalization. Again, because this program is targeted to distressed urban areas, the majority of jobs, and thus income, should benefit the low-income, minority residents of these areas. The amount of income generated should not in itself alter the tax burdens of citizens. Taxes and assessments could be increased in the long-run, if the local distressed areas revitalize completely. However, if business and industry stay or return to "former" distressed areas, the tax base would be strengthened, and, therefore, help keep homeowners' taxes down to a reasonable level.

Related Regulations and Actions

Internal: "Eligibility Regulations", Final Rule, 36 CFR Part 1228, Appendix A and B, 44 FR 58088, October 9, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs," Final Rule, 36 CFR Part 1228, Subpart B, 45 FR 15456, March 10, 1980.

"Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act of 1978," Interim Rule, 44 FR 47018, August 9, 1979.

External: None.

Active Government Collaboration

The Department of Housing and Urban Development is cooperating with the HCRS, Division of Urban Programs in compliance with Title VI of the Civil Rights Act of 1964 (Nondiscrimination in Federally Assisted Programs); and on the Public Housing Urban Initiatives Anti-Crime Program, initiated by HUD and signed as a "Memorandum of Understanding" (MOU) October 10, 1979.

The Department of Labor is cooperating with the HCRS to coordinate CETA and UPARR Programs to meet multiple labor and employment opportunity objectives. MOU was signed August 3, 1979.

The National Endowment for the Arts is cooperating with the HCRS to coordinate NEA and UPARR objectives leading to the improvement of arts and cultural activities in parks and recreation systems. MOU was signed October 9, 1979.

Timetable

Final Rule for Grants Procedures—June 1980.

Available Documents

36 CFR 1228. Eligibility Regulations, Interim Rule, 44 FR 15486, March 14, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs," Interim Rule, 44 FR 39342, July 5, 1979.

Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act," Interim Rule, 44 FR 47018, August 9, 1979.

"Program Eligibility Provisions," Final Rule, 44 FR 58088, October 9, 1979.

"Local Recovery Action Programs," Final Rule, 45 FR 15456, March 10, 1980.

A Draft Regulatory Analysis, an Urban and Community Impact Analysis, an Environmental Assessment, and the public comments received on the interim regulations are available for review at the HCRS, Division of Urban Programs, Pension Building, Room 310, 440 G Street, N.W., Washington, D.C. 20243.

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DOI–OFFICE OF SURFACE MINING

Definition: "Surface Coal Mining Operations" (30 CFR 700.5*) and "Coal-Processing Plant" (30 CFR 701.5*)

Legal Authority

30 U.S.C. 1201 *et seq.*

Reason For Including This Entry

To more clearly determine the jurisdiction of its regulatory authority, the Department of the Interior (DOI), Office of Surface Mining (OSM) is initiating a study of the characteristics of coal-processing plants located outside the permit area of a mine. An outcome of this study may be amendment of the definitions of Surface Coal Mining Operations and Coal-Processing Plant. The amendment, if undertaken, might have a major impact on the coal industry.

Statement of Problem

The definitions of "Surface Coal Mining Operations" and "Coal-Processing Plant" in current regulations do not indicate clearly what off-site coal-processing plants are to be regulated. Physical or chemical processing of coal may produce coal waste. The coal-processing plants and their support facilities may be located within or outside the permit area for a mine. Furthermore, the degree of the environmental impact from the operation of coal-processing plants may vary according to the nature and location of the plant. Consequently, unless a clear understanding of the whole industry is obtained and a better jurisdiction for regulatory authority is determined, some coal-processing plants which are located outside the permit area but cause serious environmental and pollution problems may be outside the jurisdiction of the regulatory authority. OSM is, therefore, taking action to initiate a study and possibly to revise the definitions of Surface Coal Mining Operations and Coal-Processing Plant. Among other things, the study will determine the number and location of coal-processing plants that will produce clean coal and coal waste and the number and location of coal-processing plants that will only crush and load coal. The study will also report what environmental standards those plants are currently operating under or should be complying with and the cost of such compliance.

OSM's action is mainly in response to a 1979 decision of the DOI Office of Hearings and Appeals, Board of Surface Mining and Reclamation Appeals. The case involved Western Engineering, which operates a river terminal exclusively to prepare and load coal on barges. Western sometimes crushes coal and sprays the coal with water or takes other measures to control dust. Western was cited by OSM for failure to pass the effluent from these operations through a sedimentation pond and for violation of the effluent limitations. The Board ruled in favor of Western because OSM's definition was unclear as to whether this type of facility was to be regulated.

If OSM does not take any action, similar uncertainty and pollution will continue to occur and therefore make OSM's enforcement work difficult.

Alternatives Under Consideration

The proposed amendment will clarify OSM's intent on what coal-processing plants are to be regulated and eliminate any ambiguities as to the definitions. Consequently, another alternative considered is no action. Depending upon the outcome of the study, it is possible that no action may be taken; OSM favors the change of definition in order to minimize the adverse environmental impact of coal-processing operations.

Summary of Benefits

Sectors Affected: Owners of coal-processing plants; persons who live near and around coal-processing plants; the general public; and OSM and the State regulatory authority.

Owners of coal-processing plants will have the benefit of knowing whether their plants are subject to regulation. This will eliminate uncertainty and save cost. Citizens who live near coal-processing plants will have the benefit of knowing whether the plants are subject to regulation. OSM or the State regulatory authority will know the jurisdiction of its enforcement authority, and therefore perform better enforcement.

Indirectly, citizens who live in the communities with coal-processing plants will enjoy cleaner air and water and an improved quality of life. The general public will also enjoy a better environment.

Summary of Costs

Sectors Affected: Owners of coal-processing plants; OSM and the State regulatory authority; and coal users.

OSM is initiating a study to determine more specifically the number and location of various types of coal-processing plants, such as the number and location of plants that only crush and load coal, and the number and location of coal-processing plants that clean coal and produce waste products.

This study will discuss the direct and indirect costs resulting from the proposed action. Such costs might include the cost incurred by the plant owner to comply with the regulations.

Related Regulations and Actions

None

Active Government Collaboration

None at present. OSM may collaborate with the Environmental Protection Agency and the Mine Safety and Health Administration in the future.

Timetable

ANPRM—September 1, 1980
NPRM—January 15, 1981
Public Hearings—February 15, 1981 at the following locations:
Washington: Department of the Interior Auditorium
18th and C Streets N.W.
Washington, D.C.
Indianapolis: Indiana World War Memorial Auditorium
431 North Meridian Street
Indianapolis, Indiana
Denver: Court House
1961 Stout Street, Room C-503
Denver, Colorado

Public Comments—Written comments can be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Records Office, Room 153 South, 1951 Constitution Avenue N.W., Washington, D.C. 20240. Written comments will be accepted between January 15, 1981 and March 15, 1981.

Final Rule—Final rule will be published in the **Federal Register** on April 16, 1981.

Final Rule Effective—30 days after the publication of the final rule.

Available Documents

None available at this time

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DOI-OSM

Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds (30 CFR 716.17, 717.17, 816.42, 816.46, 817.42, and 817.46)

Legal Authority

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 *et seq.*

Reason For Including This Entry

The Department of the Interior (DOI) considers these rules to be of general public interest because they concern the environment and the public health and safety, and because they will help to improve the quality of the waters of the United States.

Statement of Problem

On December 13, 1977, the Office of Surface Mining (OSM) published initial regulations for control of sediment in discharges from areas of surface coal mining and reclamation activities, and on March 13, 1979, published final regulations. The rules established specific limitations—called "effluent limitations"—on the total suspended solids (TSS) iron and manganese content of the discharges from the mining area. The rules also required that all runoff be passed through sedimentation ponds and established minimum design criteria for these ponds. Essentially, sedimentation ponds improve the quality of discharges by detaining runoff until heavier particles settle to the bottom of the pond.

The TSS limitations were essentially the same as those established by the Environmental Protection Agency (EPA) on April 26, 1977, (42 FR 21380), and on January 12, 1979, (44 FR 2586). EPA's regulations were promulgated pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.* OSM's pond design criteria were based on the best technical information available when the OSM regulations were published. Six months after publication of the final regulations, however, two studies—one conducted by Skelly & Loy under contract to EPA and the other by D'Appolonia under contract to OSM—indicated that discharges from ponds designed to meet OSM's design criteria might not be able to meet the TSS effluent limitations during large precipitation events.

On the basis of these studies, a petition was filed with the Secretary of the Interior to suspend immediately the TSS effluent limitations and sedimentation pond design criteria. The petition was published in the **Federal Register** (October 18, 1979, 44 FR 60226-60230), and a public comment period followed. EPA also solicited comments on the studies during the same period and, on December 28, 1979, amended its effluent limitation regulations. The amendment granted an exemption from compliance with the effluent limitations during rainfall events to operations whose facilities are designed, constructed, and maintained to treat or contain a 10-year/24-hour rainfall event.

On December 31, 1979, OSM suspended certain of its regulations and also published an NPRM. On January 30, 1980, OSM adopted EPA's amended effluent regulations, including EPA's rainfall exemption from the effluent limitations.

EPA expects to publish proposed TSS regulations by October, 1980, and final regulations by April 1981. These will be based on an ongoing EPA field study of representative sedimentation ponds across the country. Consequently, OSM will postpone further rulemaking pertaining to these issues until sufficient data from this study are available for use in revising the OSM sedimentation pond design criteria, if that should be necessary.

Alternatives Under Consideration

Option (A): OSM would re-adopt its present regulations, including the effluent limitations and the sedimentation pond design criteria.

This option will comply with the mandate of the Act by improving the quality of the waters entering the receiving stream. However, as the Skelly & Loy and D'Appolonia studies have indicated, operators may not be able to comply with the effluent limitations during large rainstorm events, even with ponds conforming to the design criteria.

Option (B): OSM would adopt a rainfall exemption modified either to increase or decrease the size of the precipitation event to which the exemption is keyed—10-year/24-hour at present—but would re-adopt the effluent limitations and sedimentation pond design criteria.

This option will comply with the mandate of the Act and give minimum national design standards for sedimentation ponds. This option will also protect and improve the Nation's waters and limit the additional contribution of TSS to the receiving stream. However, the studies have indicated that even with ponds designed to OSM standards, operators may exceed effluent limitations during large rainfall events. Furthermore, it would be hard to choose a rainfall event that would be technically acceptable nationwide, in light of the varied settling characteristics of the sediments.

Option (C): This option is the same as Option (B) except that the sedimentation pond design criteria would be modified to reflect the conclusions of the Skelly & Loy and the D'Appolonia studies.

This option has advantages and disadvantages similar to those of Option (B).

Option (D): OSM would re-adopt the effluent limitations, but would delete design criteria concerned with the size of sedimentation ponds and the efficiency of the structure. All other design criteria would be re-adopted including the requirement to install a pond. The sizing of the pond would be left to the operator and/or regulatory authority.

This option has advantages and disadvantages similar to those of Option (B). However, it will provide operators and regulatory authorities with greater flexibility in designing sedimentation ponds.

Option (E): OSM would re-adopt its effluent limitations and design criteria, but an exemption from the effluent limitations would be granted to structures conforming to OSM's design criteria. Special design criteria for steep slope areas will be proposed.

One of the advantages of this option is that it will help protect the Nation's waters while giving relief to operations on steep slope areas. A disadvantage is that, according to the Skelly & Loy and D'Appolonia studies, the effluent limitations may be exceeded during rainfall events even with ponds designed to OSM design standards.

Option (F): OSM would re-adopt all sections of the regulations on sedimentation ponds as they existed prior to suspension, except for sections dealing with effluent limitations and rainfall exemptions. These sections would be deleted and replaced by new regulations incorporating rainfall and TSS effluent limitations to be promulgated by EPA under 40 CFR 434.

By adopting EPA's effluent limitations, OSM would comply with the requirements of the Act. However, as stated previously, re-adoption of the sedimentation pond design criteria will not ensure that the effluent limitations will be met at all times.

Option (G): OSM would re-adopt the current effluent limitations and apply them only to base flow (discharges during nonrain periods). OSM would adopt a rainfall event effluent limitation to be promulgated by EPA based on field data presently being gathered. Based on the rainfall event effluent limitations, OSM would develop minimum nationwide sedimentation pond design standards.

This option is currently being considered as the most feasible. It is known that the existing effluent standards are achievable during nonrain periods. EPA is collecting field data throughout the Nation and sampling the influent and effluent from sedimentation ponds before, during, and after rainstorms. Once the data are analyzed, nationwide effluent standards for rainstorms can also be promulgated. This two-tier effluent standard system will give maximum protection to the Nation's waters without imposing an undue burden on operators.

Summary of Benefits

Sectors Affected: The coal mining industry; users of water downstream from coal mining and reclamation operations; and the general public.

There will be a significant improvement in the quality of the Nation's waters due to improvement in the discharges from sedimentation ponds. This will benefit all downstream users, improve the aesthetics of streams receiving discharges from coal mining and reclamation operations and give coal operators guidance on how to comply with the Act, eliminating confusion which they now experience.

The cost of treating water for human consumption will decrease, though the exact amount is not yet known. Pathogenic water-borne organisms will decrease by an amount not yet known. Fish as well as organisms living on stream and lake bottoms will be subject to less man-caused pollution. In summary, the quality of life will be improved.

Summary of Costs

Sectors Affected: The coal mining industry; users of coal as a fuel; and the general public.

We have not prepared a formal Regulatory Analysis of all the alternatives. An informal Regulatory Analysis shows that the production-weighted average national cost in incremental cents per ton of constructing sediment ponds designed to OSM specifications is $0.16 for surface mining and $0.02 for deep mining. There is a distinct possibility that this average cost might decrease when OSM promulgates new regulations because required sedimentation pond size might be smaller. OSM does not envision an increase in these figures. Because these costs are relatively insignificant compared to the cost of a ton of coal (roughly $22), no decrease in coal mining operations is expected. Moreover, as coal becomes more desirable as a fuel, it is expected that more will be mined.

It is difficult to assess how much more the users of coal will pay because of the regulations.

Related Regulations and Actions

None reported.

Active Government Collaboration

OSM is actively coordinating its rulemaking efforts with EPA, which has the responsibility for regulating all discharges to the Nation's waters. The agencies will work together in promulgating regulations.

Timetable

ANPRM—September 1980
NPRM—October 1, 1980
Public Hearings—between October 1980 and December 1980
Final Rule—April 1, 1981
Final Rule Effective—May 1981

Available Documents

42 FR 62639–62716, December 13, 1977
44 FR 14901–15463, March 13, 1979
44 FR 30610–30634, May 25, 1979
Evaluation of Performance Capability of Surface Mine Sediment Basins, Skelly & Loy, August 3, 1979
Evaluation of Sediment Pond Design Relative to Capacity and Effluent Discharge, D'Appolonia, August 3, 1979
Petition filed with OSM by the National Coal Association/American Mining Congress (NCA/AMC) Committee on Surface Mining Regulations, September 21, 1979
44 FR 60226–60228, October 18, 1979
Comments on the NCA/AMC Petition (fifty).
44 FR 77447–77454, December 31, 1979
44 FR 77456–88457, December 31, 1979
45 FR 6813, January 30, 1979
Comments on NPRM for sedimentation ponds (45 FR 6913)
Final Regulatory Analysis, Permanent Regulatory Program of the Surface Mining Control and Reclamation Act of 1977, OSM–RA–1

Documents can be examined at:

OSM Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue N.W., Washington, D.C. 20240; (202) 343–4728.
OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard East, Charleston, West Virginia 25301; (303) 342–8125

OSM Resgion II, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902; (615) 637–8060

OSM Region III, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204; (317) 269–2609

OSM Region IV, 818 Grand Avenue, Scarritt Building, 5th Floor, Kansas City, Missouri 64106; (913) 753–2193. OSM

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DOI–OSM

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Performance Bonding (30 CFR Parts 800–809, Subchapter J)

Legal Authority

Surface Mining Control and Reclamation Act of 1977, P.L. 95–87, 91 Stat. 45.

Reason for Including This Entry

The Office of Surface Mining (OSM) of the Department of the Interior believes this rulemaking is important because it addresses significant problems and adds flexibility to regulations which, through the petition process, were said to be overly restrictive and in need of amendment.

Statement of the Problem

OSM has proposed amendments to its permanent program regulations for performance bonding of the reclamation of surface coal mines. OSM issued these regulations to implement §§ 509 and 519 of the Surface Mining Control and Reclamation Act of 1977, which require OSM to develop a regulatory program that requires a surface coal operator disturbing the land overlying a coal seam to post a bond in an amount sufficient to repay the regulatory authority for conducting the reclamation necessary to restore the land to its original condition, if the operator fails or is unable to perform the reclamation itself.

The bonding regulations provided various ways of assuring that funds would be available if forfeiture occurred. These included a financial commitment by a third party (a surety); offering collateral, such as cash, certificates of deposit, or letters of credit; and self-bonding (an attachment of real and personal property holdings by which, upon liquidation, funds would be made available). These alternative provisions contained specific criteria for acceptance which, upon issuance on March 13, 1980, and by review by coal companies, the surety industry, and mining regulatory agencies, were found to contain standards that were said to be unnecessarily stringent, inflexible, and in need of modification.

Under these regulations, which would not become effective until 1981, coal operators claimed it would be impossible to obtain bonding, and as a result, permits would not be issued to authorize surface coal production. The surety industry, which would be responsible for bonds issued for years to come, was said to be unable to evaluate the risks in guaranteeing reclamation performance as required by the regulations.

Mining operators unable to provide a performance bond would be prevented from mining coal, because issuance of the mine permit is contingent on bond being posted. If bonds are not available, a large segment of the mining industry may be unable to conduct business lawfully. Unless changes are made in the current performance bond requirements, the coal industry may be prevented from opening new mines and repermitting existing coal mines. If these amendments are not made, most of the small operators and many of the medium-sized operations probably will not be able to secure surety bonds.

Through public hearings and meetings with interested parties, OSM has developed amendments to the original regulations which address the main areas of concern. Several changes are proposed in response to the petition for rule-making filed with OSM and supported by the mining and bonding industries. Other changes proposed are a result of comments received during the public comment process.

Alternatives Under Consideration

OSM, in considering alternatives to the original regulations, has developed additional methods by which to bond, modified the language of the regulations to increase flexibility, provided adaptation to regional conditions, and addressed many of the issues in the petition.

The proposed regulations make changes in the following areas: cumulative bonding (a method for minimizing the amount of bond through contemporaneous reclamation practices); long-term vs. short-term bonding (recognition of the difficulty in obtaining a long-term commitment from a surety company); allowable conservation practices (those reclamation practices not extending the period necessary to ensure successful revegetation); a grace period for operators losing bond through no fault of their own; simplifying the bond release provisions; allowing a surety company to perform the reclamation under forfeiture instead of paying the total amount; and use of forfeited bonds on the permit area covered.

These proposals clarify the regulations and should ease the difficulties in obtaining bonds that are currently imposed.

Summary of Benefits

Sectors Affected: The coal-mining industry; the surety industry; coal-related industries, such as manufacturing of mining machinery; and users of coal, including electric, gas, and sanitary services.

The changes instituted through this rulemaking will benefit all coal mines in the United States by increasing the availability of bonds and bonding methods due to OSM allowing acceptance of more types of collateral and recognizing the differences in long-term vs. short-term mining operations.

Many coal-related industries, such as equipment producers, and transportation systems, and users of coal, including public utilities, may also benefit through the continued and expanded production of coal.

Summary of Costs

Sectors Affected: The coal industry; and consumers.

OSM cannot determine the costs at this time.

Related Regulations and Actions

Portions of Subchapter J—Suspended by OSM.

Portions of Subchapter J—Remanded by Litigation.

Active Government Collaboration

OSM has developed these proposed regulations without collaboration. Upon development of final rules, Federal agencies such as the Environmental Protection Agency and the Departments of Energy and Agriculture, will be requested to concur before final issuance. Each State in which coal is produced must submit a regulatory program as required by the Act, including regulatory standards for bonding which are at least as stringent as the Federal requirements. In those States not complying with this mandate, coal mining and reclamation will be under a Federal regulatory program and will be subject to the sections of the regulations proposed in this rulemaking.

Timetable

Final Rule—June 1980
Final Rule Effective—immediately

Available Documents

These documents are relevant in tracking the development of the rulemaking action:

Petition to amend regulations, 44 FR 28005, May 14, 1979

ANPRM, 44 FR 52098, September 6, 1979

NPRM, 45 FR 6028, January 24, 1980

Final Regulatory Analysis, OSM–RA–1, March 1979

Final Environmental Statement, OSM–EIS–1, January 1979

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program, 44 FR 15110–15125, 15385–15393, March 13, 1979

Transcripts of public hearings held June 5, 1979, and February 13, 1980

Comments received during comment period on the petition May 14, 1979 to June 15, 1979

Surface Mining Control and Reclamation Act of 1977, P.L. 95–87, 91 Stat. 445, August 3, 1977

Documents can be examined at OSM Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; (202) 343–4728

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DOI—WATER AND POWER RESOURCE SERVICE

Rules and Regulations for Acreage Limitation Under Federal Reclamation Law (43 CFR 426)

Legal Authority

The Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. § 371 *et seq.*

Reason for Including This Entry

The Department of the Interior (DOI) believes that these rules and regulations are important because they will affect about 50,000 farms throughout the 17 Western States which receive irrigation water from projects administered by its Water and Power Resources Service (WPRS), formerly the Bureau of Reclamation.

Statement of Problem

Federal Reclamation law places a limit of 160 acres on the quantity of land an individual or organization may own and irrigate with water from a Federal water supply project. Only projects where specific congressional or administrative exemptions or modifications to the law have been granted may exceed this limit, which has been in effect since the basic Reclamation Law was enacted in 1902. Land in excess of 160 acres may receive project water if the owner enters into a contract with the United States agreeing to sell the excess land to an individual who, after the purchase, will not own more than 160 acres. The sale must be made under terms and conditions that satisfy the Secretary of the Interior, and at a price that does not reflect the increase in the value to the land attributable to the construction of the Federal Reclamation project. The contract specifies the time period during which the landowner must sell the excess land. If the landowner does not sell the land within that period, the Secretary of the Interior has power of attorney to sell the land. If the landowner chooses not to use Federal project water for the excess land, there is no requirement that he place the land under contract or that he sell it. The 1902 Act also imposes a requirement that the landowner be a resident on or in the neighborhood of the land, interpreted to be 50 miles from the land, to be eligible to receive project water.

The purposes of the acreage limitation provisions of the Reclamation law are to promote owner-operated family farms, provide opportunity for a maximum number of farmers on land that Federal project water serves, and preclude speculative gain in the disposition of land that project water serves. In the past, these provisions have been administered through State-chartered irrigation districts and other entities that have contracted with the United States for the Federal Reclamation project. The DOI has made determinations on the application of the provisions on a case-by-case basis, based on court decisions and opinions of the Solicitor of the Department of the Interior. The DOI has never promulgated formal rules by which the acreage limitation provisions would be administered.

The practices followed in the past have resulted in a lack of uniformity among irrigation districts in administering the acreage limitation provisions, and, in some cases, in lax enforcement of those provisions by the districts. In August 1976, a United States district court ordered the Secretary of the Interior to prepare and publish rules and regulations dealing with acreage limitation under Reclamation law, with specific reference to procedures to be used to approve sales of excess land (*National Land for People, Inc.* v. *The Bureau of Reclamation of the Department of the Interior* (417 F. Supp. 449 [D.C.D.C. 1977]). Such rules and regulations will provide the needed guidelines for the uniform administration of the acreage limitation of the Reclamation law to assure that the purposes of the law are carried out.

On August 25, 1977, the DOI published proposed rules and regulations for acreage limitation in the **Federal Register** (43 CFR Part 426). During the 128-day comment period on these proposed rules, the DOI received over 11,000 written comments and heard testimony from 1,075 witnesses at 17 public hearings. The Department then revised the proposed rules, taking these comments into consideration. These revised rules will serve as the basis for the environmental impact statement (EIS) the DOI is preparing to comply with the order of a United States district court, issued December 7, 1977, halting the rulemaking until the Department completed an EIS. The draft EIS will be published by December 15, 1980, and the final EIS by July 1, 1981. The EIS will assess the economic, social, community, and environmental effects of the proposed rules.

Alternatives Under Consideration

The EIS will address a number of alternatives to amend the acreage limitation provisions of Reclamation law and the rules that the DOI can establish under existing law. The alternatives will deal with the size of ownerships and operations that are eligible for Federal project water, residency requirements, ownership arrangements, and procedures that the DOI must use in processing sales of land receiving Federal project water. The alternatives will include the following:

Alternative (1) is a small-farm alternative, with the size of the farm operation eligible to receive Federal project water limited to 320 acres.

Alternative (2) is based on amendments to Reclamation law proposed by DOI that reflect the revised proposed rules. They would limit the size of the farm operation that is eligible to receive Federal project water to 960 acres, and limit the multiple ownership arrangements that are permitted.

Alternative (3) is based on procedures used in the past which limited ownership to 160 acres per individual, permitted loose multiple ownership arrangements and unlimited leasing.

Alternative (4) is based on the pricing structure for Federal project water that would permit delivery of project water to excess land upon payment to the Federal Government of the full cost of providing the water service.

Alternative (5) is based on no acreage limitation or the repeal of the acreage limitation provisions and residency requirements of Reclamation law.

The EIS will consider other alternatives as well. Both the draft and final EIS will address the pros and cons of the alternatives; the draft statement is scheduled to be published December 15, 1980, and the final statement July 1, 1981.

Summary of Benefits

Sectors Affected: Agriculture in the 17 Western States where (WPRS) projects are located.

The major effect of the proposed rules will be related to the change in the size of farm operations on Federal Reclamation projects and to the number of family farms that may result. On many projects the change in the number and size of farms may not be significant, while on others, where larger farm operations exist, there would be a noticeable increase in the number of farms and a reduction in their size. The change in the agricultural sector could result in economic effects on production efficiency, improving the efficiency in some cases and reducing it in others; changes in income to the farm family, both up and down; increases to the community income as the number of farms increases; and changes in the nature and number of employment opportunities. The EIS on the proposed rules, currently being prepared, will identify and analyze these and other impacts of the rules. While the reduction in large-scale farming may result in a change in the number of farming opportunities, the overall change in income to the agricultural sector may not be significant; however, DOI will complete a regulatory analysis of the proposed rules if it appears necessary after we have completed the draft EIS.

Summary of Costs

Sectors Affected: Agriculture in the 17 Western States where WPRS projects are located; and WPRS.

The regulations will apply to deliveries of irrigation water to over 12 million acres of land in about 50,000 farms in these projects.

Until we complete the EIS, it is difficult to provide reliable estimates of the direct and indirect costs of the regulations to the sectors they affect. We have discussed the possible costs-versus-benefits in the section above. In addition, increases may occur in the cost of administering the acreage limitations of law under the regulations by the Federal government in recordkeeping, inspections, and monitoring irrigation water deliveries in projects involved. There may be an increase in the cost of public services in some areas where new farms may be established.

Related Regulations and Actions

None

Active Government Collaboration

The Department of Agriculture is cooperating in preparing the EIS on the proposed regulations.

Timetable

Draft EIS and Revised NPRM—December 15, 1980
Public Hearings—December 15, 1980—March 16, 1981
Regulatory Analysis—after December 15, 1980, if required
Final Rule—September 1981

Available Documents

"Department of the Interior, Bureau of Reclamation, Acreage Limitation Rules and Regulations." NPRM—43 CFR Part 426, August 25, 1977.

"Environmental Assessment of the Impact of Proposed Rules and Regulations for Acreage Limitation Administration as published in the **Federal Register**, August 25, 1977." Prepared by the Bureau of Reclamation, January 1977.

The above documents are available without cost from the Water and Power Resources Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

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DEPARTMENT OF JUSTICE

Office of Justice Assistance, Research, and Statistics

Procedures Relating to the Implementation of the National Environmental Policy Act (28 CFR 19.1, et seq.)

Legal Authority

National Environmental Policy Act, 42 U.S.C. § 4231, *et seq.;* Environmental Quality Improvement Act, as amended, 42 U.S.C. § 4371, *et seq.;* (Council on Environmental Quality, "Regulations to Implement the National Environmental Policy Act") 40 CFR 1500, *et seq.*

Reason for Including This Entry

The Office of Justice Assistance, Research, and Statistics (OJARS) believes that these guidelines are important because they will help assure that agencies receiving funds from us will protect and enhance the environment while undertaking construction projects.

Statement of Problem

The National Environmental Policy Act (NEPA) requires regulatory agencies to consider the effect of their actions on the environment. NEPA requires that each agency, before taking an action, analyze potential environmental effects and prepare an Environmental Impact Statement (in cases where the environment may be affected) or a Finding of No Significant Impact upon the proposed action on the environment. The Department of Justice has a separate proposal giving general guidance on this issue.

On December 27, 1979, the Justice System Improvement Act of 1979 reorganized the Department of Justice's Law Enforcement Assistance Administration (LEAA) by establishing the Office of Justice Assistance, Research, and Statistics. OJARS is an umbrella organization composed of three financial assistance offices: the National Institute of Justice, the Bureau of Justice Statistics, and the LEAA itself. These offices undertake few projects which significantly affect the environment. In addition, OJARS has adopted the policy of prohibiting the use of its funds by State or local governments to undertake any new construction projects.

Accordingly, we expect the number of projects necessitating the use of the NEPA regulations will be small. However, as a granting and contracting agency which allots funds to State and local agencies for criminal justice improvement programs, such as prison renovations, which may affect the environment, OJARS must have specific NEPA regulations. Therefore, OJARS is simplifying and clarifying its current regulations to eliminate unnecessary expenditures of staff time and effort for compliance with the requirements of NEPA.

Alternatives Under Consideration

We indicated in the **Federal Register**, 44 FR 68234 (November 28, 1979), that LEAA was considering certain alternative approaches to the modification of its NEPA regulations. OJARS has chosen the alternative which provided for the removal of the current 28 CFR 19 and the replacement of

updated and simplified procedures. These procedures supplement the proposed procedures of the Department of Justice and provide only such guidance as is specific for OJARS. We will publish the proposed regulations in the **Federal Register** for comment.

Summary of Benefits

Sectors Affected: State and local governments applying for OJARS funds; OJARS; and the general public.

Reduced paperwork and processing time for funding projects will result in savings to the agency, to taxpayers, and to recipients of funds.

Summary of Costs

Sectors Affected: None.

We do not expect to bear or cause any additional costs.

Related Regulations and Actions

Internal: Proposed Department of Justice Procedures for implementing the National Environmental Policy Act, 44 FR 93751, July 26, 1979.

External: Regulations of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500–1508. In accordance with the CEQ guidance, the new regulations will incorporate by reference other environmental statutes including: Fish and Wildlife Coordination Act, 16 U.S.C. § 661, *et seq.;* the National Historic Preservation Act of 1966, 16 U.S.C. § 470, *et seq.;* Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001, *et seq.;* Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. § 7401, *et seq.;* 33 U.S.C. § 1251, *et seq.;* Safe Drinking Water Act, 42 U.S.C. § 300, *et seq.;* Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.;* the Coastal Zone Management Act of 1972, 16 U.S.C. § 1451, *et seq.;* and other environmental review laws and executive orders.

Active Government Collaboration

We have forwarded a copy of the proposed regulations to the Council on Environmental Quality in the Executive Office of the President for review and comment.

Timetable

NPRM—May 1980
Public Comment Period—May to July 1980
Final Rule—August 1980
Final Rule Effective—Upon publication as final
Regulatory Analysis—not required

Available Documents

None

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DEPARTMENT OF TRANSPORTATION

United States Coast Guard

Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage (46 CFR 30, 32, and 35)

Legal Authority

Port and Tanker Safety Act of 1978, § 5, P.L. 95–474, 92 Stat. 1480 (1978).

Reason for Including This Entry

The Coast Guard believes that this rule is important because it has major economic implications for the barge and towing industry in this country. In addition, testimony presented at the hearings on this proposal indicated that the rule may adversely affect the national oil supply network because it would take barges out of service that may not be replaced.

Statement of Problem

Data gathered by the Coast Guard show that, from 1973 through 1977, the total volume of oil spilled by tank barges was about 174,000 barrels. Approximately 85 percent of the oil spilled resulted from hull damage, which occurred as a result of groundings and collisions in the normal course of barge movements. Because barges operate mainly on the inland river system, most of the oil spilled by tank barges enters highly sensitive inland waters where the effect on the marine environment is more significant than it would be on the high seas. While the amount of pollution entering the waters from tank barges fluctuates annually, it is not decreasing in general. Thus, the present regulations dealing with pollution prevention, which essentially regulate only loading and unloading operations, are insufficient to reduce oil pollution from tank barges. Based on a study entitled "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., the Coast Guard has concluded that the lack of construction standards for tank barges is a major factor in the pollution they cause. After reviewing the data, the Coast Guard determined that a "no action" alternative is not acceptable. The barge industry would not attack the river pollution problem without our intervention. The Coast Guard believes that barges need the protection of a double hull to prevent cargo discharge which would ordinarily result from groundings and minor collisions that breach the hulls of single-skin barges.

Alternatives Under Consideration

In 1971 the Coast Guard proposed a requirement for double walls on new tank barges constructed for the carriage of oil in specified trades. This proposal would have required the vertical surfaces, or walls, of barges to be double, but it did not propose double bottoms. Normal attrition of tank barges would delay any dramatic reduction in oil pollution. In order to accelerate the retirement of single-hull barges already in service, the proposal included a provision that would have precluded the complete rebuilding of existing vessels, and would have allowed only limited repair to damaged areas on these vessels. This provision was designed to reduce the number of existing single-hull barges gradually. Another proposed alternative was to specify a date after which owners and operators could not use single-hull barges.

Because of the extensive negative comments from the towing industry, we did not impose the double-wall construction requirement for new tank barges at that time. Instead, the Coast Guard initiated two studies. The first, "Alternative Inland Tank Barge Designs for Pollution Avoidance," developed design and construction alternatives and evaluated them for effectiveness. The second, "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges that carry oil. These studies have convinced the Coast Guard that a double-hull tank barge fleet is necessary to prevent pollution due to hull damage.

The comments we received in response to the 1971 NPRM indicated that, while the industry supported the intent of the regulations to prevent pollution, it strongly objected to the methods proposed to accelerate the retirement of existing single-hull vessels and to substitute double-hull barges. We received no comments suggesting economically acceptable ways to accelerate retirement of these vessels.

The Coast Guard is aware that the problems and costs associated with the construction of new barges differ greatly from the problems and costs associated with modifying existing barges. For this reason, following the 1971 proposal, the Coast Guard split this rulemaking into two parts: an ANPRM asking for comments on how to reduce the pollution problem posed by the existing

fleet and an NPRM proposing construction standards for new barges.

The present barge fleet consists of about 1,200 full double-hull barges, 2,200 single-hull barges, and 428 barges with partial double skins. Hastening the retirement of single-hull barges could significantly affect both the economic viability of many individual tank barge operators and the tank barge industry's collective ability to respond to the Nation's need to transport bulk liquid cargo. The alternatives we considered in the ANPRM are early retirement of vessels, conversion to other service, restriction of routes, increased Coast Guard inspection standards, and reduction of the numbers of barges towed together as a single unit.

In the case of new construction, the NPRM proposed two alternatives to the double-hull approach: taking no action or requiring the use of heavier internal structures in either selected areas of the vessel or overall to make the hulls more resistant to penetration. We selected the double-hull alternative as a result of information gathered in a joint Coast Guard/Maritime Administration study known as the "1974 Tank Barge Study" because results indicated that this was the most effective method.

Because any action taken on these two items would have a profound affect on the environment and the economy of the towing industry, we decided to hold a series of hearings on both the ANPRM and the NPRM in various parts of the country. Responses at the hearings addressed both the ANPRM and NPRM without distinguishing between them.

In general, the comments advocated the following alternatives:

(A) Do not retire existing equipment.

(B) Require constructing single-hull barges with heavier materials.

(C) Require more stringent inspection and vigorous enforcement of existing regulations. In addition, industry representatives questioned the effectiveness of double hulls in preventing pollution.

These issues are valid and deserve further consideration. The Coast Guard has decided that an independent agency should evaluate the proposed alternatives. In addition, industry estimates of costs differ greatly from Coast Guard estimates. Industry estimates are higher by far. In light of the industry data, the Coast Guard will have to reexamine the anticipated economic effects of the proposal. Consequently, the National Academy of Sciences will reexamine the entire tank barge issue and recommend various options to accomplish the Coast Guard's objective.

Summary of Benefits

Sectors Affected: Manufacturing of tank barges; and the general public.

The Coast Guard has concluded that double hulls would be 95 percent effective in preventing pollution due to hull damage. This conclusion is based on the report we mentioned previously, the "1974 Tank Barge Study."

Summary of Costs

Sectors Affected: Water transportation of oil tank barges; towing services; manufacturing of tank barges; and users of oil.

The cost of a double-hull inland tank barge would range from $146,000 to $425,000 more than for a single-hull inland barge of comparable size. In 1978, added costs for full double hulls on ocean barges ranged from $700,000 to $1,700,000 for each barge.

The costs for modifying existing barges are more difficult to determine. The proposals in the ANPRM would cost a total of approximately $222 million, (current dollars) or a 31 percent increase over present expenses for the tank barge industry. The ANPRM solicited estimates of these costs as well as costs the industry would incur for activities, such as oil recovery and cleanup resulting from spills related to hull damage. Compliance costs would be passed on to the consuming public.

Related Regulations and Actions

Internal: The Coast Guard is also considering double-hull requirements as a possible solution to spilling hazardous materials.

External: None.

Active Government Collaboration

The Coast Guard has informed the Environmental Protection Agency and the Maritime Administration of its regulatory proposals.

Timetable

The National Academy of Sciences held a workshop on these proposals on April 15 and 16, 1980. Now the Academy is developing recommendations for the Coast Guard. We will defer any further action until we have evaluated these recommendations, and any new economic information.

Final Regulatory Analysis—will accompany Final Rule
Final Rule—unknown at this time

Available Documents

Karlson, E. S., et al., "Alternative Inland Tank Barge Designs for Pollution Avoidance," May 22, 1974

"Polluting Incidents In and Around U.S. Waters," annual reports for 1971 through 1977. Coast Guard publication number C.G. 487

Joint Coast Guard/Maritime Administration Study, "Tank Barge Study," October 1974. National Technical Information Service number COM–75–10284/AS

Bender, A., et al., "Tank Barge Oil Pollution Study," prepared for the Coast Guard by Automation Industries, Inc., 1978

NPRM—36 FR 24960, December 24, 1971 (superseded)

NPRM—44 FR 34440, June 14, 1979, for new construction

ANPRM—44 FR 34443, June 14, 1979, for existing construction

Supplementary NPRM—45 FR 16438, March 13, 1980, for both proposals

Draft Regulatory Analysis and Environmental Impact Statement, "Design Standards for New Tank Barges and Regulatory Analysis for Existing Tank Barges to Reduce Oil Pollution Due to Accidental Hull Damage, May 1979"

Documents available from Agency Contact.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone and Lead). (40 CFR 51.24, 52.21)*

Legal Authority

The Clean Air Act, as amended, § 166, 42 U.S.C. § 7476.

Reason for Including This Entry

The regulation, when developed and promulgated, is likely to impose siting restrictions on air pollution sources because of limitations on areawide emission totals. This could have a significant effect on industry.

Statement of the Problem

The purpose of this program is to provide for adequate representation of the public interest where the Nation's clean air resources are threatened by increases in concentrations of Set II pollutants (hydrocarbons, carbon monoxide, nitrogen oxides, ozone, and

lead). The present Prevention of Significant Deterioration (PSD) regulations administered by the Environmental Protection Agency (EPA) require the use of "best available control technology" (BACT) on all new or modified major sources of all pollutants covered by the Clean Air Act. In addition the present program also limits increases in areawide concentrations of sulfur dioxide and particulate matter through an air quality increment system. The present program, however, does not similarly limit areawide emission levels or air quality impacts of Set II pollutants and, therefore, cannot protect against the degradation of air quality up to the National Ambient Air Quality Standards (NAAQS). The Clean Air Act, as amended in 1977, requires EPA to respond to this problem (42 U.S.C. 7476).

Alternatives Under Consideration

EPA is now reviewing a range of regulatory alternatives which appear to be most reasonable at this time. These alternatives include the following:

Emissions Controls Only—This system would rely primarily on the requirements for best available control technology (BACT) on major new stationary sources and the Federal standards for motor vehicle emissions, with the possible addition of motor vehicle inspection and maintenance requirements. Control requirements under this system would not vary as a function of ambient pollutant concentrations or of the proximity of other sources, as long as the National Ambient Air Quality Standards were not violated.

Ambient Air Quality Increments—This approach would call for developing an area classification system establishing numerical limits for allowable degradation of ambient air quality. This system would be similar to that already in effect for particulate matter and sulfur dioxide.

Emission Density Zoning (EDZ)—An EDZ system would set theoretical ambient air quality increments to be used only as a guideline for establishing limits on maximum allowable emissions per unit land area. Once EPA established these emission density limits, the appropriate State or local air pollution control agency would base preconstruction review of new and modified sources on the emission density limits rather than on ambient air quality.

Inventory Management—This system would require State and local agencies to develop and maintain detailed emission inventories, with the provision for mandatory periodic public review whenever the local emission inventory increased by a pre-established quantity or percentage. The system would require this public review before allowing any further incremental increase in emissions, and could include an environmental analysis, a community environmental education program, a public hearing, and a vote by elected officials from the potentially affected areas.

Statewide Emission Limitation (Bubble)—We would design this system to ensure that aggregate statewide emissions would not increase. Every local increase (after some fixed time) would require an equivalent decrease somewhere else within the State to offset it.

Avoidance of Juxtaposed Major Sources of Hydrocarbons and Nitrogen Oxides—We would design this approach to prevent significant deterioration in air quality which results from the formation of ozone. Such a program would focus special attention on the hydrocarbon/nitrogen dioxide ratio, and would prevent the location of major sources within a certain fixed distance of each other.

Emission Fees—The State would set up a fee system to strengthen the requirements for BACT on major new stationary sources. The State air pollution control agency would then levy a fee on each major new source. The fee would be based on the quantity of emissions and would thus give the source an incentive to develop and incorporate new and more effective strategies for controlling emissions.

Marketable Permits—A marketable permit system would establish permits to emit a certain fixed quantity of emissions and allow air pollution sources to buy and sell those permits. As in an emission fee system, the cost of these permits gives the source an incentive to minimize the quantity of emissions. Furthermore, the responsible air pollution control authority could limit the exact quantity of emissions within any one area by limiting the number of marketable permits allowed within that area.

Summary of Benefits

Sectors Affected: The general public.

Areas of the country which are presently attaining the NAAQS for carbon monoxide, nitrogen dioxide, ozone, and lead will have a program to prevent significant air quality deterioration from those pollutants. In addition, regulations will provide special protection to national parks, national wilderness areas, and other Class I areas.

These regulations are at such an early stage of development that we cannot yet quantify benefits and costs. The benefits will vary depending on the alternative or alternatives we select. As we noted above, the regulations are unlikely to impose additional direct emission control requirements on air pollution sources, but they may impose siting restrictions because of limitations on areawide emission totals. Once we complete the regulatory analysis, we will have a better estimate of the benefits and costs associated with this regulation.

Summary of Costs

Sectors Affected: Industries emitting Set II pollutants, including: transportation, electric services, and manufacturing (particularly the petroleum refining and the primary metal industries).

We do not anticipate that the regulation will affect small businesses disproportionately. The regulatory analysis will, however, specifically address this problem.

As we noted above, we will assess the costs of implementing these regulations as a part of the regulatory analysis. We already require the affected sources under the present PSD regulations to install the best available control technology (40 CFR 51.24 and 40 CFR 42.21). Therefore, the costs resulting from this regulation alone will be related only to site location.

Related Regulations and Actions

Internal: EPA has developed and currently administers regulations for the prevention of significant deterioration of air quality resulting from emissions of particulate matter and sulfur dioxide (40 CFR 51.24). The same regulations also require best available control technology on the sources potentially affected by this regulation.

External: The regulation will require each State to develop regulations to implement this program. These regulations will require EPA review and approval.

Active Government Collaboration

EPA has formed an interagency work group to assist it in the development and review of these regulations. The following are members of the workgroup: Department of Transportation; Department of Energy; Department of Interior, National Park Service, Fish and Wildlife Service and Bureau of Land Management, Department of Commerce, Department of Housing and Urban Development, Department of Agriculture, and Council on Environmental Quality. In addition, we have solicited and received

cooperation from State governments through the State and Territorial Air Pollution Program Administrators, and local agencies throughout the Association of Local Air Pollution Control Officers.

Timetable

ANPRM—May 1980
Public Meeting—July 1980
Regulatory Analysis—May 1981
NPRM—August 1981
Public Hearing—September 1981
Final Rule—April 1982

Available Documents

None

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide (40 CFR Part 50*)

Legal Authority

Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(d)(1) of the Clean Air Act as amended directs EPA to review existing national ambient air quality standards (NAAQS) every five years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and welfare. EPA set the original carbon monoxide (CO) standards (April 30, 1971 36 FR 8186) at 9 parts per million (ppm) averaged over an 8-hour period and 35 ppm for a 1-hour period. After review of scientific bases for the standards (the air quality criteria), EPA will decide whether to propose new standards or reaffirm the original standards. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQS.

The magnitude of the problem resulting from human exposure to carbon monoxide has not been completely quantified. However, there are several population groups that are particularly sensitive to carbon monoxide exposure, such as patients with coronary heart disease (e.g., angina pectoris), peripheral vascular disease, cerebrovascular disease, or chronic obstructive pulmonary disease; pregnant mothers and their fetuses; and patients with anemia. These sensitive population segments range from 5 to 12 percent of the U.S. population. In other words, several million persons in the United States with cardiovascular, pulmonary, and central nervous system diseases can have these conditions aggravated by exposure to carbon monoxide.

Alternatives Under Consideration

Major alternatives to maintaining existing standards are:

(1) to change the concentration levels of the standards; and

(2) to change the time periods over which concentrations are measured. EPA may make the health-based (primary) standards more stringent, less stringent, or keep them at current levels. The Agency is looking at alternative primary standard levels, and at the need for the existing secondary standard to protect against environmental and other nonhealth damages.

We are investigating no new Federal regulatory techniques in the CO NAAQS review process. All governmental regulatory actions taken as a result of EPA's setting a NAAQS are at the discretion of State governments. The States are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, especially persons particularly sensitive to CO exposure.

Revision of air quality criteria and review of the existing ambient standard will result in greater assurance that the standard which EPA reaffirms or newly promulgates will protect public health and welfare. The standard will especially benefit those individuals with coronary heart disease, anemia, central nervous system and pulmonary disorders; pregnant women and fetuses.

Summary of Costs

Sectors Affected: Manufacturing of motor vehicles and motor vehicle equipment regulation; and administration of transportation programs; the driving public; and EPA and State air pollution control agencies.

State air pollution control strategies for attaining CO ambient air quality standards probably will focus on reducing emissions from motor vehicles. These strategies may affect the automotive industry, the driving public, transportation planning, and highway street operations. Motor vehicles account for nearly 75 percent of the nationwide CO emissions; most high CO monitor readings occur in urban areas with heavy traffic. EPA will complete a study of the costs and economic effects of controlling CO emissions to meet alternative air standards at the time we propose any changes to the CO standard.

Related Regulations or Actions

Internal: Based on the alternative air quality standards under consideration and our current understanding of control requirements, it is unlikely that revised EPA emissions standards for motor vehicles will result from this review.

External: Modifications in existing standards could require States to reassess their current implementation control programs, and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies that are involved in reviewing the standard include the Departments of Transportation, Energy, and Health, Education, and Welfare. In addition, EPA has contacted the Interagency Regulatory Liaison Group (IRLG) and will involve them in the standard review. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—summer 1980
Regulatory Analysis—summer 1980
Public Comment Period—to be specified in NPRM.
Public Hearing in Washington, D.C.—summer 1980
Final Rule—fall 1980

Available Documents

ANPRM—"Review of the Carbon Monoxide Air Quality Standard," 43 FR 56250, December 1, 1978

"Air Quality Criteria for Carbon Monoxide" (External Review Draft, April 1979); it is available from the Environmental Criteria and Assessment Office, MD–52, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

U.S. Environmental Protection Agency Science Advisory Board Clean Air Scientific Advisory Committee, Subcommittee on Carbon Monoxide, "Transcript of Proceedings" for January 30 and 31, 1979 and June 14–16, 1979; these are available for review in the Central Docket Section, EPA, Room 2903B, 401 M Street, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m. on weekdays.

"Control Techniques for Carbon Monoxide Emissions," EPA–450/3–79–006, June 1979; the report is available from EPA Library (MD–35), Research Triangle Park, NC 27711. Telephone: (919) 541–2777.

EPA has established a docket (EPA, Central Docket Section OAQPS–79–7) for review of this standard.

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide (40 CFR Part 50*)

Legal Authority

Clean Air Act, as amended, §§ 109(c) and 109(d), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure the protection of public health and welfare and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(c) of the Clean Air Act as amended directs EPA to promulgate a short-term nitrogen dioxide (NO_2) standard unless there is no significant scientific evidence that such a standard is needed to protect public health. Section 109(d)(1) of the Act requires EPA to review existing National Ambient Air Quality Standards (NAAQS) every 5 years. (Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and safety.) This review includes the existing NO_2 annual average standard promulgated by EPA on April 30, 1971 (36 FR 8186). This standard is 100 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean (40 CFR 50.11). The Agency has combined possible proposal of a short-term NO_2 standard with review of the annual average NAAQS into one rulemaking process (see 45 FR 6959, January 31, 1980). After review of scientific bases for the standards (the air quality criteria), EPA will decide whether to propose a short-term NO_2 standard and change, or reaffirm the existing annual NO_2 NAAQS.

Public exposure to NO_2 can result in impairment of pulmonary (lung) function and can increase susceptibility to respiratory infection. NO_2 or other nitrogen oxide compounds in the ambient air can adversely affect crops, visibility, and materials, and can cause acid rainfall. Acid rain adversely affects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on revised air quality criteria, EPA may decide to keep the existing annual standard without change, or make some modification to the allowable air concentration of nitrogen dioxide, the period over which the concentration is measured, or, the number of times States will be allowed to exceed the standards. The agency may also decide to propose a short-term NO_2 standard.

We are investigating no new regulatory techniques in the NO_2 NAAQS review/standard-setting process. All governmental regulatory actions taken as a result of setting a NAAQS are at the discretion of State governments. They are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdictions. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory attainment dates.

Summary of Benefits

Sectors Affected: The general public, particularly those persons suffering from respiratory disease.

Revision of air quality criteria and review of the existing ambient standard will result in greater assurance that the standard which EPA reaffirms or newly promulgates will protect public health and welfare, crops, materials and aquatic ecosystems.

Summary of Costs

Sectors Affected: Industries emitting nitrogen oxides, such as manufacturing, electric services, and natural gas pipelines; manufacturing of motor vehicles and motor vehicle equipment; regulation and administration of transportation programs; and EPA and State air pollution control agencies.

We will complete a study of the costs and economic effects of controlling oxides of nitrogen for alternative short-term and annual standards at the time we propose a revised standard. If the Agency's NO_2 activities result in a new regulatory action, the regulation could affect the level of control for point sources of nitrogen oxides emissions, such as power plants, industrial boilers, and natural gas pipeline stations. We currently are controlling mobile source emissions under existing emissions limits for motor vehicles; however, a stringent short-term NO_2 standard could result in the need for communitywide inspection and maintenance programs for automobile and truck emissions.

Related Regulations and Actions

Internal: Changes to the current ambient standard may affect EPA's regulations for nitrogen oxides emissions from motor vehicles and EPA regulations for new source review.

External: Modifications in the existing standard may require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary. A new short-term standard would require States to assess ambient air quality data, and if concentrations exceed the standard, develop a State implementation plan to control NO_2 emissions.

Active Government Collaboration

Other Federal agencies that are involved in reviewing the nitrogen dioxide standards are the Departments of Energy; Transportation; Interior; Commerce; and Health, Education and Welfare; and the Tennessee Valley Authority. In addition, we have informed the Interagency Regulatory Liaison Group (IRLG) of this review. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—spring 1981

Regulatory Analysis—spring 1981
Public Comment Period—to be specified in NPRM
Public Hearings—60 days after publication of NPRM
Final Rule—fall 1981

Available Documents

"Air Quality Criteria for Nitrogen Dioxide" (external review draft, June 1979), available from the Environmental Criteria and Assessment Office (ECAO), U.S. Environmental Protection Agency, MD–52, Research Triangle Park, NC 27711

U.S. Environmental Protection Agency, Science Advisory Board, Clean Air Scientific Advisory Committee, Committee Meeting on Air Quality Criteria for Oxides of Nitrogen, "Transcript of Proceedings" conducted in Washington, D.C. on January 29 and 30, 1979; available from ECAO

EPA will complete a study of costs and economic impacts of controlling nitrogen oxides when it issues the NPRM.

"Control Techniques for Nitrogen Dioxide Emissions" (draft, January 1978), available from Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, NC 27711

"National Ambient Air Quality Standards: Establishment of Standard Review Docket for Nitrogen Dioxide," 45 FR 6958, January 31, 1980

EPA has established a docket (EPA, Central Docket Section OAQPS–78–9) for review of the NO_2 standard

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (40 CFR Part 50*)

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure the protection of public health and welfare, and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards (NAAQS) every 5 years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and safety. The current Primary Standard for particulate matter (to protect public health) is 75 micrograms per cubic meter ($\mu g/m^3$)) annual geometric mean and 260 $\mu g/m^3$, maximum 24 hour concentrations, not to be exceeded more than once per year. The current Secondary Standard for particulate matter (to protect public welfare) is 150 $\mu g/m^3$, maximum 24-hour concentration, not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQS.

EPA will review the scientific basis of the standard (the air quality criteria) as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Exposure to airborne particulate matter (PM) aggravates asthma and other respiratory disorders, and cardiovascular diseases; and can impair pulmonary function, and increase coughing and chest discomfort. PM may also increase the adverse health effects of gaseous air pollutants, such as sulfur dioxide. Depending on their chemical composition, specific types of PM may have more serious toxic or carcinogenic effects than others. Elevated PM levels result in increased soiling of exposed materials and impair visibility.

Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standards without change, or may decide to change the allowable air concentration of particulate matter, the period over which the concentration is measured, or the number of allowable exceedences. EPA is also considering standards based on the size of the particulate as well as its concentration. This consideration is based on evidence that smaller particles penetrate deeper into the lung, and evidence that when elevated concentrations of particulate matter occur in combination with elevated levels of sulfur oxides adverse health effects may be more pronounced.

EPA is not investigating new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting a NAAQS are at the discretion of State governments which are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQS by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children and those persons suffering from respiratory diseases and cardiovascular diseases.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards, whether reaffirmed or newly promulgated, will adequately protect health and welfare of the general public including those groups within the general public most sensitive to adverse health affects of PM.

Summary of Costs

Sectors Affected: Electric, gas, and sanitary services; the non-ferrous metal industry; those industries that use or supply large quantities of fossil fuel; and State air pollution control agencies.

EPA will complete a study of costs and economic impacts of controlling particulate matter under alternative standards when it issues the NPRM. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs to accommodate revisions to the existing standards.

Related Regulations and Actions

Internal: Changes to the current ambient standards for particulate matter may affect EPA's regulations for new source review.

External: Modifications in the existing standards would require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which are actively involved in reviewing the standards for particulate matter are the Departments of Energy; Transportation; Interior; Commerce; Health, Education and Welfare; and the Tennessee Valley Authority. In addition, EPA has informed the Interagency Regulatory Liaison Group (IRLG) of this review. The

IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—fall 1980
Regulatory Analysis—fall 1980
Public Comment Period—to be specified in NPRM
Public Hearing—60 days after publication of NPRM
Final Rule—spring 1981

Available Documents

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979

"Air Quality Criteria for Particulate Matter," AP–49, January 1969, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

"Health Effects Considerations for Establishing a Standard for Inhalable Particles," July 1978, available from the Health Effects Research Laboratory, Environmental Protection Agency, Research Triangle Park, NC 27701.

"Airborne Particulate" National Academy of Sciences, 1977, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Dioxide (40 CFR Part 50*)

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare, and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs the EPA to review the existing National Ambient Air Quality Standards (NAAQS) every 5 years. Ambient air-quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and welfare. The present primary standard for sulfur dioxide (set to protect public health) is 80 micrograms per cubic meter ($\mu g/m^3$) annual arithmetic mean, and a maximum 24-hour concentration of 365 $\mu g/m^3$, not to be exceeded more than once per year. The current secondary standard for sulfur dioxide (to protect public welfare) is 1300 $\mu g/m^3$, maximum 3-hour concentration not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQS.

EPA will review the scientific basis of the standards (the air quality criteria) as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Sulfur oxides in the air, working alone or in combination with other pollutants, aggravate respiratory diseases such as asthma, chronic bronchitis and emphysema, and also irritate the eyes and respiratory tract. Sulfur oxides also cause impaired visibility and help form acid rain which adversely effects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standards without change, or may alter the air concentration of sulfur dioxide or the period over which the concentration is measured.

EPA is investigating no new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting a NAAQS are at the discretion of State governments. They are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQS by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children, those persons suffering from respiratory diseases, and agricultural interests.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards whether reaffirmed or newly promulgated, will adequately protect the health and welfare of the general public including those most sensitive to adverse health effects of sulfur oxides.

Summary of Costs

Sectors Affected: Electric, gas and sanitary services; the non-ferrous metal industry; the petroleum refining industry; those industries that supply or use large quantities of fossil fuel; and State air pollution control agencies.

A study of costs and economic impacts of controlling sulfur oxides under alternative standards will be completed by EPA when the NPRM is issued. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs in order to accommodate any revisions to existing standards.

Related Regulations and Actions

Internal: Changes to the current ambient standards may affect EPA's regulations for new source review.

External: Modifications in the existing standards would require States to reassess their current implementation control programs, and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which are actively involved in reviewing the sulfur oxide standards are the Departments of Energy; Transportation; Interior; Commerce; Health, Education and Welfare; and the Tennessee Valley Authority. In addition, EPA has informed the Interagency Regulatory Liaison Group (IRLG) of this review. The IRLG functions to coordinate certain regulatory activities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—fall 1980
Regulatory Analysis—fall 1980
Public Comment Period—to be specified in NPRM
Public Hearing—60 days after publication of NPRM
Final Rule—spring 1981

Available Documents

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

"Air Quality Criteria for Sulfur Oxides," AP–50, January 1969—available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Sulfur Oxides," National Academy of Sciences, 1978—available from the National Academy of Sciences, Printing and Publication Office, 2101 Constitution Avenue, Washington, D.C. 20418.

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EPA-OANR

Standards Of Performance To Control Atmospheric Emissions From Industrial Boilers (40 CFR Part 60)

Legal Authority

The Clean Air Act, as amended, § 111, 42 U.S.C. § 7411.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this rule would be important because it would affect many industries, address a major air polluter, namely industrial boilers, and minimize emissions in the face of increased industrial use of coal. The impact of this regulation on industry would approach $100 million per year for additional capital and annualized costs by 1990.

Statement of Problem

Combustion of coal, oil, and gas in industrial boilers results in the emission of significant quantities of particulate matter, sulfur dioxide, and nitrogen oxides to the atmosphere. Because of the large number of boilers and the associated emission rates, industrial boilers contribute significantly to air pollution in the United States. In 1975, emissions from industrial boilers were estimated to include 2.77 million tons of particulate matter, 3.25 million tons of sulfur dioxide, and 2.01 million tons of nitrogen oxides or approximately 17, 11, and 8 percent of total national emissions of these pollutants. The projected growth rate of the use of industrial boilers, coupled with the emphasis on shifting fuel from gas and oil to coal, will increase the potential for emissions. These air pollutants affect the health and welfare of most of our urban-dwelling citizens by contributing to disease in people and animals, reducing visibility in the atmosphere, damaging vegetation, and soiling and deteriorating real estate. Failure to provide more effective control of emissions from industrial boilers will increase exposure to the undesirable effects of these pollutants and will expand the portions of the country that exceed EPA's ambient standards for these pollutants. This rule will apply to new and modified industrial boilers.

Alternatives Under Consideration

The 1977 Clean Air Act requires that EPA adopt standards of performance for stationary sources of air pollution that are fired by fossil fuels. EPA is gathering information on eight technologies for reducing boiler emissions: (1) oil cleaning and existing clean oil, (2) coal cleaning and existing clean coal, (3) synthetic fuels, (4) fluidized bed combustion, (5) particulate control, (6) flue gas desulfurization, (7) nitrogen oxides combustion modification, and (8) nitrogen oxides flue gas treatment.

We are using computer modeling to examine alternatives to determine the cost impacts, emission impacts, effects upon fuel consumption, overall energy impacts, and other environmental effects on a regional and national basis. The alternatives include differing levels of emissions for various sizes of boilers and type of fuels.

Summary of Benefits

Sectors Affected: Manufacturing industries; and the general public.

This rule will apply to new and modified industrial boilers used in a large number of manufacturing industries, particularly energy-intensive industries, such as glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281), and will affect people in urban and rural areas who are subject to pollution emissions from these industries.

Installing equipment that represents the best available control technology at new and modified industrial boiler facilities will help lessen air pollution in already affected areas and preserve clean air in as yet unpolluted areas of the country. Such control will reduce the need for using the "cleanest" fuels, which can be diverted to existing plants in which new add-on controls are less cost effective.

A regulation that requires more stringent controls on new and modified industrial boilers will allow industrial expansion and economic growth without an accompanying assault on ambient air quality.

Summary of Costs

Sectors Affected: Manufacturing industries; and consumers of products produced by these industries.

Energy intensive industries such as glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281) are the specific industries that this rule would affect most.

Cost estimates for applying the control technology required by a regulation governing emissions from industrial boilers would be determined by the number, sizes, and types of sources we regulate and the degree of control we require. EPA estimates that by 1990 annual added capital costs of control will approach $200 million and annualized costs will approach $100 million (1978 dollars). These estimates are necessarily very tentative at this time. Consumers may pay higher prices for products manufactured by energy-intensive industries.

Related Regulations and Actions

Internal: We have issued water pollution regulations in the form of "Best Practical Technology Currently Available" and "Best Available Technology Economically Achievable." Industrial boilers are also subject to requirements of the Resource Conservation and Recovery Act.

External: Industrial boilers are subject to the Fuel Use Act and associated regulations established by the Department of Energy.

Active Government Collaboration

Because emissions from industrial boilers come from the combustion of fossil fuels, EPA is working closely with the Department of Energy to share information and stimulate advances in technology.

Timetable

Regulatory Analysis—July 1980
NPRM—February 1981
Public Hearing—March 1981
Final Rule—December 1981

Available Documents

ANPRM—40 CFR 60 (44 FR 37632, June 28, 1979)

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EPA-OANR

Visibility Protection Requirements (40 CFR Part 51.300-51.307)

Legal Authority

The Clean Air Act, as amended, § 169A, 42 U.S.C. § 7491.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because it will establish a new regulatory program for visibility protection.

Statement of Problem

Congress has set aside certain international parks and national wilderness areas, national memorial parks, and national parks (Class I areas) to preserve and enhance their beauty for present and future generations to enjoy. The intrinsic beauty of these areas, however, has been threatened because of visibility degrading pollution. Congress became aware of the need to protect visibility in these areas and directed EPA to explore the relationship between man-caused pollution and visibility.

From this research we can say there are generally two types of air pollution which reduce or impair visibility:

(1) smoke dust, or colored gas plumes that are emitted from stacks of a single source or a small group of sources that obscure the sky or horizon, and (2) widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area.

These types of pollution are caused by factories and plants that emit particles and gases into the air. These substances either absorb or scatter the light, thus reducing the amount of light a person can receive from a viewed object. The practical effect is that impaired visibility degrades the aesthetic value of the surrounding landscape by either discoloring the atmosphere to produce a visible plume, whitening the horizon and causing objects to appear flattened so that landscape colors and textures become less discernible, or, in the case of a discernible plume, obscuring some portion of the landscape.

Current air pollution control regulations, such as the State Implementation Plans, New Source Performance Standards, and the Prevention of Significant Deterioration Program, while requiring emission controls and protection of national ambient air quality standards, do not necessarily provide specific visibility protection in the Class I areas. Therefore, if EPA fails to implement this program, visibility in certain Class I areas will continue to be impaired and/or may be impaired in the future, thus limiting people's enjoyment of the area.

In a preliminary survey of the Class I area Federal Land Managers, approximately one-third reported undesirable impaired visibility and/or the need to evaluate suspected pollution sources. However, few, if any, areas are totally free from manmade pollution which impairs visibility.

Alternatives Under Consideration

EPA could propose and promulgate a full-scale program to address all types of visibility impairment. However, because of lack of technical and scientific evidence on the cause of visibility impairment, the agency prefers a phased program that will first address impairment which visual observations or other monitoring techniques can reasonably attribute to a source. The agency plans to address other visibility problems when the source/impact relationships are better understood.

Under Phase I of the program the States, in coordination with the Federal Land Managers of the Class I areas, will develop plans which will:

1. Require control of impairment that can be traced to a single major source or small group of sources.

2. Evaluate and control new sources to prevent future impairment, and

3. Require States to adopt other strategies to remedy existing and prevent future visibility impairment.

Future phases will further implement the visibility program by addressing more complex problems, such as regional haze and urban plumes. Under this alternative, we will promulgate future phases when improvement in monitoring techniques provides more data on source-specific levels of visibility, regional scale models become refined, and our general scientific knowledge of visibility improves.

We expect that Phase I of the visibility protection program will serve as a basic framework into which future phases can be incorporated. In other words, the basic plan requirements will remain consistent while only the elements which define the scope of Phase I will change in response to advances in our technical knowledge.

Summary of Benefits

Sectors Affected: General public, especially those in the Western States.

This regulation will affect the 156 mandatory Class I Federal areas where EPA has determined that visibility is an important value (44 FR 69122, November 30, 1979), and the millions of visitors who use those areas.

These regulations and the State plans developed to implement them will reduce the man-made visibility impairment in those Class I areas. In addition, any added controls on existing and new sources will provide general visibility improvement in the region around those areas.

Summary of Cost

Sectors Affected: Electrical services and their customers; manufacturing industries; and States.

EPA expects that fossil fuel fired power plants and a few large industrial complexes (such as pulp mills and metal smelting) in the Western United States will feel the primary economic effects of the first phase of the program.

The costs of the existing industries involved will be the capital and annual operating costs of additional control equipment. In the case of electric power plants, we expect the costs to be passed on, in the form of rate increases, to the customers of these facilities. EPA will quantify costs as we define regulatory alternatives.

New sources and modification of existing sources which impact the visibility in Class I areas may require additional controls or may be prevented from building.

Related Regulations and Actions

Internal: EPA's Prevention of Significant Deterioration regulations (40 CFR 51.24 and 52.21), which govern new source controls and location, affect many of the sources which visibility regulations will affect. Also, EPA's new source performance standard for utility boilers (40 CFR 60 Subpart D) places controls on power plants.

External: Approximately 36 States will be required to develop implementation plans. These plans will require EPA's review and approval.

Active Government Collaboration

EPA has formed an interagency work group to assist it in the development and review of these regulations. The following are members of the work group: Department of Agriculture, U.S. Forest Service; Department of Interior, National Park Service, Fish and Wildlife Service, and Bureau of Land Management; Department of Energy; Tennessee Valley Authority; and Council on Environmental Quality. In addition, we have solicited and received cooperation from State government through the State and Territorial Air Pollution Program Administrators, and local agencies through the Association of Local Air Pollution Control Officers.

Timetable

EPA's current schedule for the first phase shows:

Regulatory Analysis—May 1980
NPRM—May 1980
Public Hearing—June/July 1980
Final Rule—November 1980

Available Documents

Designation of Mandatory Class I Federal Area Where Visibility is an Important Value. 40 CFR Part 81 (44 FR 69122, November 30, 1979)

ANPRM–41 FR 69116, November 30, 1979

"Protecting Visibility: An EPA Report to Congress" (EPA 450/5–79–008) Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

"The Development of Mathematical Models for the Prediction of Anthropogenic Visibility Impairment" (EPA–450/3–78–110 a, b, c), (FINAL), National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161 (PB 293119, PB 293120, PB 293121)

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EPA–OANR–OFFICE OF MOBILE SOURCE AIR POLLUTION CONTROL

Fuels and Fuel Additives (40 CFR Part 79*)

Legal Authority

The Clean Air Act, as amended, § 211, 42 U.S.C. § 7545.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have a marked effect on the way fuels and fuel additives are developed and marketed. While this rule may not have an annual impact of $100 million or more, the synthetic fuel and fuel additive areas will be active ones in the future as the Nation attempts to lessen its dependence on foreign oil.

Statement of Problem

In 1977, Congress amended the Clean Air Act, adding § 211(e) which requires EPA to develop regulations to test the environmental and health effects of fuels and fuel additives. Section 211(e)(2) of the Act itself establishes deadlines by which the manufacturer must provide the requisite information to the EPA Administrator. Section 211(e)(3) authorized the Administrator to: (1) exempt small businesses from the regulations, (2) provide for sharing of testing costs among manufacturers who desire to register identical compounds, and (3) exempt businesses from duplicative testing requirements.

The present registration regulation requires that manufacturers submit certain information on the chemical composition and the toxicity of fuels and fuel additives to the extent this information is known to the manufacturer as the result of testing conducted for reasons other than fuel registration (40 CFR 79.31 (c)).

The proposed action may require the manufacturer to perform certain physical, chemical, and biological testing of fuels and fuel additives before registration.

On August 29, 1978, EPA published an ANPRM in the **Federal Register** (43 FR 38607) requesting comments on specific topics. In response to this request, the Agency received over 22 submittals of comments from the interested public. These regulations will consider all comments received from the interested individuals and organizations.

Alternatives Under Consideration

Our preferred alternative is to require testing on a tier basis. This approach would require manufacturers to report the chemical composition of all candidate fuels and fuel additives. If, based on chemical composition, EPA can make a determination that the environmental and health impacts are insignificant, further testing may not be required.

The second alternative would require full testing for all fuels and fuel additives with no exemptions. Approximately 2,000 fuels and fuel additives would require full environmental and health testing. This alternative would be unnecessarily costly, as many fuels and fuel additives whose environmental impact we can predict to be small or negligible will have to be tested.

The third alternative would be to submit regulated pollutants only (oxides of nitrogen, carbon dioxide, hydrocarbons) to registration and performance testing but not to health or environmental testing. This is the present system as required by 40 CFR 79 but which the Congress changed.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas where the concentration of vehicles is greatest; and those people who live near or work in plants which produce fuels or fuel additives.

The benefit we expect from this regulation is the protection of public health. Those fuels and fuel additives and the products of their combustion, which may be harmful to public health, will be identified and eliminated from the marketplace, where appropriate.

We cannot estimate the economic benefits, in terms of reduction in respiratory and other diseases, at this time. However, because of the current cost of medical services and because of the generally accepted view that prevention is preferable to treatment of diseases, the expected economic and social benefits, although they are not quantifiable at this time, should be significant.

Summary of Costs

Sectors Affected: Petroleum refining; manufacturing of motor vehicles and equipment; users of motor vehicles or their services; and the general public.

There are over 2,000 fuels and fuel additives currently registered under § 211 of the Clean Air Act. We estimate that approximately 200 of these will require some degree of testing by the manufacturers. The cost to the industry of implementing these tests should be between $90 and $120 million. These costs will be distributed over the first three years of regulation, because by law all fuels and fuel additives must meet the testing requirements within three years of the date of promulgation of this regulation. Small businesses would be exempt from the most costly tests. Users of motor vehicles will share these costs to the extent they are passed through to the consumer.

Related Regulations and Actions

Internal: Fuels and Fuel Additives Registration, 40 CFR Part 79

Proposed Guidelines for Registration of Pesticides, 40 CFR Parts 161, 162, and 163

Toxic Substances Control Act, § 4, Carcinogen Protocols and Chronic Toxicity Protocols, 40 CFR Part 772

Ambient Air Quality Standards, 40 CFR Part 50

External: None.

Active Government Collaboration

Health-testing protocols will be submitted to the Interagency Regulatory Liaison Group (IRLG) for screening before the regulation is promulgated.

Timetable

ANPRM—December 1980
NPRM—July 1981

Regulatory Analysis—July 1981
currently under preparation
Public Hearing—60 days after
publication of NPRM
Public Comment Period—90 days
following publication of NPRM
Comments may be sent to:
Charles L. Gray, Jr., Director
Emission Control Technology Division
Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, MI 48105
—Final Rule—July, 1982
—Final Rule Effective—three years after
promulgation of regulation.

Available Documents

Testing for Health Effects on Fuels and Fuel Additives, Gause, et al., Environmental Monitoring Systems Laboratory, Research Triangle Park, N.C. 27711

Test Plan to Study the Effect of MMT on Emissions as a Function of Fuel and Additive Composition, EPA–600/2–750048, September 1975

ANPRM—43 FR 38607, August 29, 1978, EPA docket ORD–78–1

All documents available for review at the EPA, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street S.W., Washington, D.C. 20460. The documents are available for personal inspection or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA–OANR–OMSAPC

Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks (40 CFR Part 86*)

Legal Authority

The Clean Air Act, as amended, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because we expect it will have an annual economic impact of more than $100 million.

Statement of Problem

The Clean Air Act as amended in 1970 contained many provisions aimed at removing harmful pollutants from the air we breathe. Among other things, the 1970 Act called for the establishment of National Ambient Air Quality Standards. These levels were to be set so that there would be no danger to public health and welfare. To date, we have set ambient air quality standards for five pollutants: particulate matter, sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen dioxide (NO_2) and ozone (of which hydrocarbons (HC) is the main precursor). Of these five pollutants, mobile sources are major contributors to the total pollutants emitted for three: HC, CO, and oxides of nitrogen (NOx). This regulation package concerns the establishment of standards for HC and CO from light-duty trucks.

Both HC and CO emissions have been related to adverse health effects. Briefly, HC emissions react with sunlight to form ozone and other photochemical oxidants. Ozone is a pulmonary irritant that affects the respiratory mucous membranes, other lung tissues, and respiratory functions. CO when inhaled replaces oxygen in the blood. The presence of CO adversely affects the carrying and delivering capacity of oxygen by the blood.

Although significant improvements have been made in air quality since 1970, a review of air-quality monitoring data makes it clear that additional reductions in HC and CO emissions will be necessary if ambient air quality goals set by Congress in the Clean Air Act are to be achieved. On March 3, 1978, EPA published in the **Federal Register** a listing on a State-by-State, pollutant-by-pollutant basis, of the status of attainment of air quality goals for every area of the Nation (43 FR 8962). This information, compiled by the respective States and reviewed by EPA, was the most accurate picture available of the Nation's air quality status as of the adoption of the Clean Air Act Amendments. These data indicated that of 3,215 counties or county equivalents covered by those designations, 607 (19 percent) were classified as nonattainment for photochemical oxidant, and 190 (6 percent) were classified as nonattainment for carbon monoxide. Nonattainment status indicates that the given area fails to meet the primary national ambient air quality standard (NAAQS) for the pollutant under consideration based upon either direct air quality monitoring or indirect estimates for areas lacking monitoring data. Current nonattainment data is available to indicate the changes which have occurred since 1977. As of July 1979, the nonattainment designations include 586 (18 percent) counties for ozone and 164 (5 percent) for carbon monoxide.

Light-duty trucks (LDTs) contribute a significant portion of the total nationwide emissions of HC and CO, yet to date we have not controlled LDTs to the stringency represented by existing light-duty vehicle (passenger cars only) standards, which is greater than a 95 percent reduction of HC and CO from the uncontrolled state. Presently, LDTs contribute more than 16 percent and 15 percent of the total mobile source hydrocarbon and carbon monoxide emissions, respectively. If we impose no further control, we project that they will contribute more than 20 percent of the hydrocarbon emissions and 29 percent of the carbon monoxide emissions, in the urban areas of the United States by 1995.

In recognition of the above facts, the Clean Air Act, as amended in 1977, granted the Environmental Protection Agency the statutory authority to reduce HC and CO emissions from light-duty trucks by at least 90 percent (from uncontrolled levels).

Alternatives Under Consideration

In the broadest sense, the Environmental Protection Agency considered the following alternatives in proposing this action:

(A) Implement more stringent HC and CO standards than the minimum 90 percent reductions mandated by the Clean Air Act.

(B) Separate the light-duty truck class into two subcategories by weight—those under 6,000 pounds and those over 6,000 pounds gross vehicle weight (GVWR)—and set separate standards for each.

(C) Implement HC and CO standards that represent a 90 percent reduction from baseline levels.

We did not consider less stringent control of HC and CO emissions from the 6,000 to 8,500 pounds GVWR group as an additional alternative since the Clean Air Act requires at least a 90 percent reduction in 1983. We may only consider alternatives involving less stringent standards if we determine that the technological infeasibility provisions of § 202(a)(3)(C) of the Act apply. EPA did not find the conditions existed to justify less stringent standards.

EPA did not seriously consider standards more stringent than the 90 percent reductions (alternative A) because Congress had determined that these levels were reasonable reductions achievable on the specified schedule with current control technology. Both EPA and the manufacturers provided Congress with the information necessary to arrive at these mandated reductions. Also, the extremely short

timetable for promulgating the new standards hindered EPA's ability to fully examine the alternative of more stringent standards. EPA will continue looking into the feasibility of promulgating more stringent standards if necessary.

It would be possible to divide the LDT class into smaller categories based upon finer divisions in GVWR, curb weight, or other features (alternative B). Presently, LDTs with the least technological potential for emission reductions (generally those with the highest inertia weights and roadloads) constrain the stringency of the emission standards for the entire class. By subdividing the class, we could set more stringent standards for the smaller LDTs.

We could see a greater reduction in total emissions from the light-duty truck class if we adopted this alternative. However, such an approach would take away some of the manufacturers' incentive to reduce LDT weight and thus improve fuel economy. Because of these foregone fuel economy benefits and also leadtime constraints, EPA is postponing consideration of this alternative.

Alternative C is the alternative that EPA proposes. The Agency has determined that the 90 percent reductions in HC and CO are achievable at a reasonable cost. We anticipate there will be no increases in fuel use with the application of electronic engine controls (EECs). The use of EECs will be caused by increased market pressures and fuel economy regulations.

Summary of Benefits

Sectors Affected: The general public in urban areas.

EPA's environmental impact analysis indicates that the proposed regulations will reduce the lifetime emissions of an average LDT by 76 percent for HC and 82 percent for CO. Based on a cross section of urban areas experiencing air quality problems, these reductions in per vehicle emissions will by 1995 yield improvements of 1 to 2 percent in average ozone air quality and 3 to 4 percent in average carbon monoxide air quality.

Summary of Costs

Sectors Affected: Light-duty truck manufacturing; and purchasers and users of light-duty trucks.

EPA estimates that compliance with the proposed 1983 requirements will increase the average purchase price of a light-duty truck by approximately $95 (in 1980 dollars) which is a 1 to 2 percent increase to the average purchase price. We do not anticipate any increase in operating or maintenance costs.

The estimated aggregate cost of compliance to the Nation for the 5-year period 1983 through 1987 is $1.28 billion (in 1980 dollars). This figure is the aggregate cost, based on a discount rate of 10 percent, to the beginning of the 5-year period. Use of a discount rate emphasizes that because of the time value of money, a cost incurred now is worth more to the Nation than a cost incurred in the future.

Related Regulations and Actions

Internal: Current emission standards for light-duty trucks are found in "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86. Regulations implementing the Department of Transportation light-duty truck fuel economy standards are found in "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

EPA has recently finalized standards and measurement procedures for the control of particulate emissions from diesel-fueled light-duty trucks ("Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496, March 5, 1980). Other related regulations we recently finalized are HC and CO emission regulations for 1984 and later model year heavy-duty vehicles. These regulations are very similar to the light-duty truck proposal we describe here, in that they finalized HC and CO standards representing 90 percent reductions from uncontrolled levels. Further information is available in "Gaseous Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," 45 FR 4136, January 21, 1980.

In addition to the existing regulations above, EPA is in the process of developing revised oxides of nitrogen standards for light-duty trucks effective in the 1985 model year.

External: Light-duty vehicle and light-duty truck fuel economy standards are found in the Department of Transportation "Passenger Automobile Average Fuel Economy Standards," 41 CFR Part 531.

Active Government Collaboration

Department of Transportation, Council on Wage and Price Stability, Department of Commerce.

Timetable

Final Rule—May 1980
Effective Date—June 1980

Available Documents

NPRM—44 FR 40784, July 12, 1979
Draft Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1983 and Later Model Year Light-Duty Trucks
Public Docket OMSAPC–79–2 (LDT Rulemaking)
Public Docket OMSAPC–78–4 (1984 HDT HC and CO Rulemaking)

All documents can be inspected and copied at the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street S.W., Washington, D.C. 20460.

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EPA–OANR–OMSAPC

Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines (40 CFR Part 86*)

Legal Authority

The Clean Air Act, as amended, § 202, 42 U.S.C. § 7521.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because we expect it will have an annual economic impact of more than $100 million.

Statement of Problem

The Clean Air Act Amendments of 1977 mandate the establishment of regulations which require a reduction (from the uncontrolled state) of heavy-duty engine or vehicle emissions of 90 percent for hydrocarbon (HC) and carbon monoxide (CO) in 1983 and 75 percent for oxides of nitrogen (NOx) in 1985. These amendments also provide EPA with options to either temporarily revise or change the standards under certain conditions. As defined in the Act, heavy-duty vehicles include those trucks over 6,000 pounds gross vehicle weight (GVW); excluded are off-road vehicles, such as farm tractors and construction equipment. This definition overlaps two truck categories as used by EPA. These are light-duty trucks (LDTs) which EPA defines as trucks up to 8,500 pounds GVW, and heavy-duty vehicles (HDVs) which includes the 8,500 pounds GVW and over trucks. We published regulations implementing the mandated reductions in HC and CO emissions on January 21, 1980 (45 FR 4136) for HDVs and are in the process of finalizing regulations for LDTs.

During high temperature combustion in internal combustion engines, atmospheric nitrogen reacts to form nitrous oxide (NO) and a comparatively small amount of nitrogen dioxide (NO_2). In the atmosphere, the NO is converted to NO_2 by direct reaction with oxygen and by photochemical processes. NO_2 in the atmosphere causes visibility restrictions and brownish coloration. Elevated NO_2 levels are also associated with both long-term and short-term health effects on the respiratory system.

Based upon the present annual standard of 0.05 parts per million, EPA has identified several (8 or less) Air Quality Control Regions which are currently exceeding acceptable levels. EPA's analysis of future oxides of nitrogen (NOx) emissions indicates that current light-duty and heavy-duty vehicle NOx control strategies will produce some overall NOx reductions through the mid-1980s, after which annual growth of vehicle sales, industry, and other sources contributing to pollution will begin to dominate. Thus, to even maintain the status quo, further NOx controls will be needed. Heavy-duty vehicles and light-duty trucks, representing approximately 40 percent of mobile source NOx emissions, constitute one area where further, in addition to already existing, NOx control is available on a cost-effective basis. Mobile sources themselves constitute about 30 percent of total NOx emissions.

Alternatives Under Consideration

In the development of the NOx standard EPA will consider the following alternatives.

(A) Implement an oxides of nitrogen standard that reflects the Clean Air Act's mandated 75 percent reduction.

(B) Implement an oxides of nitrogen standard that is either less stringent or more stringent than the 75 percent reduction required by the Clean Air Act.

(C) Establish a corporate average standard which would allow a manufacturer to average in some way the fleet emissions of oxides of nitrogen. The average emission level, rather than the specific emission level of each vehicle or engine, would have to meet the standard.

With regard to alternatives (A) and (B), EPA is currently evaluating the advantages and disadvantages of both alternatives. Although the Clean Air Act (as amended August 1977) directs EPA to set an oxides of nitrogen standard that reflects a 75 percent reduction (from uncontrolled levels) applicable for the 1985 model year, provisions are incorporated in the Act allowing EPA either to set more stringent standards or less stringent standards. EPA can make such revisions to the standard if it finds that the emission standards cannot be achieved by available technology at reasonable cost. Of course, as standards are made more stringent, more benefits will accrue. Likewise as standards become more stringent, costs of compliance will generally increase. The task confronting EPA is one of determining technological capabilities, and balancing costs and benefits.

EPA is considering alternative (C) as a means of obtaining necessary NOx reductions and, at the same time, allowing greater flexibility to the manufacturers in complying with emission standards. Under an averaging approach, a manufacturer could achieve compliance to an emission standard by averaging its aggregate fleet emissions. Some engines could be designed to be below the standard and others above it. Conceptually, this approach could increase a manufacturer's flexibility from both a technological and an economic standpoint. There are some disadvantages to such an approach that still need attention; principally they are the basic inconsistencies of such an approach with the requirements of the Clean Air Act, the complexity of enforcement, and the inherent inequities between manufacturers of different total sales and products.

At the present time the agency considers alternative (A) as the most likely option to propose. However, we will continue to address issues, such as technological capability and cost, in the development of the final rule. It is possible that after analyzing manufacturers' comments, EPA will reconsider alternative (B). It is also quite probable that EPA will pursue alternative (C) further in the proposal. Specifically, EPA may solicit comments and suggested approaches to an averaging standard to help the agency in further evaluation of such an approach to mobile source emission control.

Summary of Benefits

Sectors Affected: The general public living in urban areas.

Although a thorough and detailed benefit analysis has not been performed yet, we can roughly estimate the environmental impact. A proposed NOx standard representing a 75 percent reduction from uncontrolled levels would reduce lifetime emissions of an average light-duty truck by 500 pounds, and of an average heavy-duty vehicle by approximately 1 ton, and 7 tons for gas and diesel, respectively (compared to vehicles sold under present regulations). These reductions will yield improvements in excess of 10 percent in average NOx air quality by 1995.

Summary of Costs

Sectors Affected: Manufacturing of heavy-duty engines and vehicles, and light-duty trucks; purchasers and users of heavy-duty engines and vehicles, and light-duty trucks.

This regulation will require the addition of engine emission control hardware and/or engine modifications in order to comply with the proposed NOx standard. Consequently, to cover the cost of any new hardware or engine modifications, manufacturers will have to increase the price of their products. Although precise cost estimates are not available at this time, we project that the average price increases of a light-duty truck or gasoline-fueled heavy-duty vehicle may be as high as $250 (in 1980 dollars). Diesel heavy-duty vehicle first cost increases could be more than $200 (in 1980 dollars) or less than 1 percent of the total cost per vehicle. Slight increases in maintenance costs may result; however, no estimates are available at this time.

Related Regulations and Actions

Internal: Current emission standards for light-duty trucks and heavy-duty engines can be found in "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86. Regulations implementing the Department of Transportation light-duty truck fuel economy standards are found in "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

EPA has recently finalized standards and measurement procedures for the control of particulate emissions for diesel-fueled light-duty trucks ("Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496, March 5, 1980). Other related regulations recently finalized are HC and CO emission regulations for 1984 and later model year heavy-duty vehicles. For further information consult "Gaseous Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," 45 FR 4136, January 21, 1980.

In addition to the existing regulations above, EPA is in the process of finalizing more stringent hydrocarbon and carbon monoxide standards for light-duty trucks, and developing particulate regulations for heavy-duty diesel engines.

External: Light-duty vehicle and light-duty truck fuel economy standards are found in the Department of Transportation "Passenger Automobile

Average Fuel Economy Standards," 41 CFR Part .....

Active Government Collaboration

Department of Transportation, Council on Wage and Price Stability, and Department of Commerce.

Timetable

Draft Regulatory Analysis—May 1980 (currently under preparation)
NPRM—July 1980
Public Hearing—August 1980
Public Comment Period—60 days following publication of NPRM.
Comments may be sent to:
Charles L. Gray, Jr., Director
Emission Control Technology Division
Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, MI 48105
Final Rule—December 1980
Effective Date—January 1981, applicable to model year 1985

Available Documents

None at this time

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EPA-OANR-OMSAPC

Heavy-Duty Diesel Particulate Regulations (40 CFR Part 86*)

Legal Authority

The Clean Air Act, as amended, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have an annual effect of $100 million or more on the economy.

Statement of Problem

Despite significant gains made in the control of particulate emissions, there are still many regions of the United States that are not able to meet the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP). To help improve this situation, Congress required EPA (through the Clean Air Act Amendments of 1977) to prescribe standards for the emission of particulate matter from 1981 model year heavy-duty diesel vehicles. EPA must base this standard on the lowest emission rates that we find technologically feasible at the time the standard will take effect, while also taking cost, noise, energy, and safety into consideration.

Diesel engines already power one-third of the heavy-duty vehicles sold in this country. By 1990, EPA expects this figure to increase to over two-thirds, primarily because of the fuel economy advantage of diesel engines over gasoline engines. These diesels emit 40 to 100 times the particulate matter emitted by catalyst-equipped vehicles operated on unleaded gasoline. (EPA expects that most gasoline-fueled heavy-duty vehicles will require catalysts and unleaded gasoline beginning in 1984 due to stringent standards for the emissions of hydrocarbons and carbon monoxide (see 45 FR 4136, January 21, 1980)). Heavy-duty diesel vehicles, if left uncontrolled, would emit 171,000 to 241,000 metric tons per year of particulate matter to the atmosphere by 1990. Urban areas would be the most seriously affected by these emissions. Ambient particulate levels from heavy-duty diesels alone would reach 2 to 7 micrograms per cubic meter (annual geometric mean) in cities such as Chicago, Los Angeles, New York, and Dallas. Somewhat smaller levels of 2 to 5 micrograms per cubic meter (annual geometric mean) would occur in smaller cities such as St. Louis, Denver, and Phoenix. These levels would occur over large-scale areas within these cities. Additional diesel particulate levels of 4 to 6 micrograms per cubic meter (annual geometric mean) would be expected in localized areas within 90 meters of very busy roadways. If controls are not applied, these ambient impacts would hinder the efforts of many urban air quality control regions to meet the primary NAAQS for TSP of 75 micrograms per cubic meter. This NAAQS was set at a level to protect the public health, and many areas of the country are currently exceeding the standard.

Diesel particulate is a particular health concern because of its chemical nature. Diesel particulate contains polycyclic organic matter, which is believed to be carcinogenic, and carbon, which can synergistically increase the effects of other pollutants. The extractable organic fraction of diesel particulate has been shown to be mutagenic (causing genetic damage) in short-term bioassays. EPA is currently performing a health assessment to determine the carcinogenic risk (if any) to human health.

Diesel particulate is also extremely small in size, allowing it to penetrate deeply into the lungs. Over 95 percent of diesel particulate is fine (aerodynamic diameter of less than 2.5 micrometers). Fine particles, such as these, have the greatest potential health impact as they have the longest contact with the most sensitive areas of the respiratory tract. Particulate emitted from diesels also has a greater relative exposure impact than that from many stationary sources because it is emitted at ground level in areas where people live and work.

Alternatives Under Consideration

EPA will consider the following alternatives when proposing a standard for particulate emissions from heavy-duty diesel vehicle engines:

(A) Do not regulate particulate emissions from heavy-duty diesel vehicles, but apply additional controls to particulate emissions from stationary sources. Control of particulate emissions from stationary sources may be less costly than controlling particulate emissions from heavy-duty diesel vehicles. But these stationary source controls could also be more costly and may not be able to provide the necessary improvements in air quality which are available from the control of heavy-duty diesel vehicles.

(B) Do not regulate particulate emissions from heavy-duty diesel vehicles, but apply more stringent controls to particulate emissions from other classes of motor vehicles. Controls placed on these other vehicle classes may be more effective or less costly than heavy-duty diesel controls. But controls placed on these other vehicle classes may be more costly and less effective, and may not be able to provide the same improvement in air quality as the regulation of emissions from heavy-duty diesels.

(C) Prescribe a heavy-duty diesel particulate standard and examine alternative levels of control along with alternative dates of implementation. It is likely that the different alternatives examined will have different costs and effectiveness and one may prove to be significanty better than the others, while still complying with Congressional mandates.

We currently regard alternative (C) as the most desirable alternative. Additional particulate controls available for stationary sources and other mobile sources do not appear able to reduce particulate emissions enough to remove the need for regulation of particulate emissions from heavy-duty diesel engines.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas or near busy roadways, and those who are especially susceptible to respiratory disease; and States

containing areas currently in violation of the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP).

EPA estimates that this regulation will reduce particulate emissions from heavy-duty diesel vehicles by 50 to 75 percent. This reduction would begin to appear with those new vehicles produced in the 1985 model year. By 1990, emissions of particulate matter from these vehicles would be reduced from 171,000 to 241,000 metric tons per year (depending on the number of diesels on the road) to 71,000 to 147,000 metric tons per year. Urban levels of heavy-duty diesel particulate in the atmosphere would be reduced from 2 to 7 micrograms per cubic meter to 1 to 4 micrograms per cubic meter. Roadside levels would be reduced similarly. These reductions will help many areas of the country meet the primary NAAQS for TSP (75 micrograms per cubic meter) which EPA set at a level to protect the public health. Because diesel particulate is highly respirable, these reductions should provide an added benefit in the area of public health.

Also, because diesel particulate is very small (average diameter of 0.07 to 0.2 micrometer) and is primarily made up of carbon, they are very effective in reducing visibility. Thus, any reduction in diesel-particulate concentration should improve visibility, particularly in urban areas.

Summary of Costs

Sectors Affected: Manufacturers of heavy-duty diesel engines and vehicles; purchasers and users of heavy-duty diesel vehicles.

This regulation probably will require the addition of emission control devices to heavy-duty diesel engines, though the actual devices used and their cost could vary from manufacturer to manufacturer and engine to engine. Manufacturers of these engines and the vehicles equipped with these engines will have to raise prices to recover their increased investment. While this increase could be substantial, very roughly a one-time purchase price increase of $200 to $600 (1980 dollars), EPA does not expect this to adversely affect sales. This increase only represents a 1 to 3 percent increase in the price of a heavy-duty diesel vehicle.

EPA does not expect this regulation to increase the operating costs of heavy-duty diesel vehicles, in fact a decrease may actually be possible. Because operating costs comprise 90 to 95 percent of the total cost of owning and operating heavy-duty diesel vehicles, this regulation should have a negligible impact (less than 0.5 percent) on the cost of hauling freight in these vehicles. Thus, neither those whose business is hauling freight nor those who have their freight hauled should be adversely affected. Small, independent haulers should experience no disproportionate effect.

Related Regulations and Actions

Internal: "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86.

EPA is also in the process of revising the standard for the emissions of nitrogen oxides from both gasoline-fueled and diesel heavy-duty engines.

External: None.

Active Governmental Collaboration

None

Timetable

ANPRM—May 31, 1980
NPRM—June 30, 1980
Regulatory Analysis—June 30, 1980
Current Status—under preparation
Public Hearing—30 days after publication of NPRM, Ann Arbor Michigan.
Public Comment Period—60 days following publication of NPRM.
Comments may be sent to:

Charles L. Gray, Jr., Director
Emission Control Technology Division
Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, MI 48105

—Final Rule—May 1, 1981
—Final Rule Effective—the 1985 Model Year

Available Documents

ANPRM—42 FR 61287, December 2, 1977, EPA docket A–80–18

All documents available for review at the EPA, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, D.C. 20460. The documents are available for personal inspection or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA—OFFICE OF WATER AND WASTE MANAGEMENT

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants From Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced Into Publicly Owned Treatment Works (40 CFR Part 420)

Legal Authority

The Clean Water Act, as amended, §§ 301, 304, 306, 307, and 501, 33 U.S.C. §§ 1311, 1314, 1316, 1317, and 1351.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this regulation is important because it will provide control of discharges into the water from the largest metal manufacturing industry in the United States. We expect it will have an annual effect on the economy of more than $100 million.

Statement of Problem

The Clean Water Act requires EPA to promulgate regulations to control the discharge of pollutants into navigable waters and the introduction of pollutants into publicly owned treatment works (POTWs). These regulations must include effluent limitations representing the best practicable technology (BPT), the best conventional technology (BCT), the best available technology (BAT), new source performance standards (NSPS), and pretreatment standards for facilities introducing wastewaters into POTWs.

Initially we promulgated regulations for the iron and steel manufacturing industry on June 28, 1974 (Phase I or "steelmaking" operations), and on March 29, 1976 (Phase II or forming, finishing, and specialty steel segments). The U.S. Court of Appeals for the Third Circuit remanded the regulations for several reasons, including the agency's failure to consider adequately (1) the impact of plant age on the cost or feasibility of retrofitting, (2) site-specific costs, (3) consumptive water use, (4) the economic condition of the industry, and (5) the achievability of certain limitations. (*AISI et al.* v. *EPA*, 526 F.2d 1027 (3d Cir. 1975) and *AISI et al.* v. *EPA*, 568 F.2d 284 (3d Cir. 1977)).

We are developing new BPT regulations to replace the regulations remanded by the court. These regulations will reflect new information from industry surveys and sampling, and will remedy the deficiencies found by the court. In addition, we are developing BCT and BAT regulations to control toxic pollutants, as required by the 1977

amendments to the Clean Water Act. We expect to publish an NPRM in the **Federal Register** in December 1980 which will include effluent limitations and standards for the manufacturing operations covered by the 1974 and 1976 regulations.

The iron and steel manufacturing category (Standard Industrial Classification Codes 3312, 3315, 3316, 3317, and parts of 3479) is comprised of approximately 650 manufacturing facilities nationwide. The amount of process water used by these facilities is estimated to be 6,272 million gallons per day. Because of these large flows, the quantity of pollutants discharged is very large, even though the concentration of pollutants in a waste stream sometimes may be relatively small.

During its sampling program, EPA detected, in iron and steel manufacturing wastewaters, significant levels of copper, chromium, cyanide, iron, nickel, lead, zinc, oil and grease, ammonia, sulfide, fluoride, and suspended solids. Additionally, the agency found a wide variety of organic materials, including benzene, phenols, and aromatic compounds, in wastewaters from coke manufacturing, in blast furnaces which use the coke, and in cold rolling operations. The heavy metals may produce cumulative toxic effects and many of the organic compounds are known or suspected carcinogens.

Alternatives Under Consideration

The Agency is evaluating the capabilities and costs of various wastewater treatment technologies for controlling pollutant discharges from iron and steel manufacturing facilities. A primary focus of this effort is to promulgate regulations to control the discharge of toxic pollutants.

The technologies for the control of wastewater pollutants include both end-of-pipe treatment and methods to reduce water usage. End-of-pipe treatment, best applied after recycle to reduce wastewater volumes, includes, where appropriate, cyanide oxidation, hexavalent chromium reduction, metals precipitation, oil removal, suspended solids (including precipitated metals) removal, and chemical and biological destruction of ammonia and toxic organic materials. While there is some variation in options between the segments of the industry, the options outlined below are generally applicable to all iron and steel manufacturing facilities.

Option (A) includes in-process controls to reduce water flows, metals precipitation (if not already required by BPT), and filtration. This option also includes extended biological treatment of coke plant wastes.

Option (B) includes sulfide precipitation of metals prior to filtration. Coke plants would add powdered activated carbon to the extended biological treatment system.

Option (C) includes advanced treatment, such as evaporation to achieve zero discharge, and chemical oxidation of blast furnace wastewaters to reduce discharges of ammonia and organic pollutants.

In evaluating options for this regulation now under development, we considered all of the important factors, including the quantity and type of pollutants generated by each wastewater source; the treatment technologies available for application to that wastewater source; air, solid waste, energy, and other non-water quality environmental aspects of the proposed regulation; and the cost and economic impact of applying each of the several options.

We are still gathering additional information on costs and on the availability and effectiveness of technologies. We have not at this time selected the options we will propose, although we think that options which reduce the discharge of water to the maximum extent are the most environmentally acceptable.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the regulation we will propose will be the reduction of toxic pollutant discharges from iron and steel manufacturing facilities. The quantity of pollutants removed from discharges to the environment under this regulation will vary depending on the various options selected. The Agency estimates that through compliance with the BPT regulation the industry will remove approximately 3.4 million pounds per year of toxic organics, 5.8 million pounds per year of toxic metals, and 176 million pounds per year of suspended solids, oil and grease, ammonia, and other pollutants. Options (A), (B), or (C) will reduce BPT process wastewater volumes from about 2,600 million gallons per day (mgd) to about 300 mgd. Option (A) will reduce BPT pollutant discharge loads by about 85 to 90 percent. Options (B) and (C) will provide some additional but less dramatic removals of pollutants.

Summary of Costs

Sectors Affected: Manufacturing of iron and steel products; and users of these products.

We are continuing to refine the cost data for the various options. We are also considering the cost effectiveness of requiring different levels of treatment for the various operations. As an approximation of the costs of compliance, the capital investment for the BAT regulatory options range from about $600 million above BPT for Option (A) to over $1 billion for Option C in 1978 dollars. We do not expect these costs to result in a substantial decrease in steel production or increase in steel costs. Industry would likely pass through any increased cost of iron or steel to consumers. However, some shifts in production from marginal plants to more efficient plants will likely continue to occur as the industry strives to become more competitive with foreign producers.

Related Regulations and Actions

Internal: The Agency is reviewing the interaction between this regulation and air pollution and solid waste disposal requirements. As an example, we are evaluating the possible disposal of blowdown from blast furnace wastewater recycle systems by evaporation in slag pits. This is being coordinated with air programs.

In addition, in evaluating wastewater treatment alternatives, the Agency is considering, to the extent possible, the requirements and costs for the management of solid wastes under the Resource Conservation and Recovery Act.

External: This regulation will set minimum requirements on a national level which supercede less stringent State or local regulations. However, all levels of government may require more stringent limitations in specific instances if water quality criteria or other requirements so justify.

Timetable

NPRM—December 1980
Public Comments and Hearing—February 1981
Final Rule—July 1981
Regulatory Analysis—February 1981

Available Documents

The applicable documents currently available are:

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steelmaking Segment of the Iron and Steel Manufacturing Point Source Category, June 1974, EPA-440/1-79/024-a,

Development Document for Proposed Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category.

Volumes 1 through 9, October 1979, EPA 440/1–79/024–a

Copies of the June 1974 report are available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA. 22161. The accession number is PB 238–837 and the cost is $24.80 per copy. The October 1979 report may be obtained through the EPA contact designated below.

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EPA–OWWM

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills Into Navigable Waterways (40 CFR Parts 430* and 431*)

Legal Authority

The Clean Water Act, §§ 301, 304, 306, 307, 308, and 501; 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, and 1361.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it will have an annual effect of $100 million or more on the economy.

Statement of Problem

EPA is required under the statute cited above to develop technology-based effluent limitations guidelines and standards for discharges into navigable waterways, and to review such guidelines and standards at least every five years. EPA promulgated effluent limitations guidelines reflecting the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT) and new source performance standards (NSPS) for six subcategories of the industry on May 9 and 29, 1974 (39 FR 16578, 40 CFR Part 431; and 39 FR 1872, 40 CFR Part 430). EPA promulgated BPT guidelines for the 16 remaining subcategories of the industry on January 6, 1977 (42 FR 1398, 40 CFR Part 430).

The Clean Water Act of 1977 requires industry to achieve by July 1, 1984, effluent limitations requiring application of BAT for those pollutants which Congress declared "toxic" under § 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional water pollutants (biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "non-conventional" and are subject to regulation under BAT.

EPA expects to publish proposed effluent limitations guidelines for BAT, BCT, NSPS and pretreatment standards for existing and for new sources (PSES, PSNS) in the **Federal Register**, September 1980.

EPA estimates that there are 700 operating pulp, paper, and paperboard mills in the United States which discharge about 4.2 billion gallons per day of wastewater. Toxic and nonconventional pollutants of concern detected in the industry's wastewaters during an EPA sampling program were 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, pentachlorophenol, chloroform, ammonia, and zinc. Conventional pollutants routinely monitored in discharges from pulp, paper, and paperboard mills include biochemical oxygen demand, suspended solids, and pH.

Alternatives Under Consideration

The agency is considering various wastewater treatment technologies for controlling toxic, nonconventional, and conventional pollutant discharges from the pulp, paper, and paperboard industry to the Nation's waterways. Toxic and nonconventional pollutants will be regulated under the best available technology economically achievable (BAT), new source performance standards (NSPS), pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS). Conventional pollutants will be regulated under the best conventional pollutant control technology (BCT) and "new source performance standards" (NSPS).

In evaluating the options for development of regulations, the agency considers several important factors, including the quantity and type of pollutants each wastewater source discharges, treatment technologies that are available for the control of these wastewaters, the air pollution and solid wastes that the wastewater treatment systems may produce, and the cost of these systems.

The Agency, through its sampling and data-gathering efforts, has determined that existing biological treatment systems are very effective in removing most priority pollutants found in pulp, paper, and paperboard industry wastewaters. Several toxic pollutants were detected with sufficient frequency and/or at sufficient levels to concern us, and we are considering them as candidates for control under BAT and pretreatment regulations. The pollutants of concern and the options being considered to ensure their control under BAT are described below.

Pentachlorophenol, 2,4,5-trichlorophenol, and 2,4,6-trichlorophenol (toxic pollutants) were found in treated effluents in many subcategories of the industry. These compounds are present in certain of the slimicide and fungicide formulations used in the pulp, paper, and paperboard industry. The best and least expensive method for control of these pollutants is the substitution of these slimicides and fungicides with formulations that do not contain pentachlorophenol, 2,4,5-trichlorophenol, or 2,4,6-trichlorophenol.

Chloroform (a toxic pollutant) was found in very high concentrations (up to 10 milligrams per liter) in raw wastewaters from mills producing bleached pulps. Biological treatment systems are capable of removal of chloroform to low levels (less than 0.1 milligrams per liter). The agency is considering establishing BAT effluent limitations guidelines and NSPS based on those levels of chloroform attained through the application of biological treatment.

Zinc (a toxic pollutant) was found in wastewaters from facilities using zinc hydrosulfite as a bleaching chemical. The agency is considering establishing BAT effluent limitations guidelines, NSPS, and pretreatment standards based on the substitution of zinc hydrosulfite with sodium hydrosulfite.

Ammonia (a nonconventional pollutant) is discharged from facilities using ammonia-based pulping processes. The Agency is considering establishing BAT effluent limitations and NSPS based on either a substitution to a different chemical base or on the application of additional end-of-pipe treatment.

Conventional pollutants currently regulated include: biochemical oxygen demand (BOD), total suspended solids (TSS) and pH. The Agency is considering three options under BCT to reduce the discharge of BOD and TSS from pulp, paper, and paperboard mills:

(1) includes the addition of in-plant production process controls to reduce raw wastewater flow and BOD to the existing BPT treatment system.

(2) includes the reduction of BOD and TSS to levels typical of best performing mills. This option may require expansion or upgrading of existing end-of-pipe

treatment systems at many mills in the pulp, paper, and paperboard industry.

(3) includes the application of chemically assisted clarification in addition to the technology considered as the basis of Option (1).

The Agency is still developing information on the costs and capabilities of the three technology options.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the proposed rule will be the reduction or elimination of toxic, nonconventional, and conventional pollutant discharges from pulp, paper, and paperboard mills. The discharge of 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, pentachlorophenol, and zinc would be virtually eliminated and the discharge of chloroform and ammonia would be greatly reduced.

The discharges of BOD and TSS from pulp, paper, and paperboard mills will be substantially reduced by the following amounts dependent upon the option selected as the basis of BCT regulations:

BOD: Option 1—18 percent, Option 2—40 percent, Option 3—50 percent

TSS: Option 1—18 percent, Option 2—45 percent, Option 3—80 percent

The current discharge of one million pounds per day of BOD from pulp, paper, and paperboard mills accounts for about 45 percent of the total industrial contribution of BOD. Therefore, these additional reductions represent a significant portion of current conventional pollutant discharge to the Nation's waterways.

Summary of Costs

Sectors Affected: Pulp, paper, and paperboard mills; and users of pulp, paper, and paperboard products.

The agency is currently refining cost data for the various technology options. It is expected that, with the exception of ammonia removal options, the BAT, PSES, and PSNS technology options will have an insignificant impact on the pulp, paper, and paperboard industry. It is likely that large capital expenditures will be necessary at the nine pulp mills using ammonia-based cooking liquors, should we establish limitations for the control of ammonia.

The agency has made preliminary estimates of the capital costs (1978 dollars) for all U.S. pulp, paper, and paperboard mills to attain levels of BOD and TSS associated with the BCT technology options. They are: Option 1—$.83 billion, Option 2—$1.2 to 1.9 billion, and Option 3—$2.2 billion.

Related Regulations and Actions

Internal: Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the cost of installation and operation of various wastewater treatment technologies.

External: None.

Active Government Collaboration

The Department of Commerce has provided assistance by reviewing materials.

Timetable

NPRM—September 1980
Public Comment Period—60 days following publication of NPRM
Final Rule—June 1981
Regulatory Analysis—September 1980

Available Documents

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Unbleached Kraft and Semichemical Pulp Segment of the Pulp, Paper, and Paperboard Mills Point Source Category, EPA, May 1974, National Technical Information Service (NTIS) Number PB-238 833

Development Document for Effluent Limitations Guidelines (BPCTCA) for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink and Non-Integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category, EPA, December 1976. Available for review at EPA Headquarters Library

Preliminary Data Base for Review of BATEA Effluent Limitations Guidelines, NSPS, and Pretreatment Standards for the Pulp, Paper, and Paperboard Point Source Category, prepared for the U.S. Environmental Protection Agency by the Edward C. Jordan Co., Inc., Portland, Maine, June 1979. Available for review at EPA Headquarters and Regional Libraries only.

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EPA-OWWM

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants (40 CFR Part 423)

Legal Authority

The Clean Water Act, §§ 301, 304, 305, 306, 307, 311, 402, and 504, 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, 1321, 1364, and 1346.

Reason for Including This Entry

The Environmental Protection Agency (EPA) expects that these regulations will cause industry to bear annualized compliance costs of $100 million or more.

Statement of Problem

The Environmental Protection Agency (EPA), in its efforts to control water pollution under the statute cited above, is required to develop technology based effluent limitations guidelines and standards to control pollutant discharges from the steam electric power-generating industry, and to review these regulations once every five years. We initially promulgated effluent limitations guidelines for this industry on October 8, 1974. The U.S. Court of Appeals for the Fourth Circuit remanded parts of the guidelines (*Appalachian Power v. Train*, 545 F. 2d 1351 (4th Cir. 1976)). The court found the record insufficient with respect to various technical aspects and non-water quality considerations (especially cost data and ultimate disposal of wastes).

We are reviewing the 1974 regulations to reflect updated information and remedy the deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, we are expanding the review to include toxic substances cited in the June 8, 1976 Consent Decree, *Natural Resources Defense Council et al.* v. *Train*, 8 ERC 2120 (D.D.C. 1976). We expect to publish the NPRM in the **Federal Register**, July, 1980. We will not include guidelines for thermal discharges in these regulations. The Agency is still considering various thermal options in light of *Appalachian*.

The steam electric generating industry is composed of approximately 1000 generating plants nationwide. These plants have extremely large discharge flows; therefore, the quantity of pollutants they discharge is substantial even though the concentration is relatively low. Pollutants detected in significant quantities in the wastewaters of steam electric plants during an EPA sampling program were total residual chlorine, copper, zinc, nickel, chromium, arsenic and trihalomethanes.

Alternatives Under Consideration

The Agency is considering several wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort is to control the discharges of toxic substances. We have determined

that cooling water and ash transport water from power plants are the major contributors of toxics. With cooling water, the Agency is concerned about the discharge of pollutants resulting from the use of chlorine and other chemical additives. Technology options for controlling pollutant discharges from this waste stream include end-of-pipe treatment (such as dechlorination) and management practices (such as using alternative chemicals).

For ash transport water (defined below), the Agency is concerned with the discharge of inorganic toxic substances. The control technologies that the Agency has evaluated include: (1) methods of ash transport without the use of water, (2) complete recirculation of the water used, (3) partial recirculation; and (4) end-of-pipe treatment.

In evaluating the options for regulation development, we considered several important factors, including the quantity and type of pollutants each wastewater source discharges; treatment technologies that are available for the control of these wastewaters; the air and solid wastes that the wastewater treatment systems may produce; and the cost of these systems.

The various technologies under consideration for waste streams other than ash transport water have minimal economic impact. However, ash transport pollutant control technologies may cause major economic impact for smaller size facilities. These pollutants enter the water because coal or oil that is burned in a steam electric plant's boiler produces varying amounts of ash that require periodic collection and disposal. Some relatively fine and light-weight ash is carried from the boiler with the flue gases and collected with air pollution control equipment. This type of ash is called "fly ash." The relatively bulky and heavy ash that settles at the bottom of the boiler's furnace is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. Only those plants that use water to transport their ash would be affected by these regulations. The advantages and disadvantages associated with the control options for ash transport water are given below because of their potentially significant economic impact.

Fly Ash

We are considering three technological options for developing effluent guidelines for steam electric plants. The first option requires zero discharge of water used for fly ash transport. The technology for achieving this option is to use transport methods that do not require the use of water (dry transport). The advantages to this option are that the technology is demonstrated and available, and it will eliminate the discharge of toxic metals. The disadvantage is that the cost is high, especially for existing plants.

The second option requires recycling and reuse of the ash transport water. The advantage is that it will reduce toxic pollutants in both their suspended and, to a lesser degree, their dissolved form. However, data are not available yet to determine the degree of recirculation that is possible.

As a third option, the Agency is considering adding a further requirement to the second option that will reduce arsenic from fly ash transport water to 0.05 milligrams per liter, through coagulation and lime precipitation. The advantage of this treatment is that it would be required only of those plants with high levels of arsenic. Since this technology is not used currently in steam electric plants for this wastewater stream, the Agency would be required to use data from other industries to determine the effluent concentration that is achievable.

Bottom Ash

There are two technological options under consideration for bottom ash transport water, including a zero discharge option. The zero discharge option can be achieved through complete reuse/recycling of the ash sluice water or by using transport methods that do not require water. This option will remove completely all toxics in both their dissolved and suspended forms. The other technological option under consideration is partial recirculation of bottom ash transport water. This will remove suspended toxic metals and a limited amount of dissolved metals, although technology for further removal of dissolved metals is available.

We are still gathering additional information on the costs and availability of the technologies. We have not selected the option for proposal, although the Clean Water Act requires regulations "which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants", § 301(b)(2)(A).

Summary of Benefits

Sectors Affected: The general public; manufacturing of antipollution equipment; and the aquatic environment.

The major benefit of the proposed rule will be improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities containing toxic compounds, primarily total residual chlorine and metals. A rough estimate of the quantity of inorganic toxics that the zero discharge option for fly ash would remove is 2,876 lb/day for existing plants and 1,192 lb/day for new plants. The zero discharge option for bottom ash sluice water would remove an estimated 1,131 lb/day of priority pollutants for existing plants and 477 lb/day for new plants.

Manufacturers of antipollution equipment would find increased demand for their products.

Summary of Costs

Sectors Affected: Electric services; and users of electric power.

On a national basis, an estimate of the total capital expenditures required to bring existing plants into compliance with the proposed regulations for the period 1980–1985 is approximately $3.31 billion (1980 dollars). This represents about 1.5 percent of the total anticipated capital expenditures for the industry during the same period. With the addition of operation and maintenance costs, this means that the average electric bill for consumers would increase by approximately 0.5 percent. None of these requirements is expected to cause plant closings; however, the impact on smaller existing plants can be significant. The Agency is currently updating the cost data and is considering exempting smaller plants from the zero ash water discharge requirement based on economic impacts.

Related Regulations and Actions

Internal: The scrubber systems used to comply with air pollution regulations may discharge contaminated water. The proposed requirements of the New Source Performance Standards under § 111 of the Clean Air Act will increase the number of facilities with scrubber systems in the future. Section 316(b) of the Clean Water Act authorizes the Agency to require the best technology available in the location, design, construction, and capacity of intake structures for cooling water, to minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various wastewater treatment technologies.

External: The recent emphasis on converting oil-fired power plants to

other fuel types and the problems associated with nuclear waste disposal will affect the distribution of generating capacity by fuel types in the industry and, therefore, the amount of pollutants that would be discharged and controlled.

Active Government Collaboration

The Nuclear Regulatory Commission, the Department of Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

Timetable

NPRM—July 1980
Final Rule—March 1981
Regulatory Analysis—July 1980

Available Documents

The Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category, EPA, October, 1974, National Technical Information Service (NTIS) Number PB-240853/P5

Supplement for Pretreatment to the Development Document for the Steam Electric Power Generating Point Source Category, EPA, April 1977, EPA 440/1-77/084

Technical Report for the Revised Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category, EPA, September 1978

Copies of the above reports can be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 or the EPA contact designated below.

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CHAPTER 3—FINANCING AND BANKING

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Administration

Coinsurance for Private Mortgage Lenders (New Construction) (24 CFR Part 251)

Legal Authority

National Housing Act, Section 244, 12 U.S.C. § 1715z(9).

Department of Housing and Urban Development Act, § 7(d), 42 U.S.C. § 3535(d).

Reason for Including This Entry

Increased lender participation in the Federal Housing Administration (FHA) multifamily insurance programs of § 221 of the National Housing Act is important, because § 221 provides the main mortgage insurance vehicle for § 8—assisted lower income housing developed with FHA-insured mortgage financing.

Statement of Problem

Most of the nation's depository financial institutions are reluctant to use FHA mortgage insurance because they feel that a lengthy processing time is required for FHA underwriting analysis. Coinsurance, in which the insured lender bears a share of any loss caused by mortgage default by the borrower, can solve this problem, because it enables HUD to delegate processing to coinsured lenders. They can be trusted to perform underwriting analysis carefully because they bear a risk of loss upon default.

Section 8 new construction or substantial rehabilitation, which is not financed with tax-exempt bonds or with conventional uninsured mortgages, is generally financed under § 221(d)(3) or 221(d)(4) programs for, respectively, nonprofit or profit-motivated mortgagors. The latter is currently the most active FHA-multifamily program.

Alternatives Under Consideration

HUD considered two alternatives which it subsequently rejected:

(1) HUD might delegate processing to approved mortgagees that originate mortgage loans with full FHA insurance. This could, however, impose an unacceptable risk on the FHA Insurance Fund, because HUD would then be obligated to pay 100 percent of any loss on these loans (instead of 85 percent under coinsurance) in which the lender and not HUD performed underwriting analysis.

(2) HUD might permit mortgage bankers to originate coinsured § 221 mortgages. To limit HUD's risk exposure, eligible coinsurance originators could be limited to supervised depository lenders, because they have the assets and net worth to absorb a share of coinsurance losses, and they are supervised by Federal or State bank examiners.

Summary of Benefits

Sectors Affected: Savings and loan associations, commercial banks, and savings banks; private rental housing developers; residential building construction; occupants of low- and moderate-income housing projects; HUD; and the general public.

The benefits of this proposal would be:

(1) Faster processing of FHA § 221 mortgage insurance approvals.

(2) Reduced HUD insurance risk exposure. (HUD takes 85 percent of loss under coinsurance, instead of full 100 percent).

(3) An increased source of supply of private mortgage financing for § 221 housing, including § 8—assisted lower income housing.

No additional HUD staff would be required to implement this program.

Summary of Costs

Sectors affected: Savings and loan associations, commercial banks, and savings banks.

This proposal could cause increased risk exposure for lenders because for those mortgages which terminate in default, the lender would assume 15 percent of the loss (basically, unpaid mortgage balance less (a) the amount realized upon resale of the housing project; (b) the lender's share of all FHA mortgage insurance premiums collected from the mortgagor; and (c) the amount of application and insurance commitment fees normally collected from lenders, because these fees would no longer be charged as the lender would be performing processing with its own staff specialists in property appraisal, mortgage credit analysis, and construction inspection).

Related Regulations and Actions

Internal: HUD already has in operation FHA coinsurance programs for single-family housing, 24 CFR Part 204; and State Housing Finance Agencies multifamily housing, 24 CFR Part 250; and will soon implement a program of FHA § 223(f) coinsurance under 24 CFR Part 255.

External: Unknown.

Active Government Collaboration

The Federal Home Loan Bank Board has provided informal advice and comments in the drafting of this proposed rule.

Timetable

NPRM—August 15, 1980
Draft Regulatory Analysis—available with NPRM

Available Documents

None

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TREASURY DEPARTMENT

Comptroller of the Currency

Description of Office Procedures, Public Information (12 CFR 4)*; Supplemental Application Procedures (12 CFR 5)*; Employee Stock Option and Stock Purchase Plans (12 CFR 13)*; Changes in Capital Structure (12 CFR 14)*; Change in Bank Control (12 CFR 15)*; Policy Statements (41 FR 47964)*

Legal Authority

Depository Institutions Deregulation and Monetary Control Act of 1980 P.L. 96–221, 94 Stat. 132.

Reason for Including This Entry

These regulations will affect the supervision and regulation of the national banking system and the delivery of competitive financial services to the public.

Statement of Problem

The authority of the Office of the Comptroller of the Currency (OCC) over entry into the national banking system and over the structural configuration and corporate activities of national banks has significant impact on the supervision and regulation of the national banking system and the delivery of competitive financial services to the public. OCC has received comments from applicants and other members of the public that current OCC methods of handling and deciding applications could be revised in a variety of ways. OCC is reassessing its current published policies, the need for additional policies, and existing regulations, seeking appropriate improvements in OCC's decision criteria and reductions in inappropriate burdens on applicants.

There are approximately 4,500 national banks located throughout the United States. Each may file various applications with OCC at any time. In 1979, for example, OCC received approximately 90 charter applications, 1,000 branch applications, 90 merger applications, and hundreds of applications for changes in capital structure, relocations, operating subsidiaries, title changes, and other matters.

Two considerations underlie this project. First, OCC believes that its regulations and policies governing how applications are decided should be periodically reviewed with input from national banks and other members of the public. Second, it is OCC's belief that the application process should not create unnecessary delays and costs. Application forms and processing procedures should not require the submission or review of unnecessary information while failing to elicit information vital to an appropriate decision.

Alternatives Under Consideration

Although proposed changes will be issued for comment on a subject-by-subject basis (i.e. charters, branches, mergers, etc.), the major alternatives common to each involve the choice between greater or lesser levels of government intervention in the business judgments of national banks. OCC's intent is to eliminate unnecessary interference in the business decisions of national banks. For example, OCC will consider whether national banks in particularly sound condition desiring to branch or raise capital should be permitted to do so with lesser filing requirements and lesser review procedures than currently in effect.

Summary of Benefits

Sectors Affected: National banking industry; customers and shareholders of national banks; the general public; and OCC.

The benefits of greater government intervention could include assuring that bank activities serve the public interest and that poor bank decisions are not implemented to the detriment of the bank, its customers, shareholders, and community. The benefits of lesser government intervention could include enhanced competition, efficiency, and financial services delivery. In addition, OCC's and applicants' direct and indirect costs could be reduced.

Summary of Costs

Sectors Affected: National banking industry; customers and shareholders of national banks; and the general public.

The costs of greater government intervention could include decreased competition, excessive costs and delays, and increased risk that judgments made by government officials will be inconsistent with sound business decisions made in light of market realities.

The costs of lesser government intervention could include implementation of poor business decisions by individual banks which could increase costs (which would be passed on to customers and shareholders), or increase the number of individual banks exiting from the banking system through mergers or failures.

Related Regulations and Actions

Internal: None

External: Each of the 50 States has rules governing applications for State-chartered banks. Regulations of the Board of Governors of the Federal Reserve System are included in 12 CFR 262, 263, and 265. Federal Deposit Insurance Corporation regulations are included in 12 CFR 303, 304, 306, and 308.

Active Government Collaboration

Proposals issued for comment will be sent to the banking authorities for each of the 50 States and to the Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation.

Timetable

Public Comment Period—May 19 to July 18, 1980
Comments should be sent directly to the AGENCY CONTACT listed below.
Final Rule—September, 1980
Final Rule Effective—October, 1980
Regulatory Analysis—OCC will not prepare

Available Documents

Policy Statements: 41 FR 47964, November 1, 1976.

Semiannual Agenda: 45 FR 9743, February 13, 1980.

NPRM: May 19, 1980 (FR cite unavailable at time of this publication)

These documents are available from the Agency Contact listed below.

Agency Contact

Alan Herlands, Director
Regulations Analysis Division
Office of the Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219
(202) 447–1177

Technical assistance available in consumer protection, community and civil rights regulations as they relate to consumer involvement with national banks from:

Jo Ann S. Barefoot, Deputy Comptroller for Customer and Community Programs
Comptroller of the Currency
Washington, D.C. 22019
(202) 447–0934

TREAS–OCC

Lending Limits (12 CFR 7.1100)*; Unimpaired Surplus Fund (12 CFR 7.7545*)

Legal Authority

Depository Institutions Deregulation and Monetary Control Act of 1980, P.L. 96–221, 94 Stat. 132.

Reason for Including This Entry

This proposal will affect the activities of all national banks, State and local governments, and the general public.

Statement of Problem

The Office of the Comptroller of the Currency (OCC) charters, examines, regulates and supervises national (e.g., federally-chartered) banks. Maintaining adequate capital in national banks is an important part of OCC's goal to assure a safe and sound national banking system. OCC is considering changes to its policy and procedures for assessing the adequacy of capital of individual banks. In connection with that effort, OCC is reviewing interpretive rules which define capital.

Numerous activities of national banks are also limited by statute based on the amount of bank capital. Immediate changes in the interpretive rulings which define capital under those statutes would have an immediate impact on all national banks in their determinations of the magnitude of permissible activities. These changes would thus also have an impact on borrowers from national banks, State and local governments which issue securities, national bank shareholders, and other members of the public.

Capital planning is an important element in the management of every national bank. Assuring adequate capital in national banks is an important element of bank supervision, promoting a safe and sound national banking system. Although maintaining adequate capital in the national banking system is an historic, ongoing goal of the OCC, several factors in the current financial markets have increased OCC's current attention to the subject. These factors include, among others, the effects on bank capital of inflation-generated growth in bank assets and liabilities.

In order to develop and implement a revised, rational capital adequacy policy, an appropriate definition of capital is necessary. The present OCC definition includes (for most, but not all, purposes) all shareholders' equity accounts, subordinated notes and debentures, (long-term debt securities whose holders' rights are subordinate to the rights of depositors and other creditors) and 50 percent of the reserve for possible loan losses (a contra-asset account reflecting expected losses in the loan portfolio). This definition is inconsistent with definitions used by the Board of Governors of the Federal Reserve System, and by the Federal Deposit Insurance Corporation with respect to State chartered banks. OCC is working with these agencies to develop a consistent definition of capital and a more uniform capital adequacy policy. In light of recent economic conditions and uncertainty as to the future, OCC believes that a revised, consistent, rational capital adequacy policy (based on an appropriate definition of capital) is necessary at this time to supervise and monitor national banks properly and to assist banks in their analyses and planning.

Various statutes limit the extent of a national bank's activities based on the amount of its capital. These activities include, among others, holding of investment securities, establishing branches, aggregate borrowings, lending to a single entity or group of related entities, real estate lending, and lending to affiliated entities. In some cases the limitation is on the aggregate extent of activity; in others, the limitation is on the magnitude of the activity as it relates to single bank customers. Adoption of OCC's rulemaking proposals under consideration to change the definitions of capital would affect all of these activities.

Alternatives Under Consideration

OCC is considering alternatives to the definition of capital and alternative implementation programs for any such changes. One alternative is, of course, to make no changes. A disadvantage of this approach is that it would inhibit the development of well-conceived capital adequacy policies. The advantage of taking no action is that it would generate no costs to implement changes.

OCC is considering deleting the reserve for possible loan losses from the definition of capital. This contra-asset account reflects the difference between the face amount of all loans outstanding on the books of the bank and the amount it anticipates will be repaid. As such, this account does not reflect any of the characteristics generally attributed to capital. The advantage of deleting the reserve for possible loan losses is that the revised definition of capital would then be more reflective of what is considered by most financial experts as capital. The disadvantage of deleting this account from the definition of capital is that it would further limit the maximum size of certain loans and investments by national banks.

OCC is also considering deleting some or all subordinated notes and debentures from the definition of capital. Although these debt instruments reflect some of the characteristics of capital when they have distant maturities, they must be repaid, interest payments must be made, and they become less like capital instruments as maturity dates near. OCC will consider whether all or only short-term subordinated debt should be excluded. The advantage of eliminating all subordinated debt from capital is that this change would focus each bank's attention on equity, a shortfall which cannot be overcome by long-term debt. One disadvantage of total elimination is that the capital-like characteristics of long-term subordinated debt would not be included in capital determinations. In addition, totally deleting these instruments would further curtail the various bank activities presently subject to limitations based on bank capital.

OCC is also considering eliminating only subordinated notes and debentures with short maturities from the definition of capital. The advantage of this approach is that it would permit the capital-like characteristics of long-term subordinated debt to be included in capital. The disadvantages include reducing banks' focus on equity and curtailing various bank activities.

Alternative implementation options being considered for eliminating the reserve for possible loan losses include (a) establishing a single future date when these amounts will be excluded and (b) establishing a timetable for reducing the percentage of the reserve which may be included in stages (i.e., a phase-out over time). The implementation alternatives for eliminating subordinated notes and debentures include the same alternatives as well as an alternative which would permit existing long-term debt to be included for its life, but which would exclude new debt regardless of its maturity. OCC will solicit comments specifically on appropriate implementation programs. The combination of anticipated growth in other components of capital over time and delayed effective dates of the changes under consideration should significantly reduce the potential for disruptive effects of the proposals.

Summary of Benefits

Sectors Affected: National banking industry; customers of national banks; the general public; and OCC.

Adequately capitalized banks permit a broad range of banking services to be competitively offered to the public. Improvements in capital adequacy analysis will have nonquantifiable benefits for national banks and their customers by improving the ability of bankers and regulators to assess capital adequacy. Related OCC decisions to be made, such as the need for OCC review of bank plans to issue debt and equity, may reduce burdens on applicants and the OCC, and are expected to result in

expanded abilities of national banks to take advantage of market place opportunities to issue appropriate securities.

Summary of Costs

Sectors Affected: National banking industry, particularly in rural areas; and customers of national banks, including businesses and State and local governments.

Reductions in capital, as defined, however, will further limit a variety of national bank activities. For example, current statutes generally permit a national bank to lend to an individual entity no more than ten percent of its defined capital. Similarly, current statutes generally permit a national bank to invest in a revenue obligation issued by a State or local government in an amount no greater than ten percent of its defined capital. Reducing the amount of defined capital will decrease the maximum lending and investment limits at every national bank.

Based on information otherwise filed by national banks, OCC has performed a preliminary study indicating that 999 of the country's approximately 4,500 national banks have subordinated debt outstanding in an aggregate amount approximating $3.3 billion; that many of these banks have equity capital to asset ratios below the average level for banks of similar size; and that the average decrease in maximum lending limits for these banks, if subordinated debt were excluded from the definition of capital, would be 12.8 percent. Similarly, the average reduction in maximum lending limits for all national banks, should the reserve for possible loan losses be excluded from the definition of capital, would be approximately 4.5 percent.

This analysis by itself does not, however, indicate whether the changed limits would affect actual bank performance. For example, the preliminary analysis might indicate that a specific national bank's lending limit to a single borrower would be decreased from $100,000 to $90,000 if the proposals were adopted without a delayed effective date. If that bank has not made and does not intend to make loans to a single borrower in excess of $70,000, the changes would have little impact. Conversely, if that bank had been making loans at its limit and its present and future customers were likely to need loans in amounts approaching the bank's lending limit, the effects of the changes could be more dramatic. However, the anticipated growth in other components of capital between the date of adoption of the changes and the delayed effective dates expected to be proposed would significantly decrease the likelihood of disruptive adverse consequences. Accordingly, OCC intends to issue an NPRM for comment which specifically requests input on the extent of adverse effects the changes under consideration would have. In light of (a) the generally smaller size of banks located in rural areas and (b) the lesser number of alternative lenders in rural areas, these changes could have greater adverse consequences for banks, businesses, and local governments in rural areas if the local banks have significant amounts of subordinated debt outstanding.

Related Regulations and Actions

Internal: Section 303 of the Comptroller's Handbook for National Bank Examiners describes the present capital adequacy analysis.

External: Each of the 50 States may have adopted capital definitions and limitations based on capital applicable to state chartered banks.

Active Government Collaboration

OCC has been working with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation to develop a uniform capital adequacy policy and definition of capital. Meetings among staffs are held frequently.

Timetable

NPRM—June 2, 1980

Public comment periods—June 2 to August 1, 1980. Comments should be directed to the Agency Contact listed below.

Final Rule Effective—December 31, 1980

Regulatory Analysis—OCC will not prepare

Available Documents

Semiannual Agenda, 45 CFR 9743, February 13, 1980

Comptroller's Handbook for National Examiners, § 3.

These documents are available from the Agency Contact listed below.

Agency Contact

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Chief National Bank Examiner
Office of the Comptroller of the Currency
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NATIONAL CREDIT UNION ADMINISTRATION

Deregulation of Loan Interest Rate Classification (12 CFR 701.21-1(d)*)

Legal Authority

Federal Credit Union Act 12 U.S.C. §§ 1757, 1766, and 1789

Reason for Including This Entry

The National Credit Union Administration (NCUA) believes this rulemaking is important because it is part of our program to deregulate Federal credit union operations. This rulemaking will give Federal credit unions greater flexibility in managing their lending activities and may also increase competition.

Statement of Problem

NCUA currently requires Federal credit unions to have a loan classification policy. We limit the distinctions between loans to three categories: the type of loan plan, the purpose of the loan, and the type or value of security in relation to the amount of the loan. Federal credit unions must apply the same rate of interest uniformly to all borrowers within a given classification.

The following problems arise as a result of this rule. Federal credit unions that grant real estate loans to members in different areas of the country cannot vary the interest rate in accordance with the prevailing rates in each locality. This may make interest rates uncompetitively high in one market and unnecessarily low in another (which, additionally, because of mortgage market practices, may prevent a Federal credit union from selling the loans and generating additional funds to make new loans). For other types of loans, the rule would prevent credit unions from adopting the market practice of varying the interest rate on the basis of the amount of the loan balance outstanding. This practice is widely used by other financial institutions offering credit cards at 18 percent on the first $500 and 15 percent on amounts over $500. Our prohibition also prevents credit union management from exercising the prudent portfolio management technique of matching loan maturities and interest rates to corresponding share certificate dividend rates. The rule also prevents Federal credit unions from passing on savings, in the form of lower interest rates, that result from borrowers using more efficient methods of repayment, such as payroll deductions.

As a result of these problems, NCUA is proposing to revise its present requirement for loan classifications as

part of this Agency's review of existing regulations pursuant to NCUA's Final Report, "In Response to E.O. 12044: Improving Government Regulations" (44 FR 17954, March 10, 1979). The review is also in response to requests from Federal credit unions for exceptions to the present limitations.

If the Agency does not take any action, the present restrictions will continue. Federal credit unions will be less able to respond to those problems described above, in a manner that constitutes sound and legitimate business practice. This, in turn, may adversely affect the financial condition of some credit unions, and may make fewer loans available to consumers.

Alternatives Under Consideration

NCUA is considering several alternatives:

(A) Amend the regulation to alleviate the specific problems noted. This would solve identified problems by creating additional permissible classifications of loans, such as loans repaid by payroll deductions, real estate loans in different sections of the country, or "energy saver" home improvement loans. The advantage of this method is that it permits NCUA to evaluate a particular type of classification to determine whether a significant problem exists, whether the classification will alleviate the problem, and whether the classification will serve the permissible and legitimate interests of credit unions and their consumer members. The disadvantages of this approach are the administrative burden of reviewing each problem as it is identified, and the delay in responding to the problems that are inherent in the rulemaking process, such as the required 60-day public comment period.

(B) Amend the regulation to eliminate the specification of mandatory classes of loans and instead issue guidelines describing appropriate classes. We proposed this alternative in an NPRM (45 FR 26073, April 17, 1980). This alternative would solve the problems by requiring Federal credit unions to establish loan classifications based upon factors which constitute sound and legitimate business practices (those which are based on the characteristic of the loan and not on the characteristic of the borrower). Examples of such classifications are included in the proposed rule as guidelines only, and not as mandatory categories. Included in the examples are those "additional classifications" mentioned in alternative (A) above. (The preamble to the proposed rule invites commentors to submit examples of possible categories.) This approach has the following advantages. It will permit a credit union to have flexibility in establishing lending and interest rate policies, while still requiring that these policies have a sound and legitimate business interest. It permits credit unions to create new categories in response to legitimate problems without requiring prior approval by NCUA. Finally, by continuing to require written policies that are based on the characteristic of the loan and not on the characteristic of the borrower, this approach will help to prevent arbitrary or improper policies. For example, it will prevent a Federal credit union from establishing more favorable loan rates for direct employees of the credit union's sponsor company than for other members of the credit union who are equally credit worthy. The disadvantages of this approach arise from the lack of certainty that a classification (other than those listed in the examples) constitutes a sound and legitimate business interest and is permissible under the rule. Loans may be granted on some basis other than sound and legitimate business practices at different interest rates before NCUA can review and prohibit the classification. Also, this alternative may result in litigation over varying interpretations of what constitutes sound and legitimate practices.

(C) Delete the loan classification requirement. This alternative would solve the problems by permitting Federal credit unions to establish and vary interest rates on any basis (so long as it does not violate the Equal Credit Opportunity Act, the Fair Housing Act, or other applicable laws and regulations). The advantage of this approach is that it gives Federal credit unions relatively complete control over their lending and interest rate policies. The disadvantage is that it might permit Federal credit unions to make arbitrary determinations not related to sound business practices, and might result in interest rate policies based on the characteristics of the borrower (other than those bases prohibited by other laws).

Summary of Benefits

Sectors Affected: Federal credit unions and their borrowers and shareholders.

The primary direct effect of the proposed amendment is the increased flexibility that Federal credit unions will have to tailor interest rate and lending policies to meet sound and legitimate business needs. To the extent this will result in a more rational pricing of loans, this will benefit consumers in at least two ways. First, it may lower interest rates through increased competition. For example, interest rates will be permitted to vary from one geographic region to another so that a credit union will be able to meet competitive local rates. Also, interest rates will be permitted to vary according to the method of repayment, so that savings from more efficient methods may be passed on to borrowers in the form of lower interest rates or to savers (shareholders) in the form of higher dividends. Federal credit unions will benefit by being able to address problems quickly without waiting for prior approval by NCUA. Second, this could result in a lower cost of funds to Federal credit unions. Because of the cooperative nature of Federal credit unions, any savings in operational costs can be passed on to members in the form of lower loan rates or higher dividends.

Summary of Costs

Sectors Affected: Federal credit union members.

By allowing Federal credit unions greater flexibility to vary interest rates, the proposed rule may result in higher interest rates on certain types of loans. Any adverse effects will be minimized, however, by the requirement that loan categories be based on factors that relate to sound business practices. The possibility that a Federal credit union will establish an improper loan classification based upon the characteristics of the borrowers may nonetheless increase because new classifications will not require prior approval by NCUA. Costs for both Federal credit unions establishing new categories and for NCUA may increase if litigation becomes necessary to determine whether the classifications are proper.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Public Comment Period—April 17, 1980 to June 16, 1980. Comments may be sent to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street, N.W. Washington, D.C. 20456.

Final Rule—approximately 30 to 60 days after the close of the Public Comment Period.

Regulatory Analysis—none

Available Documents

NPRM—45 FR 26073, April 17, 1980

Preliminary review memorandum, setting forth a statement of the problem, the need for the amendments, and alternatives to be explored.

All documents available for review in the Office of General Counsel, National Credit Union Administration, 1776 G St., N.W., Washington, D. C. 20456.

Agency Contact

Mr. Thomas C. Buckman, Staff Accountant (Analyst)
Office of Examination and Insurance
National Credit Union Administration
1776 G Street, N.W.
Washington, D. C. 20456
(202)357–1065

COMMODITY FUTURES TRADING COMMISSION

Proposed Rules Concerning Foreign Brokers And Traders (17 CFR 21.03)

Legal Authority

Commodity Exchange Act, §§ 4g, 4i, 5, 5a and 8a, 7 U.S.C. §§ 6g, 6i, 7, 7a and 12a. (1976).

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) thinks this rule is important because it will facilitate the Commission's ability to obtain timely information concerning foreign traders. We expect that, if adopted, the rule could substantially improve our market surveillance capability.

Statement of Problem

The CFTC is considering proposed rules which would make persons located in the United States who are registered with the Commission primarily responsible for ensuring the availability of information needed by the Commission about the foreign brokers and traders on their accounts who participate in futures trading. At present, the Commission receives less timely, less complete, and less verifiable information from some foreign brokers and traders than it generally receives from their domestic counterparts, about the size of accounts and the identity of the persons for whose benefit the accounts were established. The Commission has encountered difficulties and delays in trying to identify and communicate with these foreign entities. There is apparent widespread noncompliance by foreign brokers and traders with CFTC reporting requirements and it is difficult for the Commission to take effective enforcement action against them. As the markets regulated by the Commission have become increasingly international in character, with foreign participation now accounting for 25 percent or more of the activity in some commodities, the need for us to address these problems has become more important. If the agency does not take any action, its market surveillance program will be hampered, and it will be difficult for the Commission to detect and take action to prevent market disruptions.

Alternatives Under Consideration

The proposed rules would require domestic futures commission merchants who are registered with the Commission and who carry accounts for foreign persons to obtain a list of the persons for whose benefit the accounts were established. CFTC will request public comments on whether that information should be maintained routinely, or acquired only when it is specifically requested by the Commission. Routine maintenance of the information might be more effective for our market surveillance program but acquisition of the information only as needed would be less burdensome for futures commission merchants and foreign brokers and traders.

Summary of Benefits

Sectors Affected: All sectors of the U.S. commodity futures markets, including farmers and other producers, processors, manufacturers, commercial users and consumers of commodities; persons speculating in the futures markets; and CFTC.

If the CFTC adopts the proposed rule, the information available to the agency will be increased and foreign persons who refuse to provide requested information will have their futures contract positions eliminated. The availability of this information will promote fair dealing and integrity in the markets and improve the CFTC's ability to detect and take action to prevent market disruptions. All market users will benefit from more honest markets. The CFTC will benefit from being able to shift the burden from government to industry for obtaining this information.

Summary of Costs

Sectors Affected: Registered domestic futures commission merchants; and foreign brokers and traders who participate through domestic agents in the U.S. futures markets.

The proposed regulation could impose some administrative costs on registered futures commission merchants who would be responsible for obtaining required information. Additionally, if futures commission merchants are required to liquidate customers' accounts to comply with the rule, they may experience some loss of foreign business.

Related Regulations and Actions

Internal: On April 1, 1980, CFTC voted to adopt final rules which would require foreign brokers and traders to have an agent for service or delivery of Commission communications. ("Designation of a Futures Commission Merchant to be the Agent of Foreign Brokers, Customers of Foreign Brokers and Foreign Traders", 17 CFR 15.05).

External: None.

Active Government Collaboration

None

Timetable

NPRM—May 1980
Public Comment Period—45 days following publication of NPRM
Final Rule—Fall 1980
Regulatory Analysis—CFTC, an independent regulatory agency, does not prepare regulatory analyses, as defined under E.O. 12044.

Available Documents

NPRM available in **Federal Register** after May 1980.

"Rules Concerning Foreign Brokers and Traders", Memorandum of the Office of the General Counsel, April 1, 1980. Available by mail at no cost from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 806, Washington, D.C. 20581.

Agency Contact

Maureen A. Donley, Attorney
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CFTC

Review of Guideline No. 1—Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation

Legal Authority

Commodity Exchange Act, §§ 5, 5a, 5b, 6 and 8a, 7 U.S.C. §§ 7, 7a, 7b, 8 and 12.

Reason for Including This Entry

The Commodity Futures Trading Commission's (CFTC) Guideline No. 1 sets forth the criteria that must be met by a board of trade to become and to continue to be a market for a particular commodity futures contract. Changes in these criteria could have a significant

effect on the futures contracts traded on boards of trade.

Statement of Problem

The Commodity Exchange Act requires a board of trade (commodity exchange) seeking to become a market for a particular commodity futures contract to show that trading in the contract would not be contrary to the public interest. Guideline No. 1 sets forth the criteria to be met by a contract market in making such a showing. It indicates that the public interest test includes an "economic purpose" test and "to meet the 'economic purpose' test a board of trade is expected to establish that something more than occasional use of the contract for hedging (a method of protecting against price fluctuations) or price basing exists, or can reasonably be expected to exist." It also requires a demonstration, based on the individual terms and conditions of the contract, that the contract is commercially viable. Further, the guideline requires a showing that transactions for future delivery in the commodity will not be contrary to the public interest.

The public interest, hedging and price-basing standards, as presently contained in Guideline No. 1 are very general. As a result, it may be difficult for CFTC to ascertain whether a board of trade has met or is continuing to meet its statutory obligation. Further, the existence of a particular futures market which does not meet a public interest standard could have an adverse impact on markets for the underlying and related commodities, to the detriment of farmers and other producers, processors, fabricators, commercial users, and consumers of the commodity, as well as members of the public who buy and sell futures contracts. Trading in a contract for which an adequate deliverable supply does not exist, for example, could result in price distortions. Similarly, lack of adequate customer protection could injure public customers. The recent enormous growth of the futures markets and the development of futures contracts in many new commodities make this issue particularly important at the present time. If the agency does not act, it will continue to be difficult to assess what showing is required by a board of trade seeking designation as a contract market and what standards should be applied for continuation of such designation.

Alternatives Under Consideration

The Commission's staff has suggested consideration of several alternatives. Because chronically inactive futures markets may no longer serve any economic purpose, the staff has suggested developing standards concerning the level and duration of inactivity against which all previously designated contracts would be judged. This would have the advantage of eliminating potential misuse of inactive futures contracts, with few apparent disadvantages, because such contracts appear to provide few, if any, economic benefits.

For futures contracts which have not yet been approved for trading (designated), the staff has made an alternative suggestion: the Guideline might be revised to encourage a board of trade seeking designation for a particular commodity to agree voluntarily to vacate the designation if the contract were not actively traded. This would accomplish the ends described above, without the need for government action.

Another approach suggested by the staff is that the Commission, in assessing the potential economic purpose for a new contract, inquire into the economic purpose served by existing similar contracts and what incremental benefits are likely to result from trading in an additional contract. Adoption of this line of inquiry would enable the Commission to consider better whether a particular duplicative contract is needed and whether it would be likely to have any negative effects on the underlying commodities markets. This approach could have anticompetitive implications, however.

The Commission staff has also suggested that in evaluating whether a board of trade meets the public interest standard for designation of a new contract, the Commission should consider how well the board of trade is discharging its obligations with respect to existing contracts. The staff has also suggested the development of specific standards for judging whether a futures contract is contrary to the public interest.

Summary of Benefits

Sectors Affected: All sectors of commodity futures markets, including farmers and other producers, processors, manufacturers, commercial users, and consumers of commodities; persons who speculate in the futures markets; boards of trade; and CFTC.

Improvement of Guideline No. 1 would help assure the proper functioning of the futures and cash markets by reducing the potential for market abuses such as manipulations, corners, and squeezes, decreasing the likelihood of adverse effects on other sectors of the economy which would result from artificial commodities prices, and enhancing the protections provided to customers by boards of trade. It also could make the Commission contract review process more efficient by clarifying the standards to be applied. A reduction of the uncertainty about what the Commission considers an adequate showing that a board of trade meets the public interest should also reduce the effort and resources which boards of trade expend in new contract preparation. In addition, to the extent that the submission of more detailed, relevant information facilitates agency action, the Commission could realize some savings.

Summary of Costs

Sectors Affected: Boards of trade.

Boards of trade could incur some additional administrative costs if their submissions to the CFTC are required to be more detailed.

Related Regulations and Actions

Internal: Guideline on Economic and Public Interest Requirements for Contract Market Designations, CCH Commodity Futures Law Reporter § 6145 (May 13, 1975).

External: None.

Active Government Collaboration

None

Timetable

Commission discussion of proposed FR notice—fall 1980

Regulatory Analysis—CFTC, an independent regulatory agency, does not prepare regulatory analyses as defined under E.O. 12044.

Available Documents

"Possible Revisions to Commission Guideline No. 1," Staff discussion paper, April 22, 1980, available by mail at no charge from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 806, Washington, D.C. 20581, after April 28, 1980.

Agency Contact

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Commodity Futures Trading Commission
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FEDERAL HOME LOAN BANK BOARD

Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980. (12 CFR Subchapters A, B, C, and D)

Legal Authority

The Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. Law No. 96-221, 94 Stat. 161.

Reason for Including This Entry

The Depository Institutions Deregulation and Monetary Control Act of 1980 signed by President Carter on March 31, 1980, will result in very substantial changes to the savings and loan industry. To implement this legislation, over the coming months, the Board will be considering numerous regulatory changes, including changes that provide Federal savings and loan associations a number of new or expanded investment authorities.

Statement of Problem

While the primary function of the industry—to provide home financing—will remain unchanged, the Act's provisions will increase the ability of savings and loans to compete for deposits by allowing expansion into areas traditionally reserved to commercial banks.

The following list indicates provisions of the Act that affect Federal Savings and Loan Insurance Corporation (FSLIC)-insured institutions and specifies the Board's target date for action on each regulatory proposal. Where the Board has already issued a proposal for public comment, or implemented a final regulation, the date of the Board action and the **Federal Register** cite are provided.

(1) *Consumer Safeguards on Mobile Home Lending*—The Act requires implementation of consumer regulations under the usury preemption section within 120 days of the effective date of the Act, by July 30, 1980. The Board adopted a proposal on May 5, 1980, which solicits public comment until June 5. The Board expects to act on final regulations by the end of June.

(2) *Mutual Capital Certificates*—The Act permits Federal associations to offer mutual capital certificates and permits their inclusion in reserve accounts. The Board expects to adopt a regulatory proposal in early June.

(3) *State Stock to Federal Stock Charter*—The Act allows associations to transfer from state stock to Federal stock form. The Board expects to adopt a draft regulatory proposal in early June.

(4) *Residential Real Estate Authority*—The Act revises Federal associations' investment authority pursuant to § 5(c) of the Home Owners' Loan Act. The Board expects to adopt a regulatory proposal in June.

(5) *Regulatory Simplification*—The Act requires the agency to determine the need for and to carefully analyze regulations prior to adoption. The Board expects to adopt a proposed regulation in June.

(6) *Federal Insurance Reserve (FIR)*—The Act permits the statutory reserve requirement to be established by the Board between 3 and 6 percent. Any immediate change to the reserve requirement will be accomplished by regulatory action, most likely in July.

(7) *Consumer Lending Power*—The Act establishes for Federal associations a new 20 percent of assets basket for consumer loans, commercial paper, and corporate debt securities. The Board expects to adopt a regulatory proposal in July.

(8) *Credit Cards*—The Act permits Federal associations to engage in credit card operations. The Board expects to adopt a regulatory proposal in July.

(9) *Increased Investment in Service Corporations*—The Act allows Federal associations to invest up to 3 percent of assets in service corporations provided that one-half of any investment in excess of 1 percent is allocated to community development purposes. The Board proposal adopted on April 3 will be finalized after review of public comments. The comment period closed May 9, 1980. The Board expects to adopt implementing regulations in July.

(10) *Money Market Fund Investments*—The Act permits Federal associations to invest in money market funds and permits members to use money market funds as legal investments for liquidity. The Board expects to adopt a regulatory proposal in August.

(11) *Federal Mutual Savings Banks' Leeway Authority*—The Act permits Federal mutual savings banks to invest up to 5 percent of assets in a new leeway authority designed to permit commercial lending. The Board expects to adopt a regulatory proposal in August.

(12) *Reserves Against S&L Deposits*—The Act establishes reserve requirements (sterile reserves held by the Federal Reserve Board) on transaction account deposits and short-term, nonpersonal time deposits. A regulation amending the liquidity provisions to include reserves held by the Federal Reserve is expected in August.

(13) *FHLBank Processing NOW Accounts*—The Act gives the Federal Home Loan Banks authority to process and clear NOW (negotiable orders of withdrawal) and other drafts. The Board expects to adopt a regulatory proposal in September.

(14) *NOW Account Authority*—Effective December 31, 1980, all financial institutions are permitted to offer NOW accounts. The Board expects to adopt a regulatory proposal in September.

(15) *Overdraft Authority for Federals on NOW Accounts*—Overdraft authority will be implemented in connection with regulations authorizing nationwide NOW accounts, in September.

(16) *Trust Powers*—The Act permits Federal associations to engage in trust operations. The Board expects to adopt a regulatory proposal in early fall.

Alternatives Under Consideration

Prior to implementation of final regulations, the Board plans to issue, in each case, a regulatory proposal soliciting public comment regarding alternative approaches to each proposal. For example, the proposed rule regarding investments in service corporations (published at 45 FR 24178, April 9, 1980) requests comment on the types of investments that should qualify as community development investment activities under the Act's requirement that investments in service corporations be used in part for this purpose. The Board has also requested comment on the types and extent of consumer protections that should be required in mobile home finance contracts (45 FR 31122, May 5, 1980). Compliance with the final consumer protection regulations will, in part, determine whether a mobile home lender is exempted from State usury laws.

Because the Depository Deregulation Act was enacted only recently, there has not been sufficient time for the Board to settle many legal and policy issues prerequisite to the development of identifiable regulatory alternatives.

Summary of Benefits

Sectors Affected: The savings and loan industry, particularly associations with Federal charters; savings and loan depositors; and the 12 Federal Home Loan Banks.

Implementation of the increased authorities provided by the Depository Deregulation Act will provide savings and loans with the means to compete more effectively for deposits by offering an increased range of loan types and services to the public and by attracting new sources of capital investments.

Summary of Costs

Sectors Affected: The savings and loan industry, particularly associations with Federal charters; savings and loan depositors; and the 12 Federal Home Loan Banks.

Because regulatory alternatives have not yet been identified, no summary of costs is available.

Related Regulations and Actions

Internal: Statutory changes affect existing regulations included in 12 CFR Subchapters A, B, C, and D.

External: Other provisions of the Act will be implemented by, or in conjunction with, the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. Examples of such provisions are in the areas of reserves against transaction accounts, and clearing services to be provided by the Federal Reserve Banks and the Federal Home Loan Banks for NOW account drafts drawn on savings and loan deposits.

Active Government Collaboration

Under the Act, a six-member Depository Institutions Deregulation Committee has been established to promulgate regulations for setting rates on savings deposits. These members, which are the Secretary of the Treasury, the Comptroller of the Currency, and the Chairperson of the Federal Reserve, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration, also work together in implementing various other provisions of the Act.

Timetable

Consumer Safeguards on Mobile Home Lending—Public Comment Period—Open until June 5, 1980
Final Rule—June 1980
Mutual Capital Certificates—NPRM—June 1980
State Stock to Federal Stock Charter—NPRM—June 1980
Residential Real Estate Authority—NPRM—June 1980
Regulatory Simplification—NPRM—June 1980
Federal Insurance Reserve (FIR)—Final Rule—July 1980
Consumer Lending Power—NPRM—July 1980
Credit Cards—NPRM—July 1980
Investments in Service Corporations—Final Rule—July 1980
Money Market Fund Investments—NPRM—August 1980
Mutual Savings Bank Leeway Authority—NPRM—August 1980
Reserves Against S&L Deposits—Final Rule—August 1980
Federal Home Loan Banks Processing
NOW Accounts—NPRM—September 1980
NOW Account Authority—NPRM—September 1980
Overdrafts on NOW Accounts—Final Rule—September 1980
Trust Powers—NPRM—October 1980

Available Documents

The Board has proposed a rule regarding investments in service corporations (45 FR 24178, April 9, 1980). The public comment period closed May 9, 1980. The Board has issued final regulations under § 501 of the Act regarding preemption of State usury laws for mortgage loans (45 FR 24112, dated April 9, 1980) and increasing deposit insurance from $40,000 to $100,000 (45 FR 26024, April 17, 1980). The Board has also proposed consumer protections for mobile home loans (45 FR 31122, May 5, 1980) and will accept public comment until June 5, 1980. Copies of public comment letters on proposed rules are available for inspection at the Board; copies of transcripts of public meetings are available from the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems. (17 CFR Parts 229, 231, 239, 240, 241, 249*)

Legal Authority

Securities Act of 1933, §§ 6, 7, 8, 10 and 19(a), 15 U.S.C. § 77a *et seq.*

Securities Exchange Act of 1934, §§ 12, 13, 15(d) and 23(a), 15 U.S.C. § 78a *et seq.* (1976 and Supp. I 1977).

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that these rule and form amendments are important because they will significantly revise the format, and to some extent the content, of most reports and registration statements filed with the Commission under the federal securities acts by approximately 8,000 public companies.

Statement of Problem

All companies with publicly traded securities are required to register with the Securities and Exchange Commission, to file annual and other periodic reports, and to register additional securities which they may wish to sell to the public. The Securities and Exchange Commission is proposing to revise its annual reporting forms, promulgated under the Securities Exchange Act of 1934, and certain of its registration forms, promulgated under the Securities Act of 1933, to establish a single, integrated disclosure system which will permit most registered companies to comply simultaneously with the disclosure provisions of both acts.

At present, the Securities Act of 1933 and the Securities Exchange Act of 1934, each give rise to separate procedures. The Securities Act of 1933 requires that registered companies give detailed disclosure concerning their business and financial condition at the time that securities are offered for public sale. Under the Securities Exchange Act of 1934, companies whose shares are registered with the Commission or which have previously sold shares to the public under the Securities Act of 1933, must file periodic reports containing detailed disclosure of their affairs. Often major portions of the disclosure required in Securities Act registration statements and in Exchange Act reports overlap to a great degree, but because of differences in the timing of the filings the disclosure is not word for word the same.

In addition to filing registration statements and periodic reports with the Commission, many public companies prepare and deliver to shareholders informal annual reports. Portions of these annual reports are required by various State laws and by Commission rules. Again, the informal annual reports prepared by many public companies tend to contain information which duplicates some of the information contained in Securities Act registration statements and in Exchange Act reports. In the case of informal reports, however, the duplicated information tends to be delivered in a somewhat different format. This is often the case with company financial information. In informal annual reports, financial information usually is prepared in accordance with generally accepted accounting principles, while in registration statements and in Exchange Act reports the information is prepared

in accordance with Commission rules. Although in most cases the differences are not great, they are numerous.

The problem faced by the Commission is to eliminate much, if not all, of the duplicative reporting and to reduce thereby both the volume and the cost of the material which companies prepare. Concurrently, the Commission is seeking to maintain the quality of disclosures and to update disclosure obligations to eliminate outmoded or unnecessary requirements.

At least three significant factors suggest that the Commission should act at this time to combine or integrate disclosure under the Securities Act, the Exchange Act, and in informal shareholder reports. First, the report of the Commission's Advisory Committee on Corporate Disclosure delivered to the Commission in November 1977 examined the possibility of combined reporting and indicated a significant and urgent need. Second, a Commission examination of registration statements, Exchange Act reports, and informal shareholder reports indicates that over the years the number of significant content differences may have diminished, thereby making an integrated system more feasible. Finally, as the volume of disclosure requirements has increased over the years, the cost to registrants and the burden upon the Commission staff has correspondingly increased. An integrated system will reduce the volume of disclosure documents, thereby significantly easing both the costs and burdens to reporting companies.

If the Commission does not act now, unnecessary costs and burdens will be continued. Additionally, from the Commission's point of view, over the past ten years the Commission staff responsible for the review of filings has been gradually reduced while the volume of disclosure has increased. At present staffing levels, if the Commission did not eliminate the need to review essentially duplicative filings, the Commission staff would increasingly dilute its ability to effectively review the content and quality of filed documents.

Alternatives Under Consideration

(A) With respect to Exchange Act reports, information would be classified into two general categories relating to either an Exchange Act filing or to an informal shareholder report. Information included in the Exchange Act filing would not be duplicated in the shareholder report, but the Commission would permit, and in some cases require, cross references from the filing to the report. The content of public company registration filings, made under the Securities Act in connection with the sale of additional securities, would depend upon the availability of previously documented information in the marketplace or from other sources outside of the filing. Thus, the Commission would classify companies desiring to sell securities in three general categories. First, companies with widely traded securities could incorporate most disclosure by reference to Exchange Act filings and informal reports to shareholders. Second, companies with no record of financial difficulty and three years of adequate Exchange Act filings could incorporate some disclosure by reference to Exchange Act filings or to informal reports to shareholders, but the Commission would require the delivery of one or more of those filings or reports to prospective purchasers of securities. Finally, the Commission would require all other companies to prepare extensive registration statements which would involve some duplication of information previously filed in Exchange Act reports. The Commission staff believes the implementation of this alternative would result in both a more rational organization of information concerning public companies, and the development of informal reports to shareholders which could serve as the primary source of descriptive and financial information concerning those companies. Commission reports would supplement, but would not duplicate, the informal shareholder report. Although the Commission staff does not expect a reduction in the size or information content in the informal shareholder report, it would expect dramatic decreases in both size and content of formal Commission filings.

(B) This alternative would involve the combination of the informal shareholder report with the formal Exchange Act report in a manner similar to that described in the first alternative. Thus, information would be required in one report or the other, but not in both. The Commission would make no effort, however, to further integrate these reports with registration statements filed under the Securities Act. Because some duplication of prior disclosures would be required where a registrant decided to sell additional securities to the public, this approach would result in less cost saving to public companies. On the other hand, this approach would accept the existing different structures, and particularly the existing different liability provisions of the two acts, thereby avoiding potentially difficult legal issues which arise when a document prepared for filing under the Exchange Act is subsequently used to satisfy a requirement under the Securities Act.

(C) As a variation on the second alternative, the Commission could mandate a single report which would serve both as the informal report to shareholders and the formal Exchange Act filing. This report could be integrated with Securities Act disclosure, as suggested by the first alternative, or could be separate from such disclosure, as is suggested by the second alternative. Assuming full integration with Securities Act filings in the manner described in the first alternative, this approach would maximize cost-savings to companies and would simplify the disclosure system by reducing mandated disclosure from three to two documents. This alternative, however, would be considerably less flexible than either of the first two alternatives, and the information in and presentation of the annual report might suffer.

(D) This alternative would integrate disclosure under the official Exchange Act filings and Securities Act registration statements, but would leave informal reports to shareholders outside of the formal disclosure system. This would continue much of the present disclosure system. The Commission would require companies to make changes in Exchange Act reports to make them more readable so that they could be used more effectively in connection with Securities Act registration statements. This approach would maximize a company's ability to communicate in informal reports, but probably would not result in a significant reduction in the volume of disclosure documents.

The Commission currently is pursuing alternative A, which maximizes the reductions in duplicative disclosure without doing away with informal reports. The Commission believes that informal shareholder reports serve an established purpose and presently are the most effective means of communicating with shareholders. Accordingly, the greater simplification represented by combining alternatives (A) and (C) does not appear to be appropriate at this time. On the other hand, alternative (D) does not appear to be attractive because the more significant duplications appear to be in informal shareholder reports and in Exchange Act reports, and those duplications would be continued under that alternative. Finally, the Commission is not pursuing alternative (B) because reductions in duplicative disclosure

would be minimal, and in any event the Commission may have to address elsewhere the liability problems which alternative (B) avoids.

Summary of Benefits

Sectors Affected: Companies having a class of securities registered under § 12 or with a reporting obligation under § 15(d) of the Exchange Act, or which offer securities subject to registration under the Securities Act; shareholders of such companies; persons wishing to purchase shares of such companies; and other persons who rely upon or use information filed by such companies with the Commission, or who rely upon or use information contained in informal shareholder reports; and the Securities Exchange Commission.

The Commission believes, on the basis of its own informal estimates, that the proposed rule and form amendments would reduce the total volume of Exchange Act periodic reports (approximately 30,000 in 1979) filed by a particular registered company from 0 to 50 percent, and of registration statements (approximately 2500 in 1979) filed under the Securities Act from 0 to 75 percent. The greater reductions would relate to filings by companies with widely traded securities, since those companies incur the largest costs. In this regard, the Commission's Advisory Committee or Corporate Disclosure reported in 1977 that large companies incurred costs averaging more than $45,000 per year to prepare Commission-mandated annual reports. Additionally, we believe that at least some direct cost-savings would be realized by nearly all companies having a reporting or filing obligation.

The Commission does not believe that there will be any measurable cost savings to shareholders, potential investors, and other users of financial reports and filed information. However, to the extent that corporate costs are reduced, companies may pass on some of the cost reduction to one or more of these interests.

Because of the reduction in the total volume and complexity of disclosure documents, registered companies and issuers of securities should realize reduced legal, and other professional costs, printing and duplicating charges, and mailing costs. Although the Commission cannot measure the amount of these savings, because of numerous internal variables and the lack of a reporting system, the Commission believes them to be significant. Additionally, the overall volume reductions should decrease the administrative burden to the Commission staff, increase processing speed, improve communications with shareholders and investors, and result in some improved access to capital markets.

Shareholders, investors, and other users of filed information should also benefit because companies will produce more readable and communicative disclosure information.

Summary of Costs

Sectors Affected: Companies having a class of securities registered under § 12 or with a reporting obligation under § 15(d) of the Exchange Act, or which offer securities subject to registration under the Securities Act; shareholders of such companies; persons wishing to purchase shares of such companies; and other persons who rely upon or use information filed by such companies with the Commission, or who rely upon or use information contained in informal shareholder reports.

The Commission does not believe that any significant costs would be incurred by any affected sector as a result of the adoption of this proposal, although in some circumstances a limited number of companies filing reports and issuing shares could incur greater auditing costs as a result of these proposals.

Additionally, if the Commission mandates information in informal reports to shareholders, it may eliminate some flexibility in the manner in which companies disseminate information to shareholders, and the Commission imposition of Securities Act liability on portions of these documents could inhibit their presently communicative style, even though the Commission expects the overall communicability of the portions which do become formal filings and reports to improve.

Shareholders, investors, and other users of filed documents will receive slightly less information as a result of these proposals; and to the extent that legal liability makes portions less readable, these sectors could also be detrimentally affected. The Commission believes, however, that these costs will be more than offset by the greater readability of the overall information package.

Regulated Regulations and Actions

None

Active Government Collaboration

None

Timetable

Regulatory Analysis—SEC, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044.

Final Rule—September 1980

Available Documents

"Proposed Amendments to Annual Report Form; Integration of Securities Acts Disclosure Systems." Securities Act of 1933 Release No. 6176, 45 FR 5974, January 15, 1980

"Business Combination Transactions—Proposed Amendments of Related Rules." Securities Act of 1933 Release No. 6177, 45 FR 5934, January 15, 1980

"General Revision of Regulation S–X." Securities Act of 1933 Release No. 6178, 45 FR 5943, January 15, 1980

"Uniform Instructions as to Financial Statements—Regulation S–X." Securities Act of 1933 Release No. 6179, 45 FR 5963, January 15, 1980

These releases are available from Publications, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 272–2960.

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SEC

Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies (17 CFR 230.465, 239.15*, 239.16*, and 274.11*)

Legal Authority

Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, and Investment Company Act of 1940, 15 U.S.C. § 80a–1 *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that this rule is important because it will set a precedent that will significantly reduce regulatory delays which might be experienced by investment companies filing post-effective amendments to their registration statements.

Statement of Problem

The Securities Act of 1933 requires most U.S. and foreign companies to file a registration statement with the Commission before they may offer their securities for sale to the U.S. public. The registration statement form on which securities are registered includes a prospectus. The prospectus is the principal selling document for securities because it includes material information

about the company and its operations necessary for informed decisionmaking by investors.

Generally, securities cannot be sold until the registration statement has become effective. Although, by law, registration statements can become effective automatically through lapse of time (20 days after filing), for the most part issuers delay the effective date and request the Commission to declare the registration statements effective only after the Commission has reviewed the disclosure in the registration statements for compliance with the securities laws.

This statutory scheme also applies to investment companies, but with a major difference. Most investment companies, including open-end management investment companies (the type commonly known as mutual funds) and unit investment trusts, issue securities which are redeemable on demand by the shareholder. Because those investment companies are engaged in the continuous offering and sale of securities to the public, the Investment Company Act of 1940, together with the Securities Act of 1933, require these investment companies to maintain a current prospectus. They are required to bring their prospectuses up to date at approximately yearly intervals by means of a post-effective amendment to their registration statements. Investment companies also file post-effective amendments to their registration statements for other purposes: (1) to increase the amount of securities registered under the Securities Act; (2) to register an indefinite number or amount of securities; (3) to correct deficiencies in registration statements discovered after such filings have become effective; or (4) to incorporate in the prospectus any important changes or developments in the business, operations, or services of the company. Most of these filings are routine. The amendments filed to update prospectuses generally substitute current financial statements for outdated ones, while those filed to change the number of securities usually consist only of a brief informational page and the required signature. Nevertheless, the Commission and its staff must individually examine and declare an effective date for each post-effective amendment. There is currently no procedure for post-effective amendments under which they can become effective automatically through lapse of time, as is the case for new registration statements.

As a result of the variety of purposes for which investment companies file post-effective amendments to their registration statements, the Commission processes far more post-effective filings than new registration statements. In addition, the number of registered investment companies, and thus the number of post-effective amendments they file, has increased over the years. For example, in FY 1978, there were 1,472 registered investment companies filing 327 registration statements and 2,167 post-effective amendments. In FY 1979, 1,507 registered investment companies filed 347 registration statements and 2,135 post-effective amendments. For FY 1980, the Commission staff estimates that approximately 1,536 investment companies will file 350 registration statements and 2,289 post-effective amendments with the Commission. The estimates for the number of registration statements and post-effective amendments to be filed in fiscal year 1980 represent increases of approximately 7 percent and 6 percent respectively, over the figures stated for FY 1978. This increase in filings will be accompanied by a decrease in the number of Commission staff available to review and process them. While the Commission had 35.6 staff-years available for processing in FY 1978, this figure is expected to drop to 33.8 staff-years in FYs 1980 and 1981.

In the past, the Commission has implemented several procedures to process filings expeditiously. The first, the two-part filing procedure, was instituted in 1976 to spread the processing of post-effective amendments over several months. Under this procedure, the Commission requested investment companies to file, two months before the end of their fiscal year, an amendment containing only the narrative portion of the prospectus (marked to indicate changes from the most recent prospectus) and then, after the end of the fiscal year, to file another amendment containing the financial statements for the year and any further changes in the narrative. This procedure was implemented to alleviate the enormous seasonal workload on the Commission staff resulting from the fact that most investment companies have the same fiscal-year ending date, and thus must update their prospectuses by the same date each year to maintain a current prospectus in compliance with the statute.

More recently, in 1978, the Commission established a procedure for "red-line" review, under which the Commission staff limits its review of annual updating amendments to financial statements, narrative material marked to indicate textual changes, and areas in which recent developments suggest that changes in disclosure are likely to be appropriate.

While these changes have helped the Commission to make more efficient use of its resources, the Commission, nevertheless, finds it increasingly difficult to process all these post-effective filings on a timely basis. Without more significant changes to our procedures, the Commission fears that registrants will be faced with unacceptable delay in keeping their prospectuses up to date in order to be able to sell their shares. Changes are also necessary to focus the Commission's resources on disclosure documents where detailed review is necessary, and to ensure that such review is accomplished thoroughly, timely, and in a manner fair to investment company issuers. The Commission has, therefore, proposed for public comment a rule under the Securities Act of 1933 under which most post-effective amendments filed by investment companies would become effective automatically, without affirmative action by the Commission or its staff. Post-effective amendments would become effective either immediately upon filing, or 60 days after filing, depending upon their content. The two categories are related to the complexity of the filing and the need for Commission review to ensure its compliance with the securities laws.

Alternatives Under Consideration

One alternative to the rule the Commission has proposed is a rule under which all post-effective amendments would become effective immediately upon filing, thereby eliminating all staff review and comment. This approach would eliminate the delay investment companies now encounter in keeping their prospectuses current, and would make the issuers the sole judges of what disclosures should appear in their prospectuses. However, the elimination of staff review might result in an unnecessary sacrifice of investor protection. Major changes in the investment company's operations would go unreviewed by the staff, and any false or misleading statements could be corrected only if the Commission took formal action against the issuer.

Another alternative, similar to what the Commission proposed, would be to set up two categories of automatic effectiveness (immediately upon filing or 60 days thereafter), and to set up an exclusive list of events which would cause an amendment to be placed in the latter category. This alternative would have the advantage of certainty, in that

investment companies would have no doubts about the status of their filings. But it would also eliminate the flexibility needed to respond to unforeseen situations that are bound to arise, given the wide variety of investment companies.

The rule the Commission proposed strikes a balance between these alternatives. Post-effective amendments which the Commission can safely consider routine will become effective immediately upon filing. This category includes those amendments filed to change the number of securities under registration, and those filed annually to update the prospectus, provided that the registrant represents that none of the material events listed in the rule, and no other material event requiring disclosure in the prospectus, have occurred since the effective date of the registrant's most recent post-effective amendment. All other post-effective amendments would become effective 60 days after filing, including those which contain disclosure about a material event listed in the rule or any other event which the registrant represents to be material.

By framing the rule in this way, the Commission expects to eliminate staff review and comment for approximately one-third to two-thirds of all post-effective filings. This will free staff resources for comprehensive review of the more complex filings, such as post-effective amendments in the 60-day category and initial registration statements, with no detriment to investor protection. As stated above, the rule sets forth certain events which the Commission deems material and which would cause a post-effective amendment disclosing such an event to be placed in the 60-day category. The list includes such major events as termination of any contract to provide investment advisory services to an investment company, and changes in the issuer's investment objectives or fundamental policies. The events listed in the rule are those which the Commission views as clearly material to the investing public, or those likely to present complex legal or factual problems requiring close scrutiny. The list is not intended to be exhaustive, and any post-effective amendment containing disclosure about any other event which the registrant represents to be material and requiring disclosure in the prospectus would still be subject to staff review and comment. This provision was included in the rule because the Commission could not list every conceivable material event requiring disclosure in the prospectus. More importantly, the Commission wanted issuers to be responsible for determining what events were material, because they bear the liability in this area.

Under the rule there are two exceptions to automatic effectiveness after 60 days. First, the Commission may advance the effective date in appropriate situations, although the Commission warned issuers that the fact that a prospectus is, or is about to become, outdated would not be sufficient cause for the Commission to set an earlier effective date. Second, the Commission can suspend automatic effectiveness on written notice to the issuer if it appears that the amendment may be incomplete or inaccurate in a material respect. The Commission staff usually would exercise this power only where the Commission had authorized injunctive action or administrative proceedings against the issuer. If the Commission suspends automatic effectiveness, the issuer is entitled to file a petition for review of the suspension at any time, and also to have a hearing on the suspension if one is requested.

Summary of Benefits

Sectors Affected: Registered open-end management investment companies and unit investment trusts (except registered separate accounts of insurance companies as defined in Section 2(a)(37) of the Investment Company Act); and SEC.

Investment companies will benefit from the proposed rule because they will no longer have to await processing of routine post-effective amendments by the Commission staff. Even for routine filings, the review process currently extends over at least 2 months. With respect to filings that are not routine, the 60-day period generally approximates the current processing time, so, for the most part, investment companies whose filings come within this category will not have to wait longer for their filings to be processed. In addition, these investment companies will have the benefit of staff comments regarding what it considers incomplete or inaccurate disclosure, but, because filings will become effective automatically, such companies will not feel compelled to accept those comments which they feel are not needed to make the filing legally sufficient. Although investment companies and their counsel will have to shoulder greater responsibility for the accuracy and completeness of the disclosure in their filings, to the extent they are willing to do so they will be able to avoid the time-consuming and expensive process of coming to agreement with the Commission staff about difficult disclosure. Thus, investment companies should be spared many of the costs currently associated with the comment process and a corresponding benefit will accrue to investment company shareholders.

The rule should also benefit the Commission, because it will be able to redirect its resources to those filings most likely to require, and to benefit from, staff review.

Summary of Costs

Sectors Affected: None.

The Commission foresees no additional costs resulting from this rule.

Related Regulations and Actions

Internal: The proposed rule on automatic effectiveness of post-effective amendments is the result of an ongoing review of the disclosure process as it applies to investment companies. The aim of the study is to eliminate duplicative and unnecessary burdens on investment companies that stem from current disclosure requirements. On February 22, 1980, the Commission adopted a rule under the Securities Act providing for automatic effectiveness of most post-effective amendments relating to employee benefit plans.

External: None.

Active Government Collaboration

None

Timetable

Regulatory Analysis—The SEC, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044
Public Comment Period—April 3, 1980 to June 2, 1980
Send comments to George A. Fitzsimmons, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and refer to File No. S7–829
Final Rule—September 1980

Available Documents

NPRM—published April 3, 1980 as Securities Act Release No. 6205, 45 FR 24500, April 10, 1980

All documents available for review in the Commission's Public Reference Room, 1100 L St., N.W., Washington, D.C. 20549.

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CHAPTER 4—HEALTH AND SAFETY

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

Proposed Polychlorinated Biphenyls (PCBs) Regulation (9 CFR Parts 308, 381*)

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 621. Poultry Products Inspection Act, 21 U.S.C. § 463.

Reason for Including This Entry

The Food Safety and Quality Service (FSQS) protects the public health by ensuring the safety and quality of meat and poultry food products. Recently, in various parts of the United States, polychlorinated biphenyls have contaminated feed supplies which eventually affected the human food chain. FSQS is seeking to prevent the recurrence of such situations.

Statement of Problem

FSQS intends to prohibit the introduction of any new or replacement equipment or machinery in any meat, poultry, or egg products establishment that it regulates if that machinery or equipment contains polychlorinated biphenyls (PCBs) in excess of 50 parts per million (ppm) in the liquid medium.

PCBs are part of a broad group of organic chemicals known as chlorinated hydrocarbons. PCBs were produced in the United States from 1929 to 1977. (Virtually all production then came to a halt, in anticipation of a prohibition placed by the Environmental Protection Agency on the manufacture of PCBs in July 1979.) Because of their almost complete resistance to fire and explosion, their high dielectric performance (nonconductors of electric current) and their excellent heat transfer properties, PCBs were primarily used in electrical transformers, capacitors, heat-transfer systems, and hydraulic systems. (PCBs in meat, poultry, and egg products plants are primarily confined to transformers and capacitors.)

Research and studies conducted during the past 15 years have demonstrated numerous adverse health effects, including skin eruptions, visual impairment, and gastrointestinal disorders, associated with various levels of exposure to PCBs. During this same period of time there have been a number of incidents where human food supplies have been contaminated by PCBs. These cases of environmental contamination have resulted either from leaking industrial equipment or from industrial accidents where equipment containing PCBs has been ruptured and the fluid escaped into the feed or animal byproduct system.

The purpose of the proposed action to prohibit the introduction of any equipment or machinery containing PCBs in excess of 50 ppm is to reduce the likelihood of an incident of environmental contamination and thereby reduce the overall threat to public health.

On May 9, 1980, the FSQS proposed joint regulations at 45 FR 30980 with the Food and Drug Administration and the Environmental Protection Agency to supplement and extend the coverage of this proposal. The May 9 proposal established the requirement that no equipment or machinery, other than capacitors containing less than 3 pounds of PCB liquid, and no separately maintained liquids in U.S. Department of Agriculture (USDA) inspected plants and establishments would contain PCBs in excess of 50 ppm. This would mean that firms with existing equipment containing excessive PCBs would have to replace the equipment or remove the PCBs from that equipment. A 6-month disposal period would be allowed which would not begin until disposal facilities become available. All equipment removal or flushing, and all handling or removal of PCB liquids, would be performed according to EPA regulations.

Alternatives Under Consideration

(1) Take no action on the use of equipment or machinery containing PCBs in plants under FSQS jurisdiction. These plants could still use existing equipment or introduce new or replacement equipment containing PCBs. This would not stop the potential contamination of the food supply from equipment leaking PCBs.

(2) Prohibit by regulation the introduction of any new or replacement equipment or machinery containing liquid PCBs on the premises of the meat, poultry, and egg products plants under FSQS jurisdiction. This option would reduce the likelihood of environmental contamination by PCBs and thereby reduce the overall threat to public health posed by these chemicals. It would not eliminate the possibility of PCB contamination of the food supply.

(3) Conduct an extensive Information and Education campaign aimed at the managers of all plants under FSQS jurisdiction. This campaign can stress the seriousness of PCB contamination, the unnecessary liability associated with introducing new or replacement equipment containing PCBs, and the likelihood of an eventual phaseout of all equipment containing PCBs.

Under this option new or replacement equipment containing PCBs could be introduced at the discretion of individual plant managers. Managers would, however, be making informed choices. Some PCBs could contaminate the food supply.

(4) Take no regulatory action at the current time, but work toward the development of a ban on all PCB-containing equipment from the premises of meat, poultry, and egg products establishments under FSQS jurisdiction. Under this option it is possible that, for the time being, decisions to introduce new or replacement equipment containing PCBs could be made by plant managers having inadequate knowledge of PCB hazards, individual plant liability, and pending regulatory actions. PCBs could contaminate the food supply until a total ban on PCBs in food establishments is instituted.

FSQS is proceeding to develop the necessary information to propose a regulation that would eliminate all PCBs from plants under FSQS jurisdiction. When it is proposed, FSQS will conduct an impact analysis of various regulatory options. FSQS is currently planning a survey that will provide data on the number of existing transformers/capacitors in plants under FSQS jurisdiction, the size of these units, and the number of these units that may contain PCBs. The Environmental Protection Agency (EPA) has contracted for additional surveys and studies to determine the prevalence of PCBs in food plants, and to determine the cost of removing all PCBs in concentrations in excess of 50 ppm from these plants.

Summary of Benefits

Sectors Affected: Manufacturing of meat, poultry, and egg products; consumers of these products; and FSQS.

Manufacturers benefit from reducing the likelihood of PCB contamination of the food supply. Food contaminated with PCBs cannot be sold for human consumption, and must be destroyed at the producer's expense. Also, in checking for PCBs in food, products are detained and tested. Thus, the producer's sales are postponed.

FSQS also benefits through cost avoidance. When alerted to a PCB contamination incident, the agency must spend its resources tracking and testing products to ensure they are not contaminated.

When the likelihood of PCB contamination is reduced, consumers have greater confidence in the products they buy. (Greater confidence may also lead to increased purchases—a benefit

for producers.) Consumers also benefit from avoidance of adverse health effects.

The value of these benefits is difficult to quantify. However, FSQS estimates that a recent PCB contamination incident in Montana cost approximately $5 million.

Summary of Costs

Sectors Affected: Manufacturing of meat, poultry, and egg products; and consumers of these products.

Option (2) would be the most costly of the four options. Of the approximately 1,100 (out of 6,824) firms reporting in the October 1979 agency survey, 380 identified existing transformers which may contain PCBs on their premises. Based on these responses, we estimate that between 30 and 40 percent (or from 2,100 to 2,800) of the approximately 7,000 federally inspected plants have transformers. To estimate a maximum impact, the analysis assumes that 3,000 federally inspected establishments have transformers and that all these transformers contain PCBs. In a similar manner, we estimate that a maximum of 1,000 federally inspected firms use capacitors containing PCBs.

The data from the FSQS survey show that those firms having transformers reported an average of 3 units per plant, and those firms having capacitors reported an average of 15 capacitors per plant. Applying these averages to the estimated number of firms results in an estimated inventory of 9,000 (3,000 × 3) transformers and 15,000 (1,000 × 15) capacitors.

We estimated that transformers and capacitors have an expected product life varying from 25 to 40 years. Thus, from 2.5 to 4.0 percent of these existing units will be phased out each year. To estimate a maximum impact we assumed that 4 percent of the units will wear out each year. Some firms will also replace equipment in the process of upgrading their facilities. We assumed that this will involve an additional 1 percent of the units. Thus, we estimate that 5 percent or 450 transformers and 750 capacitors will be replaced or added each year in the normal course of industry operations.

At present, the replacement cost for a transformer is approximately $12 per Kilo Volt Ampere (KVA) and for a capacitor approximately $10 per Kilo Volt Ampere Reactive (KVAR). Using these figures and data from the survey, we estimate that existing transformers would cost an average of from $5,000 to $6,000 to replace, and that existing capacitors would cost an average of from $300 to $350 to replace. The total annual cost of 450 transformers could then be $2.7 million ($6,000 × 450). The total cost of 750 capacitors could then be $262.5 thousand ($350 × 750) per year. The total maximum replacement cost of this equipment would therefore be approximately $3 million per year excluding all installation costs. There are estimates of average transformer costs that are much higher (up to $20,000). However, use of the highest average cost estimate still results in total replacement costs of less than $10 million per year. (The cost of replacing the transformers and capacitors with non-PCB-containing equipment would be somewhat higher.)

The enforcement of Option (2) places an additional burden on USDA inspectors or compliance personnel. If FSQS promulgates a ban on additions of PCB equipment, the agency must monitor the replacement of equipment to assure compliance with the regulation. However, the agency already has inspectors at the federally inspected plants. It has been estimated that at most, 3,000 plants have transformers and 1,000 plants have capacitors. It is also estimated that a maximum of 1,200 units per year will be introduced, affecting at most 1,200 plants, but probably far fewer since one plant may introduce many units. We, therefore, estimated that requiring existing in-plant inspectors to monitor the installation of at most 1,200 units will not be a major effort.

Under Option (3), the agency could conduct an extensive Information and Education (I&E) campaign aimed at those plant managers who must make decisions on whether or not to introduce electrical equipment containing PCBs. Product liability will influence these decisions. Concern for the public health should also influence these decisions.

Under Option (4), the agency would not, at the current time, take any action with respect to the introduction of new or replacement equipment containing PCBs on the premises of any plant under FSQS jurisdiction. This option would not require any additional surveillance of FSQS-inspected establishments to prevent the addition of PCB-containing equipment and machinery. It also would not require any extensive I&E resources. Under this option, some plant managers will decide to install PCB equipment. Some plant managers may make uninformed decisions that they would not have made if they were aware of PCB hazards, product liability, and FSQS regulatory strategy.

Options (1), (3), and (4) also carry the public health costs associated with PCB contamination incidents which might result from not regulating the chemicals. The size of such costs is unknown, but could potentially equal several million dollars per incident.

Related Regulations and Actions

None.

Active Government Collaboration

FSQS, the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) are concurrently and cooperatively developing broader rulemaking (as discussed in Option [4], for example) which would address the present use of PCBs by the food, feed, pesticide, and fertilizer industries.

PCBs are a toxic substance identified for regulatory coordination by the Toxic Substances Work Group of the Interagency Regulatory Liaison Group (IRLG). During the development stage of this regulation, FSQS consulted representatives of EPA, FDA, the Consumer Product Safety Commission, and the Occupational Safety and Health Administration. FDA and EPA have separately reviewed and concurred in this proposal. These agencies agreed that any comments received as a result of this proposed rulemaking will also be shared with them.

Timetable

Final Rule—July 1980
Regulatory Analysis—Final Impact Statement will be completed as part of the rulemaking process.

Available Documents

Public Comment—Comments available upon request. Docket number FR Doc. 80-6467.

Proposed Regulation—Prohibition of All New and Replacement Equipment and Machinery Containing Liquid Polychlorinated Biphenyls (PCB's)—45 FR 13471, February 29, 1980

Draft Impact Analysis—Prohibition of All New and Replacement Equipment and Machinery Containing Liquid Polychlorinated Biphenyls (PCB's), February 13, 1980

Agency Contact

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USDA-FSQS

Voluntary Meat and Poultry Quality Control Systems (9 CFR Parts 318 and 381)

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.* Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq.*

Reason For Including This Entry

Growth in the number of meat and poultry plants as well as industry innovations have increased the number and volume of products from these plants. Thus, inspection costs for processed foods are constantly increasing for the Food Safety and Quality Service (FSQS), which has the responsibility to inspect for the safety and quality of meat and poultry products. Voluntary quality control by the plants themselves would supplement FSQS's ability to regulate processed products and enhance consumer protection.

Statement of Problem

Personnel of FSQS, United States Department of Agriculture (USDA) administer the inspection requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act. The growth in the number of meat and poultry plants, and the innovations within the industry, have increased both the volume and the number of processed products industry produces. Processed products are those created through manufacture, such as frankfurters and luncheon meat, as opposed to those created strictly through slaughter and butchering, such as steaks and roasts. The increase in the supply of processed products has resulted in increased responsibilities for the FSQS inspection programs.

Federal meat and poultry inspectors currently inspect approximately 6,900 processing plants, compared to 4,037 in 1970. The annual volume of processed product inspected increased 25 percent between 1970 and 1978. Federal processing inspectors inspected 74.1 billion pounds in 1978, compared to 59.4 billion pounds in 1970. Although most of this increase may be attributed to increases in production volumes and additional plant facilities, Federal assumption of State inspection responsibilities has also been a factor. As of June 1, 1979, the department has assumed responsibility for 25 State poultry and 17 State meat inspection programs in 25 States which were either unwilling or unable to effectively maintain their own programs. This number should continue to grow in the near future.

FSQS must continue to guarantee that marketed products are wholesome, unadulterated, and properly labeled, in spite of this tremendous increase in the volume of product it must inspect. To ensure this, FSQS currently employs 2,350 processing inspectors, compared to 1,928 in 1970. Reliance on laboratory testing has also grown since 1970. Combined with inflation, which has increased the salaries which have to be paid to inspectors, these two factors have resulted in an increase in inspection costs from $25 million in 1970 to $69 million in 1979. Food processing inspection, as opposed to animal slaughter inspection, accounts for an ever-increasing share of total inspection costs. Thus, while total inspection costs increased 130 percent, processing inspection increased 176 percent.

Despite the increase of processed products, the basic techniques of inspection, which rely on the continuous presence of inspectors, have remained essentially the same since the beginning of this century; therein lies the problem. This proposal could solve the problem and alleviate the burden on inspectors by giving FSQS increased access to a plant's records concerning its quality control process. This would lead to more complete and efficient inspection.

Quality control refers to controlling a process so that certain specifications are met. The result is a consistent and uniform product, involving a predictable cost, which meets Federal regulatory requirements. During the process of production, the plant checks to determine if a change in the process is needed to assure the wholesomeness of the finished product. Problems are detected during, rather than after, the process. Under our proposal, plants would supply FSQS with the data resulting from these checks to aid in inspection. While not eliminating the older system, this would add to it and improve the ability of FSQS to regulate processed products. The proposal provides for both total and partial inspection programs for quality control. (A partial quality control program covers only selected portions of the production process.)

In exchange for this increased access to a plant's records, FSQS is considering granting plants operating under an approved quality control program the right to use special labeling. Such labeling would differentiate products inspected through such a program from those inspected only in the usual manner. The labeling would signify to the consumer that the product had gone through a thorough, systematic inspection involving the use of increased technology.

In December 1977, the General Accounting Office released a report on "A Better Way for the Department of Agriculture to Inspect Meat and Poultry Plants." This report recommended that a quality control program be implemented on a mandatory basis; this would require a change in the existing statutory law. At the present time, over 600 processing establishments voluntarily have instituted one or more partial quality control programs which have been approved by FSQS. Without such a program, the burdens arising from the growth in the meat and poultry processing industries will be increasingly difficult to manage. Effective use of voluntary systems of quality control, operated by the plants themselves, should serve to strengthen the inspection system while allowing FSQS to be more cost-effective in the use of its inspection budget.

Alternatives Under Consideration

In developing this proposal, FSQS evaluated, among other things, the two basic alternatives to the establishment of a voluntary quality control system: (1) the retention of the present inspection system, which, while incorporating some use of quality control, does not provide for the total use of the process as an inspection system, and (2) the mandatory imposition of a requirement for a quality control program. The latter alternative would require that all meat and poultry processed products be inspected through a quality control program.

It is the view of FSQS that we cannot require mandatory quality control under the existing law. Consequently, FSQS is currently considering the possibility of seeking legislative authority to impose mandatory quality control systems, while proceeding to propose systems on a voluntary basis. Generation of data from the voluntary system would better enable USDA to properly evaluate the advisability of such a legislative change.

FSQS has recognized the need to consider the impact and effect of the proposal on the smaller operator. In the past, the department has assisted many small establishments in implementing microbiological monitoring of their sanitation programs without employing a microbiologist, determining fat and moisture content of frankfurters and bologna without expensive laboratory equipment or chemists, and controlling the count of meatballs in a container by periodic samples and charting methods. FSQS will provide the same assistance to small operators in implementing other quality control systems and will approve

all such systems which meet departmental criteria.

Thus, FSQS is seeking to adopt a more nontraditional approach to the inspection system. FSQS will not require participation in the program, but will encourage it by the availability of the special labeling. Such labeling will aid the consumer via an informational approach, increasing the knowledge with which a purchase is made.

Summary of Benefits

Sectors Affected: FSQS; manufacturing of meat and poultry processed products; and consumers of such products.

FSQS expects implementation of a voluntary quality control system to result in a gain in inspectors' efficiency. Currently, full-time, on-site inspections are performed even in plants which have established voluntary quality control programs. This results in a duplication of effort. Voluntary quality control will allow FSQS to concentrate inspection resources on chronic problem areas and, in the future, will allow for inspection of additional processing plants and increased product volumes with little or no additional increase in inspection resources. Improved inspector efficiency could result in a total net savings to the department over the next five years of between $511,200 and $1,462,000.

Industry will benefit, because plants which elect to use a quality control program will be able to exercise a more systematic control over their operations, increasing their ability to comply with standards. There will be savings for the following reasons: (1) each processor will be better able to assure a uniform amount of ingredients in each package; (2) because of this uniformity, manufacturers will be able to develop formulas for ingredient use, thus enabling them to purchase large quantities of ingredients at a minimum cost; (3) this uniformity will also reduce the amount of errors which require reprocessing, repackaging, and relabeling; and (4) overhead costs will thus be lowered.

The proposal will help small firms by providing technical assistance for the design and implementation of quality control programs which would yield the benefits discussed above.

The reduction in producers' costs can be passed on to the consumer. Consumers will also benefit as the department improves its ability to assure the distribution of wholesome, unadulterated, and properly labeled products. Quality control systems will detect products which do not conform to Federal requirements and the plants will remove these products and remedy the problems early in the processing chain. The program should serve to increase product quality and uniformity, and increase consumer confidence in the safety and quality of meat and poultry products as well. The special logo will allow consumers to identify products produced in firms with quality control systems.

Summary of Costs

Sectors Affected: FSQS; and manufacturing of meat and poultry processed products.

If this proposal is implemented, FSQS will need approximately 13 full-time quality control specialists in addition to those who are currently employed in the inspection force. The evaluation and approval of individual quality control plants will cost the department about $439,600 per year. However, as noted earlier, FSQS expects an overall savings.

Industry will bear the primary costs of implementing and maintaining these systems. The proposal would affect those plants which voluntarily elect to participate. At the end of five years, an estimated 100 plants would have quality control programs that USDA has approved. The great majority of these plants already have acceptable quality control programs, and would incur no additional costs. Some plants would choose to participate even though they would incur some additional expenses, mostly in start-up costs. FSQS estimates that 10 to 15 plants would fall into this category, and that their start-up costs would be approximately $1,000 per plant.

The immediate cost impacts associated with this proposal will vary with the size of the plant. FSQS expects that those meat and poultry processing plants which produce over 13 million pounds of product per year and the upper 50 percent of those plants which produce 3 million to 13 million pounds of product per year (medium-size plants) would incur no additional compliance and implementation costs. These are the plants which already have in-plant programs for quality control that should meet FSQS's minimum requirements for quality control. The impact would occur only on the lower 50 percent of the medium-sized plants. FSQS does not expect any plants producing 0.5 to 3 million pounds of product per year to participate voluntarily.

Government involvement in this program would be only at the Federal level.

Related Regulations and Actions

Internal: Informal approvals of pilot quality control programs and techniques (via industry permission for FSQS inspection of records and reports and samples). The proposal would formalize these approvals into a formal regulatory system.

External: Food and Drug Administration, 21 CFR Parts:

103—Quality Standards for Food with No Identity

109—Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material

110—Current Good Manufacturing, Processing, Packaging, or Holding Human Food

113—Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers

118–169—Requirements for Various Food Products

197—Seafood Inspection Program

The above contain FDA requirements which must be met by industries with quality control programs. Because FDA does not require mandatory inspection of food programs, these regulations are substitutes for inspection rather than components of a mandatory inspection system.

Active Government Collaboration

This is an action which has been and would continue to be carried out solely by FSQS. The Food and Drug Administration does not deal with meat and poultry inspection.

Timetable

Final rule—second quarter 1980

Final Regulatory Analysis—available from Agency Contact listed below upon publication of final rule

Available Documents

NPRM—44 FR 53526–53534, September 14, 1979

Draft Regulatory Analysis—available from Agency Contact listed below

Public comments received on or before November 13, 1979

"A Better Way for the Department of Agriculture to Inspect Meat and Poultry Processing Plants." Single copies available free from: U.S. General Accounting Office, Distribution Section, 441 G Street, N.W., Washington, D.C. 20548. Multiple copies available at $1.00 per copy from: U.S. General Accounting Office, Distribution Section, P.O. Box 1020, Washington, D.C. 20013.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues (21 CFR Parts 70, 500, 514, and 571)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 409(c)(3)(A), 512(d)(1)(H), 706(b)(5)(B), and 701(a).

Reason for Including This Entry

This final rule will establish criteria and procedures for evaluating assays for carcinogenic residues in animal-derived food and, accordingly, will provide equitable and uniform application of the requirements of the Federal Food, Drug, and Cosmetic Act. The rule will benefit industry by delineating the requirements that must be met before drugs, food additives, or color additives that leave carcinogenic residues in edible animal tissue can be approved.

Statement of Problem

The DES (diethylstilbestrol) Provisos of the Federal Food, Drug, and Cosmetic Act (409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B)) require the Secretary of Health, Education and Welfare, and, by delegation, the Commissioner of Food and Drugs, to refuse approval for use in food-producing animals of any new animal drug, food additive, or color additive that induces cancer when ingested by man or animal or, after tests which are appropriate for evaluation of the safety of such drug, induces cancer in man or animal, except if the Secretary finds that, under the conditions of use specified in the proposed labeling and reasonably certain to be followed in practice (a) such compound will not adversely affect the animals for which it is intended, and (b) no residue of such compound be found (methods of examination prescribed or approved by the Secretary by regulation) in any edible portion of such animals after slaughter, or in any food yielded by or derived from the living animals.

The enactment, in 1962, of this diethylstilbestrol proviso to the Delaney (anticancer) clause of the Act has been a source of continuing controversy stemming from the phrase "no residue will be found." This phrase can be interpreted either in an absolute or an operational sense. There are two important facts bearing on this controversy. First, the introduction of a compound, whether or not carcinogenic, into the system of a food-producing animal is likely to leave in its edible tissues minute residues that cannot be detected or measured by any known or likely to be developed method of analysis. Second, for any test developed to measure the concentration of a residue in an edible tissue, there is some level of residue in that tissue below which the test will show no interpretable result. In view of these facts, the Commissioner could not permit any use of carcinogenic drugs in animals if he adopted the absolute interpretation of the phrase "no residue will be found." The effect of that interpretation would be to deny the diethylstilbestrol provisos any effect whatever. The second possible interpretation is to assume that Congress intended to require the Commissioner to give an operational and more realistic definition to the phrase "no residue" and to proceed accordingly.

As a matter of policy, to implement the diethylstilbestrol provisos, the agency has adopted the second interpretation as a more likely reflection of congressional intent, for two reasons. First, by its nature, the absolute interpretation constitutes a negation of the diethylstilbestrol provisos to the Delaney clause and leads to the conclusion that the Congress introduced the provisos intending them to have no effect. Second, the critical term in the provisos is that no residue will be "found"—not that none will exist. Therefore, application of the Delaney clause to animal drugs, food additives, or color additives hinges on the availability of appropriate analytical methods that determine whether residues are present in edible tissues from animals treated with carcinogenic drugs. Although Food and Drug Administration (FDA) has adopted the second interpretation, it has never specified by regulation the criteria and procedures that apply in the process of approving methods for analyzing animal tissues for carcinogenic residues. The proposed regulation specifies such criteria and procedures.

Alternatives Under Consideration

The agency examined three approaches for alternative ways to implement the language "no residue shall be found." The first approach, which the agency has considered inappropriate from the start, defines the phrase "no residue" as the lowest limit of measurement or detection by the best analytical method that is capable of measuring the residues of a compound in edible tissues of animals, and that is available at the time the compound was approved. The agency has rejected this approach. Different compounds have differing carcinogenic potencies. These differences are not in any way related to the availability or lack of sensitive analytical methods that measure residues in edible tissues from food-producing animals that have been administered a compound. Thus, the degree of public risk associated with the use of a compound would become a function solely of the capability of available analytical technology. For instance, depending on the relative sensitivity of the available methods, in some cases FDA would permit public consumption of meat contaminated with very large levels of potently carcinogenic residues while in others it would require that meat be essentially free from carcinogenic residues of low potency.

The second approach would be to establish a "practical zero" for the residues of all carcinogens. This approach would have one advantage over alternative (1); it would provide a well-defined criterion for the lowest limit of measurement that any sponsor's assay would have to satisfy. This approach also would not, however, take into account differences in carcinogenic "potency" among various carcinogens. Therefore, it is unacceptable for the same reason as alternative (1). Unless the "practical zero" were set at the level appropriate for the most "potent" carcinogen, it would provide insufficient protection; but if it were set at that level, it might be unnecessarily stringent for carcinogens that produce a response that is of a lower magnitude. In sum, no one "practical zero" is appropriate for all carcinogens.

Recently, the agency has been using a third approach in which "no residue" is operationally defined on the basis of quantitative carcinogenicity testing of residues, and the extrapolation of test data using one of a number of available procedures to arrive at levels that are safe in the total diet of test animals and that would, if they occurred, be considered safe in the total diet of man. Under this approach, an assay is required that can reliably measure the safe level in edible tissue. The responsibility of developing the assay falls upon the sponsor of the compound, not FDA. Under this approach, the agency accepts a very low level of increased risk of cancer (one case in one million lifetimes).

Summary of Benefits

Sectors Affected: Veterinary pharmaceutical manufacturing; FDA; and consumers.

The proposal provides uniform criteria and procedures for evaluating the carcinogenic risk presented by residues of sponsored compounds for use in food-producing animals. Both FDA and industry will benefit from uniformity in regulation of such compounds.

Summary of Costs

Sectors Affected: Veterinary pharmaceutical manufacturing; livestock agricultural production; and consumers.

The draft regulatory analysis estimated that the average one-time costs of compliance with the procedures will not exceed $2.8 million (1979 dollars) for each combination of target species, route of administration, and exogenous substance (a synthetic or natural origin substance that is not produced in the body of the food-producing animal). There is a corresponding estimate of $0.5 million for endogenous substances (a substance normally produced in the body of the food-producing animal). The aggregate cost estimate will depend on the outcome of the agency's process of identification of known or suspect carcinogens. Other potential impacts include the costs to feedlot and poultry operations and consumer price effects, if the lack of availability or inability to develop residue testing methods of the required sensitivity results in withdrawal of approval.

Related Regulations and Actions

Internal: FDA is developing procedures and priorities for the cyclic review of animal drugs.
External: None.

Active Government Collaboration

We are keeping the Department of Agriculture (USDA) informed of our action and they are reviewing the analytical methodology that we require.

Timetable

Tentative Final Rule or Final Rule—July 1980
Final Regulatory Analysis—available with Final Rule

Available Documents

NPRM—44 FR 17070, March 20, 1979.

FDA requested comments on the proposal and, in order to foster substantive comments, held a public hearing on the proposal on June 21–22, 1979. FDA prepared a draft regulatory analysis under E.O. 12044 and made it publicly available when we published the proposal. An administrative record supporting the proposal, the draft regulatory analysis, and a transcript of the public hearing are available in the Office of the Hearing Clerk, Food and Drug Administration, 5600 Fishers Lane, Rm. 4–62, Rockville, Maryland, 20857.

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HEW–FDA

Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants; Polychlorinated Biphenyls (PCBs)

Legal Authority

Federal Food, Drug, and Cosmetic Act, §§ 402(a), 406, 409, and 701(a); 21 U.S.C. 342(a), 346, 348, and 371(a). The Public Health Service Act § 361; 42 U.S.C. 264.

Reason for Including This Entry

The Food and Drug Administration thinks that this regulation is important and of general public interest because of the proposed action would protect the public from food contaminated with PCBs.

Statement of Problem

Polychlorinated biphenyls (PCBs) are a class of chemicals that have been widely used in electrical transformers, capacitors, electromagnets, and heat transfer and hydraulic systems. They are useful in industrial applications because of their chemical stability, low flammability, high boiling points, and low electrical conductivity. PCBs were also used as plasticizers in the manufacture of paints, adhesives, and caulking compounds, as fillers for investment casting waxes, and as dye carriers in carbonless copy paper.

Although PCBs were first manufactured and commercially marketed for industrial uses in 1929, it was not until 1967 that their presence in the food supply was detected. At that time, and during the years since, the Food and Drug Administration (FDA) encountered a number of isolated industrial accidents resulting in PCB contamination of animal feed and human food. These accidents involved either the spillage or leakage of the chemical directly onto animal feed from manufacturing equipment, or animal feed otherwise coming in physical contact with PCB-containing materials. The consumption of the contaminated feed by food-producing animals resulted in the transfer of PCBs to human food (e.g., milk, meat, eggs).

In 1967, FDA's knowledge of the hazards of PCBs to human health was limited to primarily one incident that occurred in Yusho, Japan, in 1968 when very high levels of PCBs leaked from processing equipment and contaminated rice oil. The PCB-contaminated rice oil was sold as salad oil and, after several weeks, consumers were stricken with the so-called "Yusho" disease, which ultimately was traced to the PCBs. Among the many symptoms exhibited by the victims of this disease were chloracne (skin rash), discoloration of the gums and nailbeds, swelling of joints, and waxy secretions from glands in the eyelids.

The levels of PCB that produced those effects substantially exceeded the levels of PCB found at any time in the U.S. food supply. However, because PCBs accumulate in the fatty tissue of humans and animals, FDA found ample evidence that prolonged exposure to PCBs, even at low levels, posed a potential health risk. Therefore, FDA concluded that there was a need to limit consumer exposure to PCBs in food and, to accomplish this end, FDA decided to eliminate the use of PCB-containing equipment in food and feed establishments.

On July 6, 1973, FDA promulgated final regulations providing that new equipment or machinery for handling or processing human food and animal feed, and for manufacturing food or feed-packaging materials shall not contain PCBs. FDA required establishments in these industries that had such equipment in place to replace any PCB-containing fluids in such equipment with fluid that did not contain PCBs by September 4, 1973. The regulations, however, specifically exempted electrical transformers and condensers (capacitors), which hold PCBs in sealed containers, because, at that time, there were no known suitable replacement fluids for such equipment, and FDA did not expect their use in FDA-regulated establishments to result in direct contact with materials being processed.

Since 1973, FDA has received toxicity data based upon laboratory animal studies that demonstrate a definite association between low-level PCB exposure and potentially more serious subchronic and chronic toxicities, including adverse reproductive effects, liver damage, and tumor production.

One of these studies also has confirmed many of the adverse effects exhibited by the Yusho victims.

Recently FDA studied a number of incidents in which the use or disposal of PCBs resulted in contamination of food in the United States. PCBs leaking from damaged spare transformers and contaminating feed for poultry and livestock caused at least two of these incidents. The contaminated feed caused PCBs to be carried into human food. A fire in a warehouse in Ponce, Puerto Rico, caused one of the incidents in 1977, when PCBs were released from transformers stored in the warehouse. The warehouse served as a storage area for tuna fishmeal, which was dried, rebagged, and shipped to manufacturers for use in the manufacture of animal and and fish feeds. Over 2 million pounds of finished feed and fishmeal were contaminated, more than 400,000 chickens destroyed, and millions of eggs withheld from consumer markets.

The second transformer incident occurred in a federally inspected meat-slaughtering and processing establishment in Billings, Montana, in 1979. A spare transformer, stored in a shed at the packing plant, leaked an estimated 200 gallons of PCB-containing transformer oil into the plant's wastewater system. The solids that the operators recovered from the plant's wastewater system were rendered, and these rendered residues were included in meat meal. This contaminated meat meal was then fed to poultry and livestock and caused the contamination of approximately 800,000 chickens, 3.8 million eggs, 4,000 hogs, 800,000 pounds of assorted animal feeds and feed ingredients, and many bakery items in which contaminated eggs were used.

Quick action by plant officials and a U.S. Department of Agriculture (USDA) inspector, recognizing PCB leakage from a capacitor in a federally inspected hog-slaughtering establishment in Iowa, prevented another incident of potential massive contamination.

FDA's proposal would prohibit or limit the amount of PCBs in sealed electrical transformers and capacitors used or stored in or around food, feed and food- and feed-packaging materials plants or storage facilities, and require that certain raw materials used in human foods which are susceptible to PCB contamination be examined and analyzed to ensure that they comply with FDA tolerances for PCBs. (This regulation would not affect manufacturing of meat, poultry, and egg products, which is regulated by the U.S. Department of Agriculture.) FDA proposes to exempt capacitors containing less than 3 pounds of fluid from the regulations. These small capacitors are not included because most of the PCBs they contain are in a nonliquid, nonmobile state.

Alternatives Under Consideration

The agency considered several alternatives before developing its proposal:

(1) Do nothing. The agency abandoned this alternative because we concluded that the continued use of PCB-contaminated electrical equipment poses unreasonable risk of injury to human health. We cannot readily measure the potential harm, but the recent contamination incidents demonstrate the extent to which large numbers of people can be exposed to PCB health risks because of a single contamination.

(2) Complete ban. A complete ban on equipment containing any level of PCBs in food, feed, and food-packaging plants, i.e., a "zero" level in electrical fluids, would be unnecessarily restrictive. This approach would not allow the retrofilling of transformers where it is the less expensive option. Furthermore, the increased margin of safety may not be justified by the significantly higher costs.

(3) Inspection program. A contract study, prepared for EPA, examined this alternative which requires regularly scheduled inspection of PCB-containing equipment, in lieu of replacing such equipment. The study estimated that a daily inspection program, based on a 15-minute inspection for transformers and a 5-minute inspection for capacitors, cost $1,825 per year per transformer, and $608 per year per capacitor. While these costs are lower than replacement or retrofilling equipment, they must be endured for the life of the equipment and, consequently, this option has a higher net present value. Also, an inspection program, however rigorous, cannot necessarily prevent contamination experienced in recent incidents, e.g., fire.

(4) Restrict PCBs in new equipment only. This alternative would require companies using PCB-containing equipment to replace it at the going obsolescence rate for transformers and capacitors. This would extend the danger of PCB contamination in foods over many years, because the life of a transformer can exceed 40 years.

Variations on this option could phase out PCB-containing equipment over periods of time shorter than the remaining life of existing equipment, thus reducing the immediate economic impact of the proposal. This alternative may also ensure that the demand for replacement transformers and capacitors would be more easily met by the electrical manufacturing industry. Because this alternative would not provide any action to eliminate a potential public health hazard in the interim, it does not meet the essential requirement for timely protection against future contamination incidents.

(5) Installation of protection devices against leaks and spills. This alternative would require owners of transformers and capacitors to install basins, signaling devices, or similar systems to prevent PCBs leaked or spilled from transformers or capacitors, from contaminating foods, feeds, and food-packing materials. At this time FDA does not have cost data on this alternative but hopes to obtain such information through a contracted survey, and also through the comments submitted in response to this proposal. We are not considering this alternative at this time because of lack of information on the effectiveness or cost of any protective system.

(6) Restrict the use of PCB-containing equipment in animal feed and feed-ingredient facilities only. Recently reported incidents of direct PCB contamination of foods, feeds, and food-packaging material (where the PCB source was known to have been from transformers or capacitors) originated in facilities manufacturing and/or storing animal feeds or ingredients. Therefore, this alternative would remove the most recently experienced problem sources and result in no costs to the remainder of the food and food-packaging industry.

We did not consider this option a suitable alternative because there is insufficient evidence to warrant limiting this proposal to the animal feed industries. The potential for leaking PCBs exists in the human food industry as well, and direct human food PCB contamination would present a much greater health hazard since there would be no PCB dilution as in the feed processing chain.

Summary of Benefits

Sectors Affected: The general public; and manufacturing of transformers and capacitors.

The proposal would significantly reduce the likelihood of additional incidents in which the use or disposal of PCBs would result in contamination of food. A reduction of such incidents would be in the interest of protecting the public health and would serve to avoid the necessary destruction of PCB-contaminated food with attendant economic cost. The manufacturers of transformers and capacitors would

benefit because of increased demand for new machinery.

Summary of Costs

Sectors Affected: Manufacturing of food and kindred products (except meat, poultry, and egg products); consumers of these products; public warehousing of food and feeds; manufacturing of food-packaging materials, including metal cans and shipping containers, wood and plastic containers, and paperboard containers and boxes.

While we do not have sufficient data for a reliable estimate of transformer and capacitor use in the industries subject to this proposal, it seems likely from the data available at this time that transformers and capacitors are concentrated in a comparatively few large establishments. Data which FDA has contracted for or has requested be included in comments submitted on the proposal should permit us to define with greater precision the sectors that will be affected by the proposal.

The proposal would permit an FDA-regulated food, feed, and food-packaging establishment either to replace PCB-containing transformers and capacitors with non-PCB equivalents, or to drain the PCB-containing fluid from transformers and refill them with fluid containing not more than 50 parts per million PCB. We presume that all capacitors must be replaced because we do not believe retrofilling of capacitor fluid is feasible. The proposal has the potential to affect all establishments using PCB-containing equipment where there exists the possibility of contaminating the food supply. FDA knows of approximately 76,000 food establishments using this equipment, including 34,000 food manufacturers and 24,000 food warehouses. Additionally, we know there are an unknown number of food and feed-packaging materials establishments. We also know that not all these establishments use PCB-containing equipment, but do not know their proportions. That is, we have no reliable estimates of the number of potentially affected establishments that own or use utility-owned transformers or capacitors. Neither do we have reliable estimates of the proportion of such equipment that may be PCB-free, nor of the proportion of such equipment that may be used or stored in such a way that it is not in or around a plant or facility within the meaning of FDA's proposal.

The preliminary analysis of this proposal indicates that the economic costs of the proposal would exceed $100 million, the threshold established by E.O. 12044 for requiring a regulatory analysis, even though a reliable estimate of economic costs cannot be made without additional data.

(See USDA-FSQS, Proposed Polychlorinated Biphenyls [PCBs] Regulation, for more information on this point.)

FDA expects to obtain additional insight into the feasibility and costs of its proposed action, as well as alternatives to it. We expect to obtain much essential information from contract efforts. The proposal solicits any comments that may provide additional data or ideas helpful in developing a final regulatory analysis and a final rule on the proposal.

Related Regulations and Actions

Internal: 21 CFR Parts:

109—Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material

110—Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

225—Current Good Manufacturing Practice for Medicated Feeds

226—Current Good Manufacturing Practice for Medicated Premixes

500—General

509—Unavoidable Contaminants in Animal Food and Food-Packaging Material

External: Environmental Protection Agency

40 CFR Part 761—Polychlorinated Biphenyls (PCBs)

—Department of Agriculture, Food Safety and Quality Service

7 CFR Part 2859—Inspection of Eggs and Egg Products (Egg Products Inspection Act of 1970)

9 CFR Part 308—Sanitation

381—Poultry Products Inspection Regulations

Active Government Collaboration

As a result of the multiagency involvement in PCB containment and the recent incidents of PCB leakage from electrical transformers and capacitors, FDA, as a member of the Interagency Regulatory Liaison Group (IRLG), joined in a cooperative effort with the Environmental Protection Agency (EPA) and the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA), to determine if any additional controls were necessary to further protect the public health from the use of PCB-containing equipment in or around food and feed facilities.

EPA sponsored and EPA, FDA, and USDA distributed a technical booklet entitled, "Polychlorinated Biphenyls: An Alert for Food and Feed Facilities," December 1979, which was the result of interagency cooperation. We prepared this booklet to aid the food, feed, pesticide, and fertilizer industries in identifying potential problems with PCBs and to recommend that these industries institute a program for preventive action without delay. This cooperation also resulted in the agencies' concluding that further mandatory controls are needed.

EPA has published a proposal in the **Federal Register** of May 9, 1980 (45 FR 30989) to restrict the use of PCBs at agricultural pesticide and fertilizer facilities.

USDA published a proposal in the **Federal Register** of February 29, 1980 (45 FR 13471) to amend the Federal meat, poultry, and egg-products inspection regulations by prohibiting the entry of new or replacement equipment and machinery containing PCBs onto the premises of plants under their jurisdiction. USDA has also published a proposal in the **Federal Register** of May 9, 1980 (45 FR 30980) to prohibit PCB-containing equipment or machinery and liquid PCBs in federally inspected meat, poultry-product, and egg-product plants. Comments received as a result of the USDA proposals, the EPA proposal, and FDA's proposal will be shared among the members of IRLG.

Timetable

Final Rule—to be coordinated with EPA and USDA.

Final Rule Effective—FDA proposes that any final regulations resulting from this proposal be effective 180 days after the date of publication of the final regulations in the **Federal Register**, or after an EPA-approved incinerator is available, whichever is later

Regulatory Analysis—Final Regulatory Analysis with final rule.

Available Documents

NPRM—45 FR 30984, May 9, 1980

Supporting data and information (including EPA's current regulations on PCBs), a copy of FDA's testimony to Congress regarding the proposal, and the draft regulatory analysis are on file with the Hearing Clerk, FDA.

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HEW–FDA

Food Labeling Initiatives (21 CFR Chapter I
7 CFR Chapter XXVIII
9 CFR Chapter III
16 CFR Chapter I)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343 *et seq.*

Reason for Including This Entry

The Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA) and the Federal Trade Commission (FTC) are assessing existing food labeling laws and policies to develop an overall labeling strategy that will benefit consumers by providing better information about the foods they eat.

Statement of Problem

FDA, USDA, and FTC believe that the existing Federal food labeling laws and implementing regulations should be updated. These laws are enforced by the USDA (meat and poultry) and FDA (all other foods). The FTC is interested in food labeling because it is responsible for regulating food advertising.

Congress enacted the first Federal food laws in 1906, and, although some changes have been made since, the basic concepts of food labeling have remained unchanged for many years. For example, the last major revision of the food labeling provisions of the Federal Food, Drug, and Cosmetic Act (FD&C) administered by FDA was in 1938.

Since these food laws were enacted, significant changes have occurred both in the food industry and in Americans' attitudes toward the food supply and their diet. Advances in the food industry have resulted in a wider variety of available foods and increased availability of fresh foods. At the same time, the number of processed foods on the market now account for more than half of the American diet.

Federal agencies have attempted to meet these changes through labeling regulations. Because different regulatory agencies are responsible for different aspects of food labeling, the resulting rules have been complex, duplicative, and/or inconsistent. FDA, USDA, and FTC realized a need to reassess the existing food labeling regulations before implementing any further revisions.

In 1978, the agencies conducted a series of five public hearings soliciting views on food labeling issues, and FDA sponsored a Consumer Food Labeling Survey to determine public opinion. The agencies designed these efforts to provide themselves with information that would help develop legislative proposals or goals, devise new or revised regulations, and avoid initiating unwarranted actions. The announcement of hearings and request for comments on a series of food labeling topics were published in the **Federal Register** of June 9, 1978 (43 FR 25296). The agencies sought the public's views on many issues including ingredient labeling, nutrition labeling and dietary information, open date labeling, food fortification, imitation and other substitute foods, safe and suitable ingredients, and the total food label as an information source for consumers.

Over 9,000 people commented on these and other related food labeling issues. They especially wanted labels describing all ingredients for *all* foods, nutrition labeling on more foods, open dating on more foods, labeling of sugar content, and labels telling a product's salt content. FDA, USDA, and FTC analyzed these comments and published their tentative positions on 27 food labeling issues ranging from ingredient labeling to nutrition labeling to the labeling of imitation and substitute foods in the **Federal Register** of December 21, 1979 (44 FR 75990) for further comment. In the same issue of the **Federal Register**, the agencies announced a public hearing held on March 4 and 5, 1980 to hear oral testimony on 27 positions and issues. At this time, it is premature to discuss these as single actions because they are closely related and are part of a total package. Any specific action that will change the present legal requirements for food labeling would come only after we have considered comments on the individual issues.

Alternatives Under Consideration

New legislation and new or revised regulations will be needed to effect the changes in food labeling suggested in the tentative positions. The agencies themselves feel that more informative labeling is needed to assist consumers in making appropriate purchases based on health, nutrition, and personal preference.

In addition to regulatory action, the agencies could encourage industry to institute voluntarily some of the food labeling changes. To do nothing would run the risk of FDA being told by consumers that the Federal government does not listen to the public's wants and needs with respect to improved food labeling. In fact, the agencies will be encouraging industry to take steps to institute certain food labeling policies. For example, we encourage industry to develop a means of sharing information for purposes of nutrition labeling, which would save analytical costs that would otherwise be passed on to consumers in the form of higher prices. In addition, development of such bases could stimulate greater use of nutrition labeling because sharing information would reduce the burden on individual food producers.

Although some of the food labeling initiatives can be realized through voluntary compliance, others will require agency action through regulations or congressional action through legislation to ensure food-labeling uniformity and consistency.

Summary of Benefits

Sectors Affected: The general public.

We find it difficult to quantify the benefits that will accrue from improved food labeling. Qualitatively, the benefits can be viewed in the context of protecting public health and helping consumers make sound purchasing decisions.

Of the factors that guide the agency in making food-labeling changes, the public health consideration is the most important. From this latter standpoint, consuming essential nutrients in sufficient quantities is vital to human health. This goal can be achieved only by eating a variety of foods. An improper selection of foods can result in a person receiving inadequate or excessive amounts of nutrients, either of which may be detrimental to health.

Accurate and informative labeling concerning a product's ingredients and nutrient content is of even greater public health significance now than in the past because advances in technology have created more processed and fabricated foods whose nutrient content and other characteristics are not readily discernible to consumers without adequate food labeling. As the relationship of nutrition to certain diseases is becoming better understood, food labeling becomes even more important by providing consumers with information for choosing products. In some instances (e.g., sodium labeling) food labeling may be the most effective method for providing health protection.

Many Americans need special diets because of disease or abnormal physiological conditions, such as allergies. These people especially need accurate food labeling information.

Summary of Costs

Sectors Affected: Manufacturing of food and kindred products other than

meat and poultry, and consumers of these products.

The food-labeling initiatives will affect all segments of the food manufacturing industry, regardless of size. The smaller segments of this industry will be most adversely affected because of the costs associated with revising labels. This effect can be alleviated somewhat by providing sufficient time for making the changes, and by setting a reasonable uniform effective date. The agencies assume that the immediate cost impacts on food-processing firms will be very largely passed on to consumers through increases in produce prices. Ultimately, therefore, it is consumers to whom the cost as well as the benefits of the initiatives will accrue.

Because none of these food labeling initiatives has proceeded to the proposal stage, FDA has not made an economic or regulatory assessment. Of the various initiatives under consideration, the majority are at a stage where proceeding directly to proposals for implementing regulations would be premature, either because legislative changes will be needed to clarify the agencies' authority or because further study is necessary to determine the best approach. For these initiatives, the agencies expect that the evidence of economic impact will accumulate during the course of the legislative and research process. A number of other initiatives, however, warrant immediate and detailed analysis of their economic impact as a step toward selection of specific proposals and courses of action. The agencies, therefore, are asking the public for data or analyses that may be helpful in clarifying and quantifying the economic impact of the current proposals on industry and consumers. We will request information in a **Federal Register** notice. In particular the agencies are requesting economic data in areas of ingredient labeling and nutrition labeling.

In addition to this request for economic information, FDA will contract for a study to determine the economic impact of the possible labeling changes. The study is expected to begin in June 1980 and be completed by the end of that year.

Related Regulations and Actions

None.

Active Government Collaboration

The development of any subsequent food labeling revisions will occur in cooperation with the Food Safety and Quality Service of the U.S. Department of Agriculture and the Federal Trade Commission. The agencies will initiate activities to implement food labeling revisions according to each agency's authorities and procedures, and will coordinate such action with other agencies to ensure consistency among them.

In addition, we are keeping the White House Office of Consumer Affairs advised of these activities.

Timetable

Institute actions to implement food labeling revisions, i.e., public proposals, or seek or support legislation—summer 1980
Regulatory Analysis—not required

Available Documents

The following documents are available for review in the Office of FDA's Hearing Clerk:

1) Notices of Hearings and Requests for Comment on Food Labeling Issues—43 FR 25296, June 9, 1978—44 FR 75590 December 21, 1979

2) Food Labeling Background Papers

3) FDA 1978 Consumer Food Labeling Survey

4) Food labeling report on the analysis of comments

5) Transcripts of the six public hearings and written comments on food labeling issues

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HEW-FDA

Prescription Drug Products; Patient Labeling Requirements (21 CFR Part 203)

Legal Authority

The Federal Food, Drug, and Cosmetic Act, § 502, 503, 505, 506, 507, and 701, (21 U.S.C. 352, 353, 355, 356, 357, and 371). The Public Health Service Act, Sec § 351 (42 U.S.C. 262) 21 CFR 5.1.

Reason for Including This Entry

This regulation will benefit the public because it will help patients obtain information they need to use prescription drugs more safely and effectively.

Statement of Problem

The Food and Drug Administration (FDA) has conducted original research and reviewed various studies to determine how much is being done to communicate information on prescription drug products to patients. The FDA research and review suggest that health professionals do not always adequately communicate information about prescription drug products to patients. In addition, patients may not pay attention to, understand, accept, or remember information that is presented orally. The agency believes that required patient labeling leaflets will help overcome the problems that hamper the oral communication of important information about prescription drug products to patients.

Under the Food, Drug, and Cosmetic Act, professional labeling (commonly referred to as the package insert) is required to accompany the drug product. At this time FDA proposes to regulate distribution of labeling directed to the patient in nontechnical and nonpromotional language.

These informational pieces are referred to as patient labeling, and will be made available at the dispensing point. In most cases this will be at the retail pharmacy level, physician-dispensing level, public health clinics, or other dispensing points.

Another FDA literature review has shown that many patients misuse prescription drug products by failing to adhere to the prescribed regimen; for example, a patient may space doses improperly, fail to take the drug for the period of time necessary for adequate treatment, skip doses, or take extra doses. On the average, 30 to 50 percent of patients do not follow instructions for a wide range of prescription drug products. A patient's failure to know about or to comply properly with a prescribed course of therapy may be a major cause for the therapeutic failure of the product, or may cause the patient to experience a serious adverse reaction. Patient labeling of drugs, however, appears to improve the compliance rate.

Nationwide surveys sponsored by FDA, as well as those conducted independently, show that broad patient support exists for patient labeling. A 1978 nationwide survey showed that consumers wanted patient labeling by a 2 to 1 margin, that this desire was consistent across all age, sex, and educational subgroups.

Alternatives Under Consideration

FDA considered several alternatives to its proposed patient labeling requirements, including: 1) establishing requirements for patient labeling on a case-by-case basis, instead of requiring a general program applicable to most prescription drug products, 2) requiring that patient labeling be distributed with a new prescription, but not with refills of that prescription, 3) requiring that

copies of patient labeling be placed on display in each pharmacy, but not distributed, and 4) requiring that current labeling for doctors and other health care providers for prescription drug products be distributed to patients.

The alternative of establishing requirements for patient labeling on a case-by-case basis is unacceptable because too much time elapses between when the need is identified and when the requirement is put into effect. Further, studies of patient compliance suggest the need for patient labeling for most, if not all, prescription drug products. Although requirements established on a case-by-case basis might permit greater public review of the need for patient labeling for each drug product, this alternative would not fulfill the immediate need for a broad and workable distribution system.

The other alternatives are unacceptable because they limit consumer access to important drug information. If patient labeling were required only for new prescriptions, chronic users of some products would be denied timely information about the products. Providing patient labeling as a reference source in pharmacies would serve only the interested consumer and would provide only information that must be remembered, unless photocopying facilities are available. Also, the patient is often not the person who obtains the drug product at the pharmacy. Finally, labeling written for health care professionals may be too technical to be understood by most patients.

Summary of Benefits

Sectors Affected: Consumers of prescription drug products.

Patient labeling would provide patients with information about prescription drug products (information that 64 percent of consumers surveyed favor receiving). We believe patient labeling would increase compliance with prescribed short-term drug therapy, help patients avoid harmful drug-drug and food-drug interactions, avoid serious side effects and adverse reactions, and could help patients manage serious side effects or prevent them from worsening.

FDA has identified the following benefits that could accrue because of patient labeling: 1) reduced prescription drug use, 2) fewer revisits to health care professionals, 3) fewer hospital admissions for avoidable adverse drug reactions or therapeutic failures due to noncompliance, and 4) fewer work-days lost due to avoidable adverse drug reactions.

In 1978, consumers spent $9 billion on prescription drug products, of which an estimated $1.9 billion was for drugs for short-term therapy. Patient labeling could affect prescription sales by improving compliance with the original therapeutic regimen, and thus prevent the need for a refill or a second prescription because of the therapeutic failure of the first. It could also reduce the need for treating avoidable drug interactions with another drug.

Consumers could avoid revisiting health care professionals, at an average cost of $15 per follow up visit, if success rates for the initial drug therapy improve because patients comply better with the prescribed regimen. Return visits may also be reduced if drug interactions are avoided and side effects are better understood as a result of patient labeling. Also patients could distinguish better between potentially serious adverse drug reactions needing medical attention and adverse reactions that would disappear once the patient has adjusted to taking the drug.

Some adverse effects of prescription drug use require hospitalization of the patient. Hospital treatment of adverse drug reactions annually costs between $156 and $520 million. Patient labeling, in helping to avoid some of these costs, will yield a substantial benefit.

Finally, improper use of prescription drug products can have effects that do not require hospitalization but may force a patient to curtail normal activities.

Thus, patient labeling may produce large potential savings, for example, in the form of fewer work-days lost because of avoidable adverse drug reactions.

Summary of Costs

Sectors Affected: Manufacturing of pharmaceuticals; pharmacies, hospitals, nursing and health-related personal care facilities; consumers of prescription drug products; and FDA.

FDA intends to implement the patient labeling requirements gradually over a period of several years. Under the proposed regulation, FDA assumed that the requirements would be applied to 25 products (representing 20 percent of all prescriptions issued to consumers) in the first year, and to approximately 375 products (representing 90 percent of all prescriptions issued to consumers) by the fifth year. FDA estimated that in the fifth year of implementation the total cost of the program will be $90.04 million. The cost would affect FDA, the pharmaceutical industry, pharmacies, other health care providers, and consumers. FDA estimated that its total cost for program management would be $180,000 annually.

We estimated annual cost to the pharmaceutical industry for writing and printing patient labeling texts to range from $2.84 million in the first year to $12.78 million in the fifth year. We estimated annual costs to industry for writing patient labeling texts to range from $45,000 in the first year (when FDA would provide guideline patient labeling texts) to $180,000 in the fifth year. We estimated costs to industry of printing patient labeling to range from $2.8 million in the first year to $12.6 million in the fifth year. We do not expect shipping and distribution costs for drug products to change appreciably.

We estimated costs to retail pharmacies, because of patient labeling storage (equipment, space, and pharmacy modification) and clerical activities (filing and dispensing), to range from $20 million in the first year of implementation to $75 million in the fifth year. FDA expected that the following estimates of capitalized costs to retail pharmacies from patient labeling will remain constant over the first five years of implementation: $2.58 million for equipment, $870,000 for storage space, $1.38 million in pharmacy modifications to provide storage space, and $0 and $1.19 million in foregone profits.

We estimated clerical costs to retail pharmacies to range from $15.56 million in the first year to $70 million in the fifth year of implementation.

Hospital pharmacies and other long-term care facilities will not have to give individual patient labeling information pieces to patients but they will have to have information available to patients for reference. We expect the cost to hospitals to be approximately $2.25 million per year.

FDA expects that almost all of the costs of the proposed requirements will be passed on to the consumer, but almost all of the expected gains will accrue to consumers as well. Assuming a straight passthrough to consumers of FDA costs (taxes), pharmaceutical and retail pharmacy costs (prescription drug prices), and hospital pharmacy costs (hospital costs), the estimated total costs to the consumer in the fifth year of implementation are $90.04 million. Thus, the average prescription price would increase by about 1 percent, from $6.44 to $6.50, assuming that all industry costs are passed on and that they are equally distributed over all 1.4 billion prescriptions dispensed at the retail level.

Based on a preliminary review of the comments received in response to the proposal, FDA believes it may be appropriate to modify earlier estimates of the rate of implementing a final regulation. We are considering,

therefore, applying the final requirements to approximately ten products for the first year. Before additional patient labeling would be required the impact of patient labeling for these ten products would be evaluated during a two to three year period. If this revised procedure is adopted in the final regulation, the cost input would be substantially reduced. New cost estimates would be developed for a final regulatory analysis that would be available with the final regulation.

Related Regulations and Actions

Internal: 21 CFR 201.305 (isoproterenol inhalation drug product patient labeling requirement); 21 CFR 310.501 (oral contraceptive patient labeling requirement); 21 CFR 310.515 (estrogenic drug product patient labeling requirement); 21 CFR 310.502 and 801.527 (intrauterine devices for contraception patient labeling requirements); and 21 CFR 310.516 (progestational drug product patient labeling requirement).

External: None.

Active Government Collaboration

None

Timetable

Final Rule—winter 1980–81.
Final Rule Effective—for a drug product 120 days after a guideline patient labeling text is established for the product.
Regulatory Analysis—final Regulatory Analysis available with the Final Rule

Available Documents

NPRM—44 FR 40016, July 6, 1979

We have received over 1,300 comments. Comments were also submitted by the Council on Wage and Price Stability, in the form of a report of the Regulatory Analysis Review Group. Three public hearings on the proposal were held on September 10, 12, and 14, 1979. We prepared a draft regulatory analysis under E.O. 12044 when we published the proposal and placed it on file in the Office of FDA's Hearing Clerk (HFA–305, Room 4–62, 5600 Fishers Lane, Rockville, Maryland 20857). The draft regulatory analysis comments received in response to the proposal, and transcripts of the public hearings are available in the Office of FDA's Hearing Clerk.

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HEW–HEALTH CARE FINANCING ADMINISTRATION

Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities (42 CFR Parts 405, 442, and 483)

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) and Title XIX (Grants to the States for Medical Assistance Program) of the Social Security Act, 42 U.S.C. §§ 1302, 1295F, 1395K, 1395I, 1395x, 1395z, 1395bb, 1395cc, and 1395hh.

Reason for Including This Entry

The proposed regulations would recodify, revise, and consolidate present regulations governing conditions of participation for skilled nursing and intermediate care facilities under the Medicaid and Medicare programs. It will benefit patients in nursing homes by focusing standards on quality care and accurately measuring facility compliance.

Statement of Problem

Nursing homes must meet a number of requirements in order to provide long-term care services under the Medicare and Medicaid programs, which fund services to many elderly and low-income citizens. These requirements are set out in the Social Security Act and in the Department of Health, Education and Welfare (HEW) regulations called the "Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities." Skilled nursing facilities (SNFs) provide long-term care for patients who require skilled nursing on a daily inpatient basis which intermediate care facilities (ICFs) are used by patients who do not require regular skilled nursing, but do need some health care on a long-term inpatient basis.

The Social Security Act and HEW regulations set standards for the health and safety of Medicare and Medicaid patients in SNFs and ICFs, and are designed to assure that patients receive quality care. SNFs and ICFs are surveyed annually by State governments under contract with HEW to determine if they meet the requirements of the law and regulations. Based on information collected in the surveys, the HEW regional offices certify institutions for participation in the Medicaid and Medicare programs.

Approximately 18,000 long-term care facilities participate in Medicare and Medicaid. Medicare payments for long-term care were about $400 million for FY 1978, and Medicaid payments for long-term care totalled over $6 billion for FY 1977.

The present regulations have been in effect since 1974. The major reasons for revising the regulations are:

1. To improve the quality of patient care by developing requirements which better measure the actual quality of the care which patients receive in SNFs and ICFs.
2. To control the cost of long-term care, while not sacrificing the quality of care.
3. To update the regulation to reflect new methods of delivering health care services.
4. To strengthen requirements for the protection of patients' rights in nursing homes.
5. To make the regulations clearer and simpler, as a part of HEW's commitment to revise all old regulations to make them more readable and helpful.
6. To eliminate areas of ambiguity in the current regulations which have resulted in discrepancies in enforcement.

Alternatives Under Consideration

We held a series of public hearings during the summer of 1978 and a wide range of alternatives were discussed. Major issues were:

- What minimum qualifications should be established for professional personnel in SNFs and ICFs?
- Should unlicensed personnel be allowed to administer medications?
- How often should physicians be required to visit SNF patients?
- Should physician extenders (nurse practitioners and physician assistants) be permitted?
- Should facilities be required to provide or arrange for respiratory therapy?
- Should the requirement for annual surveys of SNFs and ICFs by State agencies be changed?

We intend to propose an evaluation system to monitor a patient's medical condition and to place greater emphasis on patients' rights in nursing homes.

Summary of Benefits

Sectors Affected: Nursing and health-related personal care facilities (SNFs and ICFs); patients and staff at these facilities; and State health agencies.

We expect the revised regulations to improve the quality of patient care and increase patients' rights in nursing homes. Nursing home personnel and patients will find the new regulations

simpler to use because they will be clearer, and diverse requirements from the old regulations will be consolidated where possible.

HEW is studying the costs of these regulation revisions and will fully describe the cost impact in the NPRM. We now believe that several of the revisions to the regulations now under review would result in savings for nursing homes which could result in lower costs for patients. These cost saving changes that are under consideration would eliminate some procedural requirements which are not directly related to the quality of patient care. In addition, revisions to the Life Safety Code requirements that will permit alternative (and less costly) methods for achieving compliance will affect the cost of these regulations.

However, new requirements under consideration could result in increased costs. The major new requirement under consideration is the proposed patient assessment provisions. These proposals concern a comprehensive assessment of all patients' health needs when they enter a nursing home, and a system for evaluating a patient's progress on a regular basis. A draft regulatory analysis providing estimates of the costs of these requirements will be available when the NPRM is published.

Summary of Costs

Sectors Affected: Nursing and health-related personal care facilities (SNFs and ICFs); patients and staff at these facilities; and State health agencies.

See above discussion under "Summary of Benefits."

Related Regulations and Actions

Internal: As part of "Operation Common Sense" (the HEW-wide operation to make regulations clear, concise, and understandable to the general public), the department intends to review and revise all standards and certification regulations which affect providers participating in the Medicare and Medicaid programs. At the present time, we are revising the HEW regulations on "Conditions of Participation for Hospitals."

External: None.

Active Government Collaboration

The Federal Trade Commission, which is concerned with patient rights in nursing homes.

HEW-Health Care Finance Administration (HCFA) is also consulting with State agencies.

Timetable

NPRM—spring 1980
Draft Regulatory Analysis—spring 1980
Final Rule—fall 1980
Final Regulatory Analysis—fall 1980

Available Documents

"New Directions for Skilled Nursing and Intermediate Care Facilities" (Summaries of Public Hearings), September 1978

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HEW-HCFA

Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)—General Notice (Not Codified in CFR LSC Are Provisions at 42 CFR 405.1134 and 442.331 et seq (Nursing Homes) and 42 CFR 405.1022 (Hospitals))

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act, 42 U.S.C. § 1302.

Reason for Including This Entry

This proposal would benefit patients in hospitals and nursing facilities by providing a framework which guarantees that the high standards of fire safety necessary to protect patients will be maintained. It would provide flexibility in meeting Life Safety Code (LSC) requirements and would accommodate new advances in safety technology and practice.

Statement of the Problem

Hospitals and nursing homes must meet a number of requirements, primarily relative to the health and safety of patients, in order to participate in the Medicare and Medicaid programs which finance health services for many elderly and low-income families. These requirements are set out in the Social Security Act and in Department of Health, Education and Welfare (HEW) regulations. One of the requirements is the LSC of the National Fire Prevention Association. The LSC contains a detailed set of standards, mostly related to safety aspects of the physical plant, such as structure, fire prevention systems, and hazard alarms.

Current procedures which require strict adherence to the provisions of the Code, may unnecessarily require hospitals and nursing homes to undertake large capital expenditures to correct LSC deficiencies. The result of strict adherence to each LSC requirement is that:

1. Some institutions cite nonconformance with the LSC as the basis for complete replacement of a facility. This may increase health costs and would be especially unnecessary in areas which already have more hospital or nursing home beds than needed.

2. Some major structural changes are made in obsolescent facilities with short life of service expectancies to bring them into compliance.

The LSC permits uses of alternative means of protecting patient safety which may be less costly than strict adherence to the specific standards in the LSC. In 1974, HEW asked the National Bureau of Standards, in the Department of Commerce to develop a rating system to assess a facility's life safety provisions without requiring vigorous adherence to each specific standard. "A System for Fire Safety Evaluation of Health Care Facilities," developed by the National Bureau of Standards was approved by the Department of Commerce in December 1978. Under this new rating system, safety provisions are assigned numerical values. Therefore, two facilities with differing safety provisions could still be rated as having equivalent levels of life safety.

Alternatives Under Consideration

HEW is considering alternatives other than continued strict adherence to the Life Safety Code. These alternatives would, for example, use the rating system developed by the National Bureau of Standards. The major alternatives are:

(1) To continue the current HEW policy of requiring hospitals and nursing homes to meet the specific standards in the LSC.

(2) To permit hospitals and nursing homes to meet either the LSC or an equivalent level of safety as measured by the rating system developed by the National Bureau of Standards.

(3) To permit hospitals, but not nursing homes, to use equivalent or alternative means of protecting patient safety. These means may be less expensive than strict application of the LSC.

Summary of Benefits

Sectors Affected: Hospitals; nursing and health-related personal care facilities which participate in Medicare and Medicaid; and patients in these facilities.

The costs savings are potentially significant but the savings will vary

based upon the options individual facilities select to assure patient safety. The cost savings are expected to be greatest in older facilities.

The cost of correcting deficiencies found during an FSES evaluation will not be greater than the cost of correcting the same deficiencies under the current evaluation process. In approximately 60 facilities evaluated using the FSES, there was an aggregate cost savings potential of about $6.7 million. Under current practice, many capital improvements required by the LSC are not made because of the great cost involved.

Summary of Costs

Sectors Affected: Hospitals; nursing and health-related personal care facilities which participate in Medicare and Medicaid.

See above discussion under "Summary of Benefits."

Related Regulations and Actions

Internal: ANPRM—Intent to consider regulation on automatic extinguishment systems for long-term care facilities, 43 FR 57166, December 6, 1978

External: None.

Active Government Collaboration

HEW worked with the National Bureau of Standards in the Department of Commerce, which developed the system for rating equivalent means of achieving LSC standards. HEW is also collaborating with the Veterans Administration which has adopted the National Bureau of Standards system for veterans hospitals.

Timetable

Final Notice for Hospitals, SNFs and ICFs—spring 1980
Regulatory Analysis—none

Available Documents

Notice with Comment Period—44 FR 37818, June 28, 1979.

Public comments available from HCFA, Room 325G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

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HEW–HCFA

Uniform Reporting Systems for Health Services Facilities and Organizations (42 CFR Parts 402, 405, and 450)

Legal Authority

Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95–142), 42 U.S.C. § 1121.

Reason for Including This Entry

The regulations require all health care facilities that receive payments under the Medicare and Medicaid programs to report cost-related information, such as cost of operation, volume of services, and capital assets, in a prescribed uniform manner.

In FY 1981 the Health Care Financing Administration (HCFA) will pay more than $50 billion for services delivered under the Medicare and Medicaid programs. HCFA's ability to manage these publicly funded health care programs has been impeded by the current cost-reporting methods, which make it difficult to judge the efficiency of institutional providers and to compare accurately the costs of services furnished within institutions or among institutions.

The proposed rule's purpose is to obtain comparable cost and related data on all participating hospitals for reimbursement, effective cost, and policy analysis, assessment of alternative reimbursement mechanisms, and health planning.

Statement of Problem

Section 19 of Pub. L. 95–142 requires improved financial and statistical data from institutional providers of Medicare and Medicaid services to accurately identify costs and to aid in the control of an ever-increasing inflation rate in health care costs. It requires the Secretary of Health, Education and Welfare (HEW) to establish a uniform reporting system for institutional health care providers.

Since the enactment of the Medicare legislation in 1965, the costs of health care have consistently increased at a rate significantly above the overall rate of inflation. Efforts by HEW to curb this increase under existing reporting provisions have been ineffective, in part because of the lack of comparable cost data. These regulations would establish uniform reporting systems for all health services facilities and organizations including hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, and health maintenance organizations that participate in the Medicare and Medicaid programs.

The law specifically requires regulations to establish a uniform system of reporting for the following types of information for each type of health services facility or organization:

- cost of operation;
- volume of services;
- capital assets, as defined by the Secretary of HEW, including capital funds, and the value of land, facilities, and equipment as appropriate; and
- patient discharge and bill data.

We will implement uniform reporting requirements through several separate regulations. To date, we have completed substantial work on uniform hospital cost reporting. Proposed rules were published January 23, 1979 and March 19, 1980.

Alternatives Under Consideration

Within the legislative mandate certain options are available. Timing and scope of a reporting system are limited by a timetable and objectives specified in the legislation. The primary objective is to design a system that will obtain comparable cost and related data from all institutional providers participating in Medicare and Medicaid. Among other things, we intend to use this data for reimbursement purposes and to improve our capacity to detect fraud and abuse. Other factors which affect the scope of the regulation include HEW's concern about minimizing the reporting burden and eliminating duplicate and overlapping data requirements placed on the provider, while meeting the intent of the legislation.

For the regulation implementing reporting of hospital data on cost, utilization, and capital assets, the major options we chose were:

(1) to merge, to the extent possible, departmental data collection activities (e.g., Medicare and Medicaid cost reporting and hospital facilities components of the Cooperative Health Statistics Systems funded by the Public Health Service) in order to coordinate reporting requirements and minimize the burden on the hospitals furnishing the data;

(2) to provide reduced cost reporting requirements for small facilities (less than 4,000 admissions annually) because they generally have fewer cost centers than large hospitals and less information to report;

(3) to limit, to the extent possible, the level of detail required to ascertain the cost of services provided for specific cost centers, in an effort to decrease the reporting burden (for example, the system would report employee work-time on a sample basis instead of requiring detailed time reporting).

We designed alternatives to minimize the level of detail and the cost of providing the information while permitting accurate comparisons of costs between hospitals furnishing the same type of service or care.

For the regulation implementing the collection of hospital bill and discharge data, the major areas of consideration are: (1) confidentiality regarding data collection on non-Federal patients and physicians; and (2) method of collecting and processing the bill and discharge data.

Summary of Benefits

Sectors Affected: Hospitals, nursing and health-related personal care facilities, medical laboratories, outpatient care facilities, health care and allied services that participate in the Medicare and Medicaid programs; patients of these facilities; and HCFA.

HCFA is designing uniform reporting systems with the intent of reducing and eliminating costly multiple collection and processing of the same data. HCFA will provide data collected via the uniform reporting systems to any interested parties, eliminating the need for many duplicative systems.

These systems will enable the department to obtain uniform comparable data necessary for reimbursement, effective cost containment and policy analysis, assessment of alternative reimbursement mechanisms, and health planning. Adequate and comparable data is not presently available to support these objectives. Attainment of these objectives will aid efforts to curb the inflationary spiral of health care costs.

Providers will receive valuable management information that could be used to assess efficiency at all levels of their operations. This would permit control over expenditures for supplies, services, and capital. A uniform reporting system for home health agencies is in the early planning stage. HCFA commissioned an accounting cost study on June 11, 1979, and will publish an NPRM after we have reviewed the results of that study. At that time, we will make an estimate of industry and government costs for implementing the system. Cost savings derived from the bill and discharge portions of § 19 of Pub. L. 95–142 are expected to offset costs associated with the cost and utilization reporting regulations.

Summary of Costs

Sectors Affected: hospitals, nursing and health-related personal care facilities, medical laboratories, outpatient care facilities, and health and allied services that participate in the Medicare and Medicaid programs.

HCFA will develop estimates of the cost of implementing the uniform reporting system for all health services and organizations as each regulation is prepared. HCFA has completed cost estimates specifically for the regulation implementing uniform reporting of costs for hospitals. HCFA awarded a contract to an accounting firm to determine the actual cost and burden of implementing the hospital cost reporting system. The results of this study showed total annual operating costs (in 1978) of $37 million nationwide, an average of about $5,300 per hospital. These costs represent .2 percent of the $25 billion HCFA paid to hospitals in 1978, and .079 percent of the $70.9 billion hospitals received from all sources.

For the 7,000 affected hospitals, HCFA estimated that the total one-time first year startup costs for the hospital cost reporting segment would be $19 million in 1978 dollars, or $2,720 per hospital.

Related Regulations and Actions

Internal: On January 23, 1979, HEW published an NPRM for collecting cost, utilization, and capital assets data from hospitals.

Because of extensive public comment, HCFA has prepared a revised manual and the department published a second NPRM to obtain further public comment.

HCFA is developing cost reporting regulations for long-term care facilities, home health agencies, and health maintenance organizations. Other regulations under development pertain to discharge and bill data.

External: None.

Active Government Collaboration

None

Timetable

Uniform Hospital Cost Reporting Final Rule—FY 1981
Uniform Hospital Discharge and Billing Data NPRM—FY 1981
Uniform Nursing Home Cost Reporting NPRM—FY 1981
Uniform Nursing Home Discharge and Billing Data NPRM—FY 1982
Uniform Reporting for Home Health Agencies NPRM—FY 1981
Uniform Discharge Data for Home Health Agencies NPRM—FY 1981

Available Documents

NPRM for Uniform Hospital Cost Reporting—44 FR 4741, January 23, 1979

NPRM and Regulatory Analysis for Uniform Hospital Cost Reporting—45 FR 17894, March 19, 1980

"Uniform Reporting Systems for Health Services Facilities and Organizations," System for Hospital Uniform Reporting, HEW draft manual, December 1978. Copies of this manual are no longer available for public distribution, but a copy is available for public inspection in Room 309G of HEW's offices at 200 Independence Ave., S.W., Washington, D.C. The revised draft manual of instructions, Annual Hospital Report, February 20, 1980, and accompanying forms are being sent in response to requests made after publication of the second NPRM. Requests should be made to, Chief, Printing and Publications Branch, Division of Administrative Services, HCFA, 1710 Gwynn Oak Bldg., Baltimore, Md. 21235 (301) 594–5514.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhoods, Voluntary Associations, and Consumer Protection

Lead-Based Paint Poisoning Prevention Act, Title 3, Section 302, 42 U.S.C.

Legal Authority

Lead-Based Paint Poisoning Prevention Act, Title 3, § 302, 42 U.S.C. 4801 *et seq.*

Reason for Including This Entry

This proposal has the potential for a major economic effect on the economy, with costs and benefits which may exceed $100 million per year, depending on the option we pursue, as set forth in the Statement of the Problem below.

Statement of the Problem

The Department of Housing and Urban Development (HUD) is required pursuant to the Lead-Based Paint Poisoning Prevention Act to establish procedures to eliminate the "immediate hazards" of lead-based paint poisoning in all federally owned housing, and in housing which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary of HUD. Further, HUD is to assure notification to purchasers and tenants of pre-1950 HUD-insured or HUD-assisted

housing of the hazards, symptoms, and treatment of lead-based paint poisoning. The current regulations define "immediate hazards" as cracking, scaling, chipping, peeling, or loose paint. While this procedure removes the most obvious hazards, there is concern that children may ingest lead by chewing intact surfaces containing high levels of lead. Also, there is concern that levels of lead used in post-1950 paint may constitute an immediate hazard to health. Reliable estimates of the number of cases of lead poisoning are not available, but the Center for Disease Control found "undue lead absorbsion" (indicating a risk of lead poisoning) in over 7 percent of preschool children screened in 1977. Also, according to a legal opinion from the Office of the General Counsel, the legislative history of paragraph 302 of the Act indicates that Congress intended that intact lead-based painted chewable surfaces be included as part of the "immediate hazard."

Alternatives Under Consideration

We are considering the following alternatives, and subalternatives:

(1) institute no regulatory change; or

(2) redefine "immediate hazard" to include intact leaded chewable surfaces.

Within the second option, several subalternatives exist: a. What level of lead in applied paint is considered unacceptable? b. What surfaces are considered accessible to children and therefore potentially chewable? c. What methods of treatment are necessary to render a chewable surface acceptable?

Generally, the more stringent the standard for unacceptable lead, the more extensive will be the required abatement and the more inclusive the percentage of a dwelling that is considered chewable. The more stringent are the standards for making a surface acceptable, the greater are the costs of lead-paint abatement, and the greater the removal of environmental lead, and hence the potential for reducing cases of lead poisoning.

Summary of Benefits

Sectors Affected: Occupants of HUD-associated housing (particularly children who are more susceptible to elevated blood lead levels); and painting contractors.

The linkages between the existence of lead paint in homes, potential for ingestion by children, the elevation of blood lead, and the emergence of symptoms of lead poisoning are not well understood. However, elevated blood lead levels are correlated with higher levels of lead in dwellings. What is known is that since 1970 the percentage of children with elevated blood lead has declined substantially, but lead poisoning has not disappeared.

Benefits to be received from reducing the number of cases of lead poisoning include the avoidance of costs of medical treatment, the reduction in the occurrence of mental retardation traced to this source, and the avoidance of suffering by victims of lead poisoning. It is very difficult to place numerical estimates on these benefits, but the regulatory analysis will examine the available evidence.

Summary of Costs

Sectors Affected: Local housing authorities; HUD; and private lessors of HUD-assisted properties.

Costs of lead-paint abatement depend heavily on the definitions of immediate hazards of unacceptable lead levels in applied paint, the percentage of units subject to inspection, the type of inspection performed, the abatement technique used, and the definition of chewable surface. Currently, loose, peeling, and chipping paint is presumed to pose a hazard if it occurs in HUD-associated housing, and such surfaces must be made intact. Alternative (2) above involves detection of lead paint in which lead exceeds allowable levels, as well as removal and refinishing of chewable surfaces. Estimates in 1977 indicated the cost might be at least $1,000 per dwelling unit for a particular set of definitions (removal of all lead paint from the interior of a typical dwelling built prior to 1940, where lead paint is defined as concentration greater than 2 milligrams per square centimeter). Actual costs could be higher or lower than this depending on the choices among the subalternatives under alternative (2). Likewise, the total cost would depend on the number of units covered by the regulations, and this, too, is open to a range of alternatives. The regulatory analysis will examine these costs, and how they vary according to the definition adopted.

Related Regulations and Actions

Internal: None.
External: Unknown.

Active Government Collaboration

None

Timetable

Public Comment Period—60 days following ANPRM (May 16)
NPRM—November 21, 1980
Draft Regulatory Analysis—will accompany NPRM
Public Comment Period—60 days following NPRM
Final Rule—May 8, 1981
Final Regulatory Analysis—will accompany Final Rule
Final Rule Effective—June 8, 1981

Available Documents

ANPRM published May 16, 1980

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines (30 CFR Part 77)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA), plans to include additional requirements in its existing regulation and believes that initial industry costs to comply may exceed $50 million.

Statement of Problem

Approximately 89,000 miners currently work in the Nation's surface coal mines and surface areas of underground mines. MSHA statistics for 1978 reveal a fatality rate of .04 and an injury rate of 4.08 per 200,000 hours worked. The primary causes of fatalities are from haulage and machinery accidents.

MSHA has reviewed all existing safety standards for surface coal mines and comments received from industry and labor representatives on regulations initially proposed in 1977, and has determined that there is a need to strengthen and clarify certain provisions. In addition, in light of E.O. 12044, some subparts and sections of the current regulations need reorganizing in order to make them easier to use by operators and inspectors. We will expand the following sections to include additional requirements for: illumination of work areas; guarding of electrical equipment; examination and testing of high-voltage circuit breakers; protection of direct current circuits; protection of low- and medium-voltage alternating current circuits; protection of electric

warning and equipment; handling of energized trailing cables and portable feeder cables; mine maps; ground control; and locations for explosives magazines. Where appropriate we will simplify sections and delete irrelevant provisions.

Alternatives Under Consideration

We first proposed these regulations in January 1977. The proposal would revise all the safety requirements for surface coal mines and surface areas of underground coal mines. MSHA has evaluated the proposal and comments received in response to that proposal. Three alternatives were available: First, to develop a final rule based on the 1977 proposal, but this approach would have sacrificed revisions which reflect new technology and further public comment on these revisions; second, to separate the 1977 proposed rule into several sections such as electrical and nonelectrical safety requirements. This approach would allow MSHA to address high priority areas first but would diminish our ability to consider all the surface safety regulations as one cohesive package. Third, to repropose the entire Part.

MSHA has decided to repropose the entire Part as described above, within the framework of the Federal Mine Safety and Health Act of 1977 and its requirements. This approach will allow MSHA to consider all its surface safety requirements as one cohesive unit within the context of the new Act, which became effective in March 1978.

Summary of Benefits

Sectors Affected: Surface coal mining and surface areas of underground coal mining; miners who work in these areas; and representatives of miners, which according to Part 40 can include any person or organization which represents two or more miners at a coal or other mine.

MSHA expects that these improved standards will help reduce fatalities and injuries of miners. This reduction in fatalities and injuries will decrease certain costs to surface mine operators, e.g., productivity lost because of accidents and lower insurance premiums. In addition, the increased readability of the standards will benefit mine operators. In some instances, specific requirements will be included in the standards rather than incorporating other documents by reference. This will provide clarity for operators, miners, and their representatives.

In 1978 approximately 417 million tons of coal, from a total figure of 660 million tons mined, was taken from surface mines and we expect this tonnage to increase.

Summary of Costs

Sectors Affected: Surface coal mining and surface areas of underground coal mining.

When we first proposed these regulations in January 1977, our economic estimates revealed that it would cost approximately $44 million for the industry to comply with the proposal. The principal costs relate to additional equipment purchases to meet requirements for low-resistance portable feeder cables; protection of direct current circuits; guarding of high-voltage equipment; examination and protection of high-voltage circuit breakers; protection of low- and medium-voltage alternating current circuits; illumination; guarding of electrical equipment; and protection of electric wiring and equipment. The 1977 estimates were as follows: illumination—$20 million; guarding of electrical equipment—$16 million; protection of electric wiring and equipment—$2.2 million; high-voltage circuit breakers, examination—$6 million; energized trailing cables—$.9 million; protection of direct current circuits—$2.0 million; guarding of high-voltage equipment—$3.2 million; and booms and masts, warning devices—$3.5 million.

The initial estimate does not take into consideration industry expansion and overall cost increases caused by inflation; industry costs to comply may well exceed $50 million in the first year (1976 dollars). Approximately 90 percent of the costs are associated with one-time equipment purchases. Therefore, they are expected to decline drastically for the second year.

Related Regulations and Actions

Internal: MSHA has regulations setting forth requirements for underground coal mines—30 CFR Part 75. MSHA is working on safety and health standards for construction work on mine property—30 CFR Part 110.

External: None.

Active Government Collaboration

None

Timetable.

NPRM—July 30, 1980
Public Comment Period—60 days following NPRM
Public Hearings—broken up by sections of proposal
Regulatory Analysis—will accompany NPRM beginning 90 days after close of public comment period
Final Rule—1982

Available Documents

NPRM—42 FR 2800, January 13, 1977
Comments on first NPRM (see Agency Contact)

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DOL-MSHA

Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers (30 CFR Part 48)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. §§ 811, 815.

Reason for Including This Entry

The Department of Labor has included this entry because of great public interest in the regulation.

Statement of Problem

Preliminary industry estimates reveal that there are approximately 70,000 to 90,000 employees engaged in mine construction work and the Bureau of Labor Statistics' data reveal that construction is a high hazard industry. In 1977, based upon the Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full-time workers; however, it was 15.5 per 100 for construction workers. The Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property. Section 115(d) of the 1977 Federal Mine Safety and Health Act requires that the Secretary of Labor promulgate appropriate standards for safety and health training for construction workers. These regulations will require that all construction workers on mine property be appropriately trained by their employers in the safety and health hazards of their jobs. Such training should help construction employees avoid accidents in the mines, thereby resulting in a reduced accident incidence rate for construction workers.

Alternatives Under Consideration

MSHA is considering the following alternatives: what amount of training we will require; how often, if there is a need

for refresher training; what training can be substituted for that which the regulation may require. MSHA believes that an important consideration in the development of the regulation will be to determine exactly what kind of training is currently being provided, so that appropriate credit can be given for such training to avoid any duplication of industry and labor training effort. MSHA is engaging in consultations with both labor and industry to get this information.

Summary of Benefits

Sectors Affected: Mine construction industry and employees; mining industry, miners, and representatives of miners (any person or organization which represents two or more miners at a coal or other mine).

MSHA expects that these regulations will provide a strong framework for reducing injuries, illnesses, and fatalities which are associated with mine construction work. Our long-term goal is to reduce measurably the hazards related to construction in the mining workplace. We anticipate that the 15.5 incidence rate previously mentioned can be reduced for the 70,000 to 90,000 construction workers on mine property. A reduction in the incidence rate will benefit the industry in the form of higher productivity and lower accident-related costs. In addition, a reduced incidence rate will result in fewer injuries, illnesses, and fatalities, which will benefit construction employees.

Summary of Costs

Sectors Affected: Mine construction industry, and the mining industry.

MSHA is developing estimates for the costs of complying with these regulations. Since MSHA is only in the drafting stage with respect to this regulation, the cost estimates will depend, in large part, upon the final make-up of the regulation, including categories of training required, hours of training, etc.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration is developing safety and health standards for construction work on mine property—30 CFR Part 110. The Mine Safety and Health Administration has existing mandatory safety and health training regulations for miners—30 CFR Part 48. The Occupational Safety and Health Administration has construction safety and health standards—29 CFR Part 1926, and portions of 29 CFR Part 1910, some of which require training. MSHA is developing regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of 3(d) of the Mine Act—30 CFR Part 45.

External: None.

Active Government Collaboration

None

Timetable

ANPRM—December 1980
NPRM—1981
Regulatory Analysis—we are unsure at this time if we will prepare one

Available Documents

None

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DOL-MSHA

Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines (30 CFR Parts 55.20-10*, 56.20-10*, and 57.20-10*, and New Parts not yet Specified).

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) thinks these regulations are important because current regulations are inadequate to ensure safe construction and maintenance of metal and nonmetal waste-impounding structures. We expect the regulation to have a major cost impact as defined in E.O. 12044 on the industry.

Statement of Problem

There are approximately 680 metal and nonmetal tailings dams in the United States. Based upon a recent survey, MSHA estimates that 15 to 20 percent of the existing structures pose some form of potential hazards, which might result in loss of life to both workers at the mines and members of the public or damage to the environment. We developed and published improved standards governing impoundments and waste piles at coal mines following the coal mine dam failure at Buffalo Creek in 1972, which resulted in many injuries and fatalities. However, because of recent waste dam failures at metal and nonmetal mines and the continuous potential for loss of life, MSHA decided that there is a problem related to the construction of new and existing impounding structures and that improved standards are necessary. MSHA anticipates that these improved standards will result in a reduction of injuries at the mine site, and will minimize the chances of water and waste from the ore spilling over into the surrounding public environment, and creating the possibility for physical damage to the land and health damage to its occupants.

Alternatives Under Consideration

MSHA has considered the following major alternatives:

(1) The manner in which we will require metal and nonmetal operators to construct new dams, i.e., how they should be designed and the materials used in construction. The type and specificity of requirements for these structures will affect the cost of the industry to comply. Although structures will, of course, have to vary depending upon the nature and geography of the mine being served, and the type of waste product involved, requirements which are specific and yet allow for operator flexibility could possibly result in more consistent enforcement by MSHA and greater miner safety. In other words, these requirements will give operators better notice of what their responsibilities are with respect to waste dams, and MSHA inspectors will have better guidelines upon which to base citations for violations.

(2) Whether or not there will be a delayed effective date to allow existing facilities to comply.

(3) Whether certain existing facilities will be exempted from or receive special treatment under the new requirements. It might be feasible to include a grandfather clause in the regulation which will exempt certain existing facilities from the requirements of the standard.

(4) Whether metal and nonmetal operators will have to submit plans for the construction of waste and impoundment structures. These plans would be approved by the appropriate Department of Labor Metal and Nonmetal Mine Safety and Health District Manager. This requirement would increase the paperwork burden on the affected industry; however, it would ensure that all new facilities are constructed in the proper manner.

(5) What the applicability will be of the Department of Army's Corps of Engineers' requirements related to impounding construction.

(6) Whether to allow the existing regulation to remain in its very general form, and do nothing at all. At this time, it appears that this alternative would not do anything to help solve the problem. Because the existing regulation contains no general guidelines or performance standards, the quality of waste dams vary greatly.

MSHA is considering whether to appoint an advisory committee composed of members from labor, industry, and the public to review these and other related issues in order to arrive at the best approach possible to alleviating the present problem.

Summary of Benefits

Sectors Affected: Miners working in mines having waste dams; persons who live in close proximity to such mines; the mining industry; the general public; and State and local governments.

Although there are no current statistics on the number of injuries resulting from dam failures at metal and nonmetal mines, the dam failure at the Buffalo Creek coal mine killed 123 persons and left thousands in the surrounding community homeless. Four metal and nonmetal failures have caused damage to the surrounding public environment; wastewater and mud were released not only into the land, but also into the source of the local water supply. We anticipate that this regulation, in whatever form we propose it, will reduce injuries, fatalities, and environmental damage associated with dam failures by setting forth more stringent requirements for waste dam construction.

Summary of Costs

Sectors Affected: Metal and nonmetal mining industry (but not fuels); States and localities which conduct mining activities; miners; and representatives of miners (any person or organization which represents two or more miners at a coal or other mine).

MSHA is in the process of developing data about the economic impact on the metal and nonmetal mining industry. The final cost estimates will have to take into consideration vast differences in types of mines, types and amounts of waste products involved, and the geographical terrain. In addition, the extent to which existing facilities can comply with the regulation with only minor changes will affect the cost. We have prepared a request for proposals notice in order to negotiate a contract with a consultant organization to determine the economic impact of these regulations. This will assist in our decision to proceed with the regulations in their present form. We do expect them to qualify as a major regulation under the cost criterion of E.O. 12044, and the Department of Labor's Guidelines for Improving Government Regulations (44 FR 5570, January 26, 1979). Operators of metal and nonmetal mines which have waste dams would be most affected by the costs of the regulation. We are also preparing a preliminary risk assessment of the currently prevailing situation with regard to impounding structures, and we will obtain more detailed information from the contract.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration currently has surface coal mine safety standards for refuse piles—30 CFR 77.214–217. The Mine Safety and Health Administration has existing metal and nonmetal safety standards which regulate waste piles—30 CFR 55.20–10; 30 CFR 56.20–10; 30 CFR 57.20–10.

External: The Department of the Army has authority, through the Corps of Engineers, to regulate dams and their construction under P.L. 92–367, 86 Stat. 506–507. The Department of the Interior, Office of Surface Mining, has authority to regulate coal mine dams and waste piles under the Surface Mining Control and Reclamation Act of 1977, P.L. 95–87, 91 Stat. 445.

Active Government Collaboration

None

Timetable

ANPRM—September 30, 1980
NPRM—March 30, 1980
Public Comment Period—March 30–May 30, 1981
Public Hearing—September 30, 1981
Final Rule—January 30, 1982
Regulatory Analysis—will accompany NPRM

Available Documents

None

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DOL–MSHA

Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations (30 CFR Parts 55, 56, and 57*)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) believes this rule is important because it is a major review of all standards affecting the metal and nonmetal mines.

Statement of Problem

One of the goals which MSHA has set and communicated to the mining community is to undertake a thorough review of all the agency's safety and health standards. MSHA committed itself to a review of all existing metal and nonmetal standards when it published the final rule on August 17, 1979, converting its former metal and nonmetal advisory standards to mandatory standards. That document stated that "MSHA intends to conduct a comprehensive study of all the health and safety standards contained in 30 CFR Parts 55, 56, and 57 in order to assess their continued applicability and effectiveness." More specifically, MSHA is undertaking this review in order to update and upgrade existing standards and to consider eliminating, consolidating, clarifying, simplifying, or reorganizing provisions where appropriate. MSHA's review will also cover changes in technology and economic conditions and other factors which affect the applicability of existing standards.

Alternatives Under Consideration.

MSHA is open to suggestions from the mining community and interested public. The agency published an ANPRM (45 FR 19267, March 25, 1980), and solicited public comment on problems related to existing standards and on the order in which MSHA should review the standards. This rulemaking project will cover all of the safety and health standards included in Parts 55, 56, and 57, which is divided into sections relating to such areas as fire prevention and control; storage, transportation and use of explosives; use of equipment; and electricity.

Current standards may need to be: (1) reorganized to facilitate their use by the metal and nonmetal mining community, (2) simplified and clarified so that they can be easily understood; (3) deleted if

outdated, duplicative or overlapping with other MSHA standards. Other standards may no longer be applicable because of changes in technology. In addition, it might be helpful to the metal and nonmetal mining community to include a more detailed index, with cross-referencing to other MSHA standards, as well as other style and format changes.

Summary of Benefits

Sectors Affected: Metal and nonmetal mining industry (except fuel); and miners in these industries.

This review will benefit the metal and nonmetal mining community because it will result in improved safety and health standards. In addition, we will revise or revoke outdated standards; clarify those standards which are confusing; and delete standards which overlap. These actions will make it easier for metal and nonmetal operators to comply with MSHA's standards. In addition, a deletion of duplicative and outdated standards may result in a reduction of operator costs associated with compliance.

Summary of Costs

Sectors Affected: Metal and nonmetal mining industry.

Because MSHA is in the initial stages of reviewing this regulation, we do not know if there will be any additional costs placed upon mine operators.

Related Regulations and Actions

Internal: All existing standards covering Parts 55, 56, and 57, as of January 1, 1980.
External: None

Active Government Collaboration

None

Timetable

Notice of MSHA decision of priorities—September 30, 1980
MSHA will establish further steps and timetables for this rulemaking process in its decision notice
Regulatory Analysis—

Available Documents

All existing standards in 30 CFR Parts 55, 56, and 57, as of January 1, 1980
ANPRM (45 FR 19267-68, March 25, 1980)
Public comments received in response to ANPRM (see Agency Contact)

Agency Contact

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DOL-MSHA

Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines (30 CFR Part 110)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Department of Labor (DOL) believes there is significant public interest in this regulation.

Statement of Problem

Construction work at the Nation's surface mines and surface areas of underground mines constitutes approximately 10 to 15 percent of total construction activity and exposes approximately 70,000 to 90,000 persons per year to safety and health hazards associated with construction. In 1977, based upon Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full-time workers; however, it was 15.5 for construction workers. In addition, although the Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property, we do know that of the 136 fatalities which occurred at metal and nonmetal mines in 1978, eight were related to construction. MSHA is currently in the process of developing complete injury, illness, and fatality data for construction workers on mine property.

Prior to March 9, 1978, construction contractors performing work at metal and nonmetal mines were subject to OSHA's construction standards. On that date, the Mining Enforcement and Safety Administration, which was transferred from the Department of the Interior to the Department of Labor, became MSHA and assumed jurisdiction over industry working on all surface mine property. If MSHA does not publish comprehensive regulations which address the hazards associated with all phases of construction work, protection will be inadequate for this important segment of the construction industry.

Alternatives Under Consideration

MSHA has circulated for public comment an ANPRM which contained virtually all of OSHA's current requirements related to construction. Requirements for personal protective equipment, fire protection, welding and cutting, steel erection, excavation, trenching, shoring, and blasting are included. This alternative, endorsed by the majority of those commenting on the ANPRM, will provide the least disruption to that portion of the industry which, prior to March 9, 1978 was subject to the jurisdiction of OSHA while working on surface mine property.

Other alternatives include:

(1) Which edition of the American Conference of Governmental Industrial Hygienists' "Threshold Limit Values of Airborne Contaminants" should be incorporated into the standard governing exposure of employees to gases, vapors, fumes, dusts, and mists at construction sites. OSHA uses the 1970 edition, but the 1978 edition is more current, and imposes more stringent requirements, resulting in reduced employee exposure to some contaminants.

(2) The substitution of certain requirements (e.g., a requirement that all electrical work be performed by qualified and certified persons), from 30 CFR Parts 71 and 77 regarding construction activities, for related ones of OSHA's. This would retain certain practices currently existing at coal mine construction sites.

Summary of Benefits

Sectors Affected: Mine construction industry and employees; the mining industry, miners, and representatives of miners (any person or organization which represents two or more miners at a coal or other mine).

The use of OSHA s standards will minimize disruption of the construction industry. Use of updated threshold limit values for airborne contaminants would potentially decrease the incidence of occupational illness and its attendant costs.

Summary of Costs

Sectors Affected: Mine construction industry; and mining industry.

MSHA is developing the estimates for the costs to industry of complying with these regulations. Although these are new regulations for MSHA, they will not represent new requirements for a large segment of the construction industry for the following reason. Prior to the effective date of the Federal Mine Safety and Health Act of 1977, all construction activity in metal and nonmetal mines which was not undertaken by the operator was subject to OSHA's jurisdiction. This was by far the largest portion of construction work at metal

and nonmetal mines. Thus, construction contractors working at metal and nonmetal mines had to comply with OSHA's construction standards.

All construction on coal mine property was subject to the jurisdiction of the Mining Enforcement and Safety Administration, this agency's predecessor. Because MSHA's draft standards are, in large part, OSHA's current construction regulations, these standards will have a minimum impact on the methods by which construction contractors do business, and no new areas will be regulated. However, if MSHA does decide to incorporate the latest edition of the "Threshold Limit Values of Airborne Contaminants," there could be increased costs associated with reduced employee exposure levels.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration currently has coal mine surface construction regulations—30 CFR Part 77. The Occupational Safety and Health Administration has regulations which govern construction activity—29 CFR 1926, and portions of 29 CFR 1910. MSHA is coordinating all aspects of this rulemaking with OSHA. MSHA has proposed regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the 1977 Act—30 CFR 45. MSHA is also drafting regulations setting forth requirements for safety and health training for mine construction workers—30 CFR Part 48.

External: None.

Active Government Collaboration.

None

Timetable

NPRM—September 30, 1980
Public Comment Period—60 days after NPRM Public Hearings—November–December 1980. Various locations to be announced.
Final Rule—June 1981 Regulatory Analysis—undecided

Available Documents

ANPRM—44 FR 52258, September 4, 1979

Comments received in response to ANPRM (available through Agency Contact)

OSHA Standards—44 FR 8575, February 9, 1979, and 44 FR 20940, April 6, 1979

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DOL–OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Chemical Substance Identification (Labeling)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this proposed regulation is extremely important because it will allow employees to identify the chemical substances and know the workplace hazards to which they are exposed, thereby enabling them to take actions to better protect themselves from these hazards.

Statement of Problem

Approximately 20 million American workers are currently exposed to toxic chemicals where they work. A 1972 National Institute for Occupational Safety and Health (NIOSH) survey found 85,000 trade name products that are commonly used in the workplace. In 90 percent of the cases neither employer nor employee knew the identity of the chemicals or the hazards of these products. The rapid proliferation of new chemicals increases the number of substances found in the workplace, and consequently increases the number of substances with which employees may be unfamiliar. Without provisions for chemical identification, workers do not know what chemicals they are using and are unaware of the potential hazards. Thus, employees are less able to properly protect themselves or seek adequate protection from their employers. Furthermore, if chemicals in the workplace are not appropriately identified, it is difficult to determine which chemicals are responsible when occupational diseases occur.

Alternatives Under Consideration

The agency is currently considering five major alternatives:

(A) Issue a regulation based essentially on the recommendations in the report of the OSHA Standards Advisory Committee on Hazardous Materials Labeling which was convened in 1974. The regulation would include provisions applying to virtually all hazardous or toxic chemicals requiring container labeling, chemical identification lists (compilations of all hazardous chemicals in a given workplace), material safety data sheets (brief papers containing pertinent information on the identified hazards), and employee training. This alternative would be the most comprehensive, but also the most expensive approach.

(B) Delete employee training provisions from alternative (A) to reduce the economic impact of the regulation on employers. This alternative would remove the mechanism that would ensure that workers will understand the information provided by labeling and material safety data sheets.

(C) Issue a regulation that would only apply to workplaces that are directly involved in the manufacture, reaction, processing, formulation, or storage of chemicals. This alternative is based on the assumption that workers in the chemical industries have the greatest potential for serious exposures to chemical substances. The overall costs of the regulation would be reduced by limiting the scope of the standard to these industries. However, there are a substantial number of workers employed in other industries which use chemical substances, and are thus exposed to significant concentrations of these substances. By narrowing the scope of the standard to the chemical industries, these additional workers would not be afforded adequate protection, although they would be exposed to the same recognized hazards.

(D) Promulgate a regulation which would apply only to those chemicals which have already been regulated or classified as recognized hazards by other Federal, private, or international organizations. Although workers are exposed to a large number of toxic or hazardous substances in the course of their employment, private or governmental organizations have established regulations or voluntary permissible exposure limits for only a relatively small percentage of these substances. By narrowing the scope of the standard to these "recognized hazards," the cost of the regulation would be reduced. However, this approach would eliminate regulation of many substances for which there is evidence that exposure may present a hazard, although they have not been specifically considered a "recognized hazard" by any organization. Thus, this alternative would severely limit the benefits of employee protection which will result from the standard.

(E) Promulgate a regulation jointly or in coordination with the Environmental Protection Agency (EPA). In order to

implement the requirements of the Toxic Substances Control Act (TSCA), EPA is planning to issue regulations concerning warning of hazardous or toxic substances. OSHA and EPA are exploring the possibility of issuing a joint or coordinated rulemaking. This would have the advantage of avoiding duplicative requirements imposed on employers and inconsistent labeling practices.

The regulatory mandates of TSCA and the Occupational Safety and Health Act are complementary. OSHA has jurisdiction for the protection of employees, while EPA governs the distribution of the products in commerce. Although the contents of the rulemakings have not been finally determined, it is expected that the two agencies will divide the responsibility for requirements of a comprehensive chemical substance identification rule. For example, OSHA may require that employers disclose the identity of chemical substances in the workplace to employees, while EPA may require that hazard warnings be applied to containers. Thus, each agency's individual rulemaking would be limited, but comprehensive coverage would be provided through joint implementation of the two regulations.

OSHA currently regards alternative (E) as the most desirable because it would provide employees with the necessary information without requiring duplication of regulation by government agencies.

Summary of Benefits

Sectors Affected: Workers and establishments in all industries which produce, use, or otherwise come in contact with hazardous chemicals, particularly manufacturing and construction.

This regulation will directly affect workers and employers in manufacturing and construction establishments which produce or use hazardous chemicals. (Standard Industrial Classification [SIC] Codes 15 through 39.) Establishments and employees in other industries not required to comply with the standard (for example, in retail trade or services) will also benefit from this regulation because they will receive products on which the chemical hazards will be identified.

The most important direct benefit of the standard or its alternatives is the information which they will provide to workers exposed to toxic and hazardous chemicals. Although the private market does supply some information on chemical hazards, there is clear evidence that it is of insufficient quality and quantity. In the absence of additional regulation, there will continue to be—as there have been in the past—substantial numbers of injuries and illnesses due to workers' lack of knowledge of the hazards present in the workplace.

The ultimate purpose of the regulation is to provide information to the worker which can be used to identify potential hazards and enable the worker to take steps to avoid or minimize his exposures. In addition, this information can be used by the worker to alert his or her physician to the potential cause of observed health effects.

Unmeasurable direct benefits of the various alternatives under consideration are the improvements in workplace health and safety which will result. With the added information which the standard will provide, workers will be likely to work more safely and be more inclined to use personal protective devices. Employers will discover the existence of previously unknown hazards which, in some cases, may be easily reduced. Nonhazardous or less hazardous products may be substituted for hazardous ones, and labor market pressures which the added information will engender are likely to provide incentives for employers to invest in health and safety programs and equipment, and to develop safer substances and control techniques.

Indirect benefits of the regulation or its alternatives are likely to be considerable, but they are unmeasurable. Workers' families and relatives will benefit because of reduced medical care costs (including hospitalization and physician services), and reduced pain and suffering. Quicker medical diagnoses will also occur when physicians are able to discover the actual chemical identification of workplace hazards. Recordkeeping will similarly improve diagnoses where workplace diseases have long latency periods and will provide valuable information to improve epidemiological research. Finally, reduced absenteeism and a clean workplace may contribute to production gains.

Additional indirect benefits include a reduction in the likelihood and severity of low probability, but spectacular, chemically caused disasters. For example, the polybrominated biphenyl (PBB) tragedy in Michigan might have been prevented had this standard been in effect at the time.

Summary of Costs

Sectors Affected: Establishments in manufacturing and construction (SIC Codes 15 through 39) which produce or use hazardous chemicals; and users of goods produced by these establishments.

The direct costs of the standard include one-time administrative expenses of identifying, listing, and recording information on existing hazardous substances. Capital costs will be minor and will consist of a small amount of information-processing equipment which some firms will purchase. There will also be considerably smaller ongoing costs of updating the information system as new information is discovered, new chemicals are added to lists, new labels are discovered, lists are updated, and so on. OSHA is in the process of estimating the costs for the various regulatory options. As yet, however, no overall estimate of total direct compliance costs are available for any of the regulatory alternatives.

Potential indirect costs could include the following. Chemical identification may disclose some industry trade secrets. If so, there is a potential for adverse impacts on industry research and development expenditures and hence upon innovation. There may be price increases for products containing or produced with hazardous substances both because of the direct costs of identification and labeling and also because the information provided by the standard may force firms to pay additional wages for hazardous work or induce them to make additional investments in health and safety equipment or training. The standard may also have an adverse competitive impact on small producers or users of hazardous substances, and on low-volume hazardous substance products. Because there are substantial overhead costs involved in identification, low-volume products and small firms, especially those without data-processing capabilities, could suffer competitive harm. OSHA does not currently have estimates on the magnitude of any of these potential costs.

Related Regulations and Actions

Internal: None.

External: A hazard-warning regulation authorized by the Toxic Substances Control Act of 1976 is currently under development by EPA. The regulation would require hazard warnings on all containers distributed in commerce. EPA, under the Federal Insecticide, Fungicide and Rodenticide Act, also has regulations requiring the labeling of pesticides. The Department of Transportation (DOT), Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) all have labeling regulations.

DOT's regulations pertain to the bulk shipment of hazardous goods. They have published an NPRM (44 FR 32972, June 7, 1979) for the display of identification numbers for hazardous materials to improve emergency response capability. FDA and CPSC regulations pertain to products for consumer consumption.

Active Government Collaboration

OSHA and the Environmental Protection Agency (EPA) are cooperating in the development of this hazard warning rule. In addition, OSHA is actively participating in the Interagency Regulatory Liaison Group (IRLG) and its Labeling Task Force to assure that the provisions of this rule do not conflict with the existing regulations of other agencies.

Timetable

NPRM—June 1980
Regulatory Analysis—June 1980
Public comment period—following NPRM
Final Rule—early 1981

Available Documents

ANPRM—42 FR 5372, January 28, 1977
"A Recommended Standard . . . An Identification System for Occupationally Hazardous Materials," (HEW–NIOSH, Publication Number 75–126)
Public docket of the record of rulemaking on chemical labeling (OSHA Docket H–022)
These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, 200 Constitution Avenue, N.W. Washington, D. C. 20210.

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DOL–OSHA

Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation (29 CFR Part 1910)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) has determined that regulation is necessary for the immediate protection of workers employed in the manufacture and formulation of pesticides. Numerous incidents of harmful employee exposures to a variety of pesticides have already been recorded in these industries. The large number of pesticides being produced in this country, as well as the broad range of toxic effects they produce, suggests that there is a potential for continuing harmful exposures and, thus, a need for employee protection.

Statement of Problem

Approximately 34,000 workers are exposed to toxic substances during the manufacture and formulation of pesticides. Pesticides are biologically active substances which are designed to kill or alter some living organism, usually designated as the target "pest." However, pesticides frequently cause health effects in whatever living organisms are exposed to them, including humans.

Extensive evidence in the scientific literature indicates that worker exposure to pesticides results in serious health problems, including severe skin irritation, damage to the liver and kidneys, sterility, lung damage, and central nervous system disorders. In addition, some pesticides cause cancer, genetic changes, and birth defects. Several well-publicized tragedies have occurred in recent years involving the development of adverse health effects in employees who were exposed to pesticides during manufacture and formulation operations (for example, the effects of Kepone on workers in a Virginia plant and the cases of sterility in male workers packaging the pesticide dibromochloropropane (DBCP)). Investigations of these incidents indicate that there is an immediate need for regulatory action by OSHA to reduce the risk of occupational disease in exposed workers.

Alternatives Under Consideration

Mandatory standards may be necessary to protect employees working in the pesticides manufacturing and formulation industries. One alternative is to develop standards for pesticides on a substance-by-substance basis. OSHA currently has permissible exposure limits for approximately 160 substances that are used as pesticides. However, the Environmental Protection Agency (EPA) has registered nearly 1,500 pesticide active ingredients which are formulated into almost 40,000 pesticide products, so OSHA's current regulations cover only a small percentage of available pesticide products. Thus, pursuing this alternative would significantly delay extending protection to many employees in these operations and would require a much greater investment of government time and resources. The agency currently believes that a generic approach to regulation—that is, regulation of pesticides as a class of hazardous substances rather than on a substance-by-substance basis—provides basic protection to workers more quickly, and appears to be a more manageable approach for implementation by employers.

OSHA is considering several variations of a generic standard covering employee exposure to pesticides. The basic provisions, in all cases, address emergency situations, worker training, medical surveillance, hygiene practices, housekeeping, and personal protective equipment. The approaches differ primarily in the degree of specification used to describe the required control measures and the "trigger points" at which certain provisions would be required.

At present, we are evaluating three alternative approaches:

(A) This alternative would base requirements for control measures solely on the degree of control that is currently used in each individual workplace. For example, the employer whose employees work in an area where pesticides are manufactured in an enclosed process (one which results in minimal exposure potential for employees) would be required to provide fewer additional control measures than the employer formulating pesticides in open vats (where the potential for employee exposure is great). Only personal protective equipment and respiratory protection devices would be required; no engineering controls (such as local exhaust ventilation) would be specified. All pesticides would be regulated in the same manner under this alternative, with no differentiations with respect to toxicity.

(B) In the second alternative, various provisions would be triggered, depending on the toxicity of the pesticide. OSHA would incorporate the toxicity categorization scheme that EPA developed under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA 7 U.S.C. § 136 *et seq.*) into this approach. For example, employers that have pesticides in Toxicity Category I (highly toxic) in their workplaces would have to perform housekeeping activities, such as removal of pesticide accumulations on surfaces, more frequently than those with pesticides in Toxicity Category III (slightly toxic). The standard would also include detailed requirements for engineering controls.

(C) This approach would be performance-oriented, and would require the employer to assume responsibility for ensuring that proper

control measures are selected and implemented when necessary. Rather than indicating which specific control measures would be required in each case, the standard would require the employer to perform a hazard evaluation and then determine the appropriate control measures on the basis of the hazards found. The hazard evaluation would involve a survey of the workplace and an assessment of the conditions in which employees work. The employer would be required to consider all relevant factors (for example, toxicity, physical state, current level of control) before implementing controls.

Although OSHA has not determined which alternative it will propose as a standard, the performance-oriented, work practices approach (alternative (C)) seems to be the most appropriate for a generic standard. This type of standard relies heavily on the "good faith" efforts of employers to comply with the intent of the regulation, but it appears to be the most equitable way to deal with the large number of pesticides involved and the range of hazards they produce. The standard would provide immediate protection for all employees in the pesticide industries. OSHA may decide to develop substance-specific standards for the most hazardous pesticides at a later date.

Summary of Benefits

Sectors Affected: Establishments engaged in manufacturing and formulating pesticide active ingredients and products; and workers in these establishments.

Sectors affected by this regulation include, but may not be limited to, establishments classified in Standard Industrial Classification (SIC) codes: 281 (Industrial Inorganic Chemicals), especially 2812 (Alkalies and Chlorine); 286 (Industrial Organic Chemicals), especially 2869 (Industrial Organic Chemicals, not elsewhere classified); and 287 (Agricultural Chemicals), especially 2879 (Pesticides and Agricultural Chemicals, not elsewhere classified). Firms classified in a number of other SIC codes also manufacture or formulate pesticides, although not as a primary product. We estimate at least 4,600 establishments will be affected by this regulation.

The direct benefit we expect from this action is a reduction in the incidence and prevalence of the adverse health effects in the 34,000 workers that are exposed to pesticides. The standard will also result in indirect benefits, such as reduced costs of adverse health effects to the worker, to industry, and to society. For the worker and his/her family, these costs may include loss of potential earnings because of disability or premature death, medical expenditures (including hospital costs, physicians' fees, and pharmaceuticals) and intangible costs, such as pain and suffering, and family bereavement. The regulation will also result in declining social costs of social security disability insurance, public assistance programs, Medicaid, and Medicare payments. Employers may experience gains in productivity as a result of reductions in employee absenteeism and turnover and from the improved health of employees. OSHA does not, as yet, have estimates of the magnitude of any of these benefits. Because workers will be healthier and have fewer job-related illnesses, workers' compensation premiums may decrease. OSHA is in the process of evaluating the alternative schemes for a regulatory analysis, which will be available when we publish the NPRM in the **Federal Register** in the fall of 1980.

Summary of Costs

Sectors Affected: Establishments engaged in manufacturing and formulating pesticide active ingredients and products, and users of these pesticide ingredients and products.

OSHA is currently estimating the direct and indirect costs of compliance of the alternatives and will make this data available at the time it publishes the proposal. We expect the costs to be significant for some of the alternatives under consideration.

The pesticide producers and formulators will probably attempt to pass through their increased compliance costs in the form of higher prices for their products to pesticides users. The agricultural sector is the largest user of pesticides, but this standard would indirectly affect many other diverse users, because pesticides are used in many workplaces to control pests.

Related Regulations and Actions

Internal: OSHA promulgated a final standard for control of employee exposure to the pesticide dibromochloropropane (DBCP) on March 17, 1978 (43 FR 11514), and for inorganic arsenic, which is found in some pesticide formulations, on May 5, 1978 (43 FR 19584). The OSHA Air Contaminant Standards (29 CFR 1910.1000) contain maximum permissible limits for about 160 chemicals which may be used as pesticides. All of these specific permissible exposure limits will continue to apply when the agency promulgates the generic standard for pesticides.

External: The Environmental Protection Agency (EPA), the Food and Drug Administration of the Department of Health, Education and Welfare (HEW) and the Departments of Transportation and Agriculture have programs for regulating the use of pesticides.

Active Government Collaboration

The National Institute for Occupational Safety and Health (NIOSH) has published a "criteria document," a report containing recommendations for controlling occupational exposure to pesticides during their manufacture and formulation. NIOSH is also preparing a control technology assessment of the pesticides industries. OSHA has been working with NIOSH to obtain information relevant to the development of an OSHA pesticide standard.

The Environmental Protection Agency (EPA) has the primary federal responsibility for regulating the use of pesticides in the United States. OSHA has a working relationship with EPA whereby EPA makes available to the appropriate OSHA staff any disclosable information relevant to an OSHA pesticides standard.

The State of California's occupational safety and health program has an active pesticides division. Working relationships have been established to exchange information and develop a pesticides data base.

Timetable

NPRM—fall 1980
Regulatory Analysis—fall 1980
Public Comment Period—following NPRM
Final Rule—summer 1981
Final Rule effective—fall 1981

Available Documents

"Request for Comments and Information—Occupational Exposure to Pesticides," 43 FR 54955, November 24, 1978

"Criteria for a Recommended Standard . . . Occupational Exposure During the Manufacture and Formulation of Pesticides," (NIOSH–HEW, 1978)

Public docket of the rulemaking record, Docket H-115

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S-6212, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A fee is usually charged for copies of these documents.

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DOL-OSHA

Occupational Noise Exposure Hearing-Conservation Amendment (29 CFR 1910.95*)

Legal Authority

The Occupational Safety and Health Act of 1970. 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) has included this entry because we believe that an amendment to the present noise standard will provide protection to many workers who are adversely affected by noise. We estimate that the amendment will have an annual impact of $100 million or more on the economy.

Statement of Problem

Exposure to high levels of noise may cause temporary or permanent hearing loss and other harmful health effects. The extent of damage depends on two factors: the intensity of the noise and the duration of the exposure. Noise intensity is, for purposes of the existing standard, determined by a sound pressure level, measured as "decibels" and abbreviated dBA.

There is an abundance of epidemiological and laboratory evidence that protracted noise exposures above 90 dBA cause hearing loss in a substantial portion of the exposed population, and that more susceptible individuals will incur hearing loss at levels below 90 dBA. Noise–induced hearing loss is an irreversible condition that progresses with increased exposure and with age. Because hearing is essential for communication, hearing loss can lead to serious social and psychological handicaps.

Noise can also cause other adverse effects, such as degraded job performance, increases in accidents and absenteeism, job dissatisfaction, headaches, fatigue, sleeplessness, stress-related illnesses, and other effects that are more difficult to isolate as noise-related than hearing loss, but which are just as real when they occur.

OSHA's existing standard for occupational exposure to noise (29 CFR 1910.95) specifies a maximum permissible exposure to noise of 90 dBA for a duration of eight hours, with higher levels allowed for shorter durations, such as 95 dBA for a period of four hours, or 100 dBA for a period of two hours, and so on. The agency refers to this relationship as the 8-hour time-weighted average of 90 dBA. Thus, exposure to an 8-hour time-weighted average greater than 90 dBA is considered overexposure. Employers must use engineering or administrative controls, or combinations of both, whenever employee exposure to noise in the workplace exceeds the permissible exposures. The standard also requires employers to administer a "continuing, effective hearing conservation program" for overexposed employees but the standard does not define such a program.

OSHA proposed a revised noise standard in 1974 (39 FR 3773, October 24, 1974), which maintained the current standard's 90 dBA time-weighted average exposure limit, but expanded the requirements for hearing conservation programs. There was a great deal of controversy about alternative permissible exposure limits and their technical and economic feasibility, but few commentors challenged the concept of a hearing conservation program. Along with the 1974 proposal, the agency developed draft environmental and economic impact statements and held two sets of public hearings. At present, the written comments and transcripts of the oral testimony in the Hearing Record amount to approximately 25,000 pages. Analysis of the Record reveals information gaps in the area of nonauditory physiological effects of noise (i.e., adverse health effects other than loss of hearing, such as high blood pressure), and also in the areas of economic and technological feasibility of noise control. The agency needs to obtain additional material and to perform additional impact analyses before we can propose a comprehensive new regulation.

In the meantime, there are an estimated 2.5 million workers in American production industries with exposures in excess of 90 dBA, and an additional 2 million employees with exposures between 85 dBA and 90 dBA. These workers could receive greatly increased protection if the agency can promulgate and enforce hearing conservation requirements as an amendment to the present standard. The agency would then issue a final comprehensive standard after obtaining the missing but necessary information, updating existing cost figures, and selecting the appropriate control strategy.

Alternatives Under Consideration

OSHA is considering the following alternatives at this time:

(A) No regulation; do not make specific requirements for noise monitoring, audiometric (hearing) testing, selection and use of ear protection, and employee education. We do not favor this alternative, however, as issuance of and compliance with a final comprehensive regulation are some time off, and the agency believes workers need the interim protection that hearing conservation measures can provide.

(B) Issue a final regulation in the immediate future that is essentially the same as the 1974 proposal. This option has the advantage of providing renewed emphasis on engineering controls, but it appears that the exposure limits in the proposed standard are not adequately protective. Furthermore, we lack sufficient information on the feasibility of reducing noise to below 90 dBA for all industries. Also, we lack quantitative information on the nonauditory effects of noise.

(C) Issue the hearing conservation requirements as an amendment to the present noise standard (29 CFR 1910.95), and issue the final regulation at a later date. Under this alternative, the agency would continue to study the nonauditory effects of noise and we would explore various regulatory approaches to engineering controls, such as providing different compliance periods for different industries or requiring lower noise levels for new plants. During this time the agency would continue to enforce the present standard.

We currently regard Alternative (C) as the most desirable alternative because it will provide millions of employees with immediate protection while the agency prepares the final standard.

Summary of Benefits

Sectors Affected: Manufacturing industries, and electric, gas, and sanitary services; Federal and State agencies with industrial programs; and employees of these industries and programs.

In 1976, an OSHA study presented the following estimates of the percentage of workers who would be affected by the proposed noise regulation in various industry sectors.

SIC	Industry	Percent
20	Food	28
21	Tobacco	10
22	Textiles	75
23	Apparel	1
24	Lumber and Wood	94
25	Furniture and Fixture	30
26	Paper	40
27	Printing and Publishing	45
28	Chemicals	37
29	Petroleum and Coal	76
30	Rubber and Plastics	20
31	Leather	1
32	Stone Clay and Glass	16

SIC	Industry	Percent
33	Primary Metals	63
34	Fabricated Metals	34
35	Machinery Except Electrical	26
36	Electric Machinery	7
37	Transportation Equipment	23
49	Electrical Gas and Sanitary Services	74

Percent of production workers exposed above 85 dBA

Insofar as OSHA regulations impact government waters this action will also affect Federal and State government waters in industrial jobs.

Hearing conservation measures, including noise exposure monitoring, audiometric testing, hearing protection devices, and employee education, should result in considerable benefits for more than 4.5 million employees. OSHA is in the process of quantifying the expected benefits of a hearing conservation regulation by estimating the amount of hearing that may be saved by instituting hearing conservation measures at various exposure levels. The Agency will also discuss the nonauditory benefits in qualitative terms. We will provide these estimates and discussions before we issue the hearing conservation amendment.

Hearing protection devices should reduce the incidence of noise-induced hearing loss and also the various nonauditory effects mentioned above. Audiometric tests should enable employers and employees to take proper precautions to prevent further deterioration of hearing, and monitoring and educational programs will increase general awareness of noise problems, and should encourage noise control at the source.

Hearing conservation measures, however, will not provide 100 percent protection to overexposed employees. The adequacy of protection will depend upon the quality of the hearing protector, the tightness of the fit, and its use by employees. Permanent hearing loss can occur before it is identified by audiometric testing and, of course, nonauditory effects cannot be detected by audiometry. Thus, none of these measures is as effective as controlling the hazard at the source, although a well-run hearing conservation program can be very effective in minimizing the adverse effects of noise.

One of the intangible benefits of this regulation may be a general improvement of employee and employer awareness of occupational health problems and the need for precautions. Another benefit, which was suggested by a National Institute of Occupational Safety and Health study, is a reduction in workplace accidents and absenteeism.

Summary of Costs

Sectors Affected: Manufacturing industries, and electric, gas and sanitary services; and Federal and State agencies with industrial programs.

All of the two-digit SIC industries listed under "Summary of Benefits" above have noise problems sufficient to necessitate hearing conservation programs. At this time the agency reserves judgment on whether or not this action will apply to the construction industry.

A 1976 OSHA study estimated that the hearing conservation requirements in the proposed standard would cost approximately $284 million annually in higher operating expenses. The breakdown in terms of 1976 dollars, was:

- noise monitoring—$155 million
- audiometry—$86 million
- ear protection—$43 million

A number of companies have already instituted hearing conservation programs, or parts of such programs, but we do not have an estimate of the numbers of these programs at present. OSHA will update these figures and analyze the costs and economic impacts of hearing conservation requirements in greater detail, and the economic analysis will precede issuance of the hearing conservation amendment.

At this time we do not anticipate any indirect costs, such as job losses or plant closings. However, we will try to identify any such costs before completing our economic analysis.

Related Regulations and Actions

Internal: Within OSHA there is a regulation for occupational noise exposure in the construction industry (29 CFR 1926.52). This regulation is virtually identical to OSHA's regulation for general industry (29 CFR 1910.95).

Within the Mine Safety and Health Administration (MSHA) there are three noise exposure regulations:

- Underground coal mines—30 CFR 70.500 to 70.510. These regulations cover permissible exposure limits, noise measurement and survey requirements, and reporting procedures.
- Surface work areas of underground coal mines and surface coal mines—30 CFR 71.300 to 71.305. These regulations are essentially the same as those for underground coal mines.
- Metal and nonmetal mines—30 CFR 55.5, which is essentially the same as OSHA's noise standard, 29 CFR 1910.95.

External: All States having their own occupational health programs must promulgate requirements at least as protective as those of the Federal OSHA. A few States already have some hearing conservation requirements.

The Department of Defense (DOD) has had hearing conservation requirements for many years. Under the most recent DOD Instruction (No. 6055.3, June 8, 1978) the three services (Army, Navy, Air Force) develop and issue their individual requirements.

The Federal Advisory Council on Occupational Safety and Health has established a Subcommittee on Noise for the purpose of developing noise abatement and hearing conservation guidelines to be used by all Federal agencies.

The Environmental Protection Agency (EPA) has regulations and programs for noise control and hearing conservation. Under the Noise Control Act of 1972, EPA has the statutory responsibility to coordinate all Federal noise programs.

Active Government Collaboration

Formal coordination between OSHA and other agencies takes place under the auspices of the Interagency Regulatory Liaison Group. The vehicle is the Noise Subgroup of the Regulatory Development Work Group. This Subgroup is chaired by the Environmental Protection Agency (EPA). OSHA interacts with the other member agencies: EPA, Consumer Product Safety Commission, and Food and Drug Administration. We are also coordinating activities with the Mine Safety and Health Administration and with the Department of Defense under the auspices of the Noise Subgroup's "Hearing Conservation Planning Group," which is chaired by OSHA. Informal liaison takes place with the National Institute for Occupational Safety and Health, the Department of Transportation's Federal Railroad Administration, and the National Bureau of Standards in the Department of Commerce.

Timetable

Public Comment Period—on items received for the record between 1977 and present April 11–June 9, 1980.
Regulatory Analysis—summer 1980
Final Rule—fall 1980

Available Documents

Occupational Noise Exposure, 29 CFR 1910.95 (existing standard).

"Impact of Noise Control at the Workplace," contractor report on technical and economic impact, January 1974.

Occupational Noise Exposure, 39 FR 37773, October 24, 1974 (NPRM)

"Proposed Regulation: Noise," June 1975. Draft Environmental Impact Statement

"Economic Impact Analysis of Proposed Noise Control Regulation," April 1976 (contractor report) OSHA Docket OSH–011A and B

All documents are available for review and copying in the Docket Office, Room S–6210, U.S. Department of Labor–OSHA, 200 Constitution Ave, N.W., Washington, D.C. 20210 (202) 523–7894. A fee is usually charged for copies of these documents.

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DOL–OSHA

OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, and Floor and Wall Openings, and Stairways (29 CFR Part 1910 Subpart D, and 29 CFR Part 1926 Subparts L and M)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Department of Labor (DOL) thinks these rules are important because they establish minimum safety standards for the prevention of work related falls. The proposed revisions of these standards will ensure safer working conditions for construction and industrial workers throughout the country by correcting deficiencies in the existing standards. In addition, the Occupational Safety and Health Administration (OSHA) will incorporate plain language in an easier-to-use format and eliminate redundant, ambiguous, or inconsequential provisions.

Statement of Problem

Occupational injuries resulting from falls associated with unsafe ladders, scaffolding, floors, wall openings, stairways, and walking and working surfaces range from 20 to 25 percent of all occupational injuries in general industry and construction. There are approximately 60 million workers in these categories. The National Safety Council estimates that the direct medical and lost productivity costs of injuries and fatalities resulting from these hazards may reach $5 billion annually (1977 dollars).

Portions of the current safety and health standards, which were promulgated by OSHA in 1971, are deficient in coverage, not up to date with current technology, ambiguous, or redundant. As a result, industry and construction groups have revised and updated their own voluntary standards. Court decisions have held some of the current standards to be invalid, and other standards have been modified by OSHA program directives or variances in an attempt to deal with problems of interpretation. OSHA has received many petitions and informal requests to upgrade or revoke certain provisions of these standards. The proposed revision of the standards will allow these deficiencies to be addressed and will incorporate all modifications.

OSHA needs to replace the existing specification-orientation standards with revised performance-oriented standards (where criteria are set, but not specific ways of meeting the criteria), and to include specific hazardous items not currently covered, such as catenary scaffolds (those suspended on two horizontal parallel wire ropes) and roof-perimeter guarding. Furthermore, if no agency action is taken, the existing ambiguous and lengthy language will continue to be inadequate in mandating safety protection in the areas discussed above.

OSHA bases this proposed action on over five years of data collection which document hazards, and on its commitment to prevent hazard-related injuries. OSHA will coordinate the revision of these standards with similar activities of professional and trade organizations and industry and labor representatives.

Alternatives Under Consideration

The first alternative, a comprehensive revision of the existing standards, would incorporate performance-oriented standards, language simplification, and additional coverage for hazards that are not currently regulated. As a result, employees and employers would become more aware of hazards, and of ways to avoid and eliminate them. The performance-oriented standards would permit and encourage more flexibility in controlling hazards. OSHA believes that greater flexibility would lead to more effective protection at decreased expense. As part of the first alternative, OSHA would include an appendix to the standards document to aid employers and employees in complying with the performance-oriented standards through alternative methods. The appendix would provide specific, nonmandatory ways of complying with the standard. Failure to use any of the alternatives in the appendix would not mean failure to comply with the standard. The purpose of the appendix is to help employers who do not want to develop their own alternative ways of complying with the performance-oriented language of the standard.

The advantage of this alternative is that it would address the most important problems of the existing standards by fully using the research work, support studies, and outside assistance that OSHA has collected to date. A comprehensive revision of the standards would permit more flexible and cost-effective compliance methods, reduce inconsistency among several regulatory standards, and simplify regulatory language. However, this alternative may have a major economic impact because it would cover a greater number of hazards than the present standards. Consequently, this option would involve a greater number of interested parties in the rulemaking procedures.

The second alternative is a phased effort to remedy major problems in the existing standards, rather than to comprehensively revise those standards. This alternative would not address the many gaps and shortcomings in the current standards and would not include an appendix listing alternative methods of compliance.

This alternative may cost the affected employers less and may simplify the rulemaking process, but it would not address many important hazards that are presently causing working injuries. In addition, it would not advance OSHA's regulatory policy to promulgate more performance-oriented standards.

The third alternative is to take no action, leaving the present standards as they are. This would greatly hinder OSHA's enforcement and consultation efforts, and certain hazardous areas such as catenary scaffolding and steep-roof-perimeter protection, would remain unregulated. Many organizations and individuals who have contributed significantly to the development of proposed revisions might refuse to cooperate further with OSHA. In addition, there would be no immediate hope of more adequately addressing those hazards that may account for one-fifth of all occupational injuries.

Adoption of any one of the three alternatives would have some effect on construction activities. However, under the first and second alternatives, OSHA would stagger the effective dates for implementation to enhance voluntary compliance, to minimize potential economic effects, and to provide time to implement an enforcement strategy.

The agency currently regards the first alternative as the most desirable, because it is the only one that will adequately address the total injuries associated with falls.

Summary of Benefits

Sectors Affected: All general industries (manufacturing; wholesale and retail trade; transportation, communications, electric, gas, and sanitary services finance, insurance, and real estate; and service industries); and employees in these industries; the construction industry; and the general public.

The major benefit expected is a reduction in work-related injuries and deaths by approximately 20 percent. Also, there would be a reduction in related personal and family pain and suffering. OSHA expects to see benefits because the proposed standard would cover currently unregulated hazards and would revise existing standards that offer inadequate protection. In addition to pain, suffering, premature disability, and death, we know that occupational injuries contribute immediately and directly to losses in national productivity while at the same time contributing additional inflationary pressure to the hospitalization and medical services sectors. Although there are no simple solutions to the hazards covered by these standards, even marginal improvements in accident rates will be significant when aggregated on a nationwide basis. For example, a 10 percent reduction in work-related falls could save $500 million (1977 dollars) annually in associated medical and lost productivity costs.

In addition to these economic benefits, the revision of the construction standards to include all relevant provisions and the parallel rulemakings for construction and for general industry would encourage compliance by all employers by making it easier for employers to locate the particular regulations covering a specific situation. Further, OSHA will use a new format that will help to eliminate redundancy and ambiguity. Elimination of ambiguity will assist employers and compliance officers alike by reducing confusion regarding the exact requirements of the standard. Less ambiguous language will also aid in any judicial review of a citation.

Summary of Costs

Sectors Affected: all general industries (manufacturing; wholesale and retail trade; transportation, communications, electric, gas, and sanitary services; finance, insurance, and real estate; and service industries); and the construction industry.

The cost of the first alternative, which is the comprehensive revision using performance-oriented standards, may exceed $100 million for employers to comply. This cost includes capital costs as well as operation and maintenance costs. These costs primarily affect the private sector and include every employer who is covered by either the OSHA general industry or construction industry standards. OSHA will conduct an economic analysis.

Related Regulations and Actions

Internal: Following this action, OSHA will revise its present standards for walking and working surfaces in the maritime industries. The agricultural standards do not need revision at this time.

External: Publications by the American Society of Testing and Materials, The American National Standards Institute, and the American Society of Civil Engineers, contain, or soon will contain related voluntary standards for many of the products and installations that this proposal addresses. OSHA has shared its research information with all of the affected standards development groups.

Active Government Collaboration

OSHA has worked and is continuing to work with the National Bureau of Standards in the Department of Commerce to develop safety requirements for scaffolding, guardrails, and safety belts. The Consumer Product Safety Commission and OSHA have been working together to establish satisfactory ladder performance standards.

The Coast Guard is also developing standards for maritime vessels and oil-drilling platforms on the Outer Continental Shelf where hazards exist that are comparable to those addressed in this rulemaking. OSHA will coordinate this rulemaking with the Coast Guard's action in these areas.

Timetable

NPRM—fall 1980
Regulatory Analysis—accompanying NPRM
Public Hearings—in at least three cities
Public Comment Period—90 days following NPRM
Final Rule—to be determined
Final Rule Effective—to be determined

Available Documents

ANPRM—40 FR 17100, April 23, 1976.

Comments and transcripts from town meetings. OSHA Public Reading Room, SA6212, U.S. Department of Labor, Washington, D.C. 20210.

These documents are available for review and copying at the OSHA Technical Data Center, Room S6212, Second and Constitution Avenue, N.W., Washington, D.C., 20210.

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DOL–OSHA

Regulations for Reducing Safety and Health Hazards in Abrasive Blasting Operations (29 CFR 1910.94 (a))*

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this regulation to be necessary to protect the 100,000 abrasive blasters and employees who work in and around abrasive blasting operations from respiratory impairment and a variety of occupational safety and health hazards.

Statement of Problem

Abrasive blasting operations expose workers to several occupational hazards which may cause disease and physical injury. Of primary concern are the hazards of (1) dusts of silica (sand) and silica substitutes, (2) excessive noise levels, and (3) safety hazards, such as slippery surfaces and conditions which enhance the development of fires and explosions.

In abrasive blasting operations, streams of silica or sand substitutes are projected by compressed air to prepare a clean surface for subsequent treatment. Large quantities of dust are created which, when inhaled, are responsible for specific types of lung disease.

Silicosis is one of those diseases. It is a tissue-scarring disease of the lung that

is irreversible and often fatal. The disease is responsible for a large number of deaths, either directly or by predisposing workers to tuberculosis and other infectious diseases.

The severity of this preventable disease has been repeatedly emphasized by the occupational health community in which there is general agreement that abrasive blasters usually contact silicosis after about 10 years of occupational exposure. The incidence of silicosis increases progressively with increasing concentrations of dust present in the work environment. Systemic poisoning or cancer may also develop, depending upon the composition of the abrasive. Abraded byproducts may also contain toxic materials and cancer-causing agents. Furthermore, dust hazards affect not only the abrasive blasters, but also those nearby employees assisting with the blasting as well as other employees at adjacent worksites.

In addition to the severe dust hazards, this worker population is exposed to excessive noise levels. The primary effect of noise exposure is premature hearing loss, although a wide spectrum of nonauditory adverse health effects, such as changes in blood pressure and decreases in respiratory rates, can also result from noise exposure.

In abrasive blasting work, a realistic potential for causing loss of life or limb is also created by the heavy dust clouds which reduce visibility. Additionally, the powerful collision of abrasive material against hard surfaces generates airborne particulates which may result in fire and explosion hazards, particularly where electrical apparatus is present.

Alternatives Under Consideration

The agency is considering the following regulatory approaches:

(A) There are major deficiencies with the existing abrasive blasting standard (29 CFR 1910.94 (a)) which result in inadequate employee protection. These deficiencies include the lack of requirements for regulated abrasive blasting zones; monitoring for silica exposures; adequate engineering controls and work practices; and adequate respiratory protection programs, medical surveillance and employee training. One alternative would be to eliminate existing regulatory deficiencies by adding the appropriate requirements and revising the existing regulations by referencing appropriate health and safety provisions (occurring throughout 29 CFR Parts 1910–1926) which currently apply to abrasive blasting.

(B) A second alternative would be to ban the use of sand in addition to the regulatory additions and revisions discussed above. Sand used in abrasive blasting is already banned in several countries and MSHA is considering prohibiting its use in aboveground mining operations. Nonetheless, it is not clear that this alternative is economically or technologically feasible in the abrasive blasting industry. Moreover, the toxicity of some alternative abrasives and abraded products indicates that a revision of the existing regulations must be accomplished to ensure adequate employee protection, regardless of whether or not the agency decides to ban sand as an abrasive. At the present time, therefore, this alternative is not our preferred regulatory approach.

The agency believes there is no suitable nonregulatory approach because the existing regulations are inadequate to provide protection and the traditional nonregulatory approaches, such as program directives and consultation, do not appear to provide relief.

Summary of Benefits

Sectors Affected: Abrasive blasters; associated workers; and establishments in the construction, manufacturing, and transportation industries listed in Table 1, particularly heavy construction not elsewhere classified, painting, paperhanging and decorating, and plating and polishing.

Table 1.—*Industries Affected by the Abrasive Blasting Standard*

SIC code	Industry short title
1629	Heavy construction, not elsewhere classified
1721	Painting, paperhanging and decorating
1743	Terrazzo, tile and marble, and mosaic work
2911	Petroleum refining
3272	Concrete products, except block and brick
3281	Cut stone and stone products
3312	Blast furnaces and steel mills
3321	Gray iron foundries
3322	Malleable iron industries
3323	Steel foundries, not elsewhere classified
3352	Aluminum rolling and drawing
3356	Nonferrous rolling and drawing
3361	Aluminum foundries
3362	Brass, bronze, and copper foundries
3369	Nonferrous foundries, not elsewhere classified
3391	Iron and steel forgings
3399	Primary metal, not elsewhere classified
3441	Fabricated structural steel
3471	Plating and polishing
3731	Shipbuilding and repairing
4011	Railroads, line-haul operating

The Census Bureau categorizes these workers as machine operatives (Census number 690) and construction laborers (Census number 751).

Regulatory action in this area will decrease the number of cases of lung disease among exposed workers. The reduction in exposure levels will produce a corresponding reduction in adverse health effects. The agency also expects regulatory action to result in fewer injuries and deaths related to abrasive blasting safety hazards. Reduction in lung disease and injury associated with abrasive blasting will decrease the pain and suffering of workers and their families and the burden on social programs, and will provide employees with significant cost reductions and improvements in productivity.

Summary of Costs

Sectors Affected: Construction, manufacturing and transportation industries listed above in Table 1, particularly heavy construction not elsewhere classified, painting, paperhanging and decorating, and planting and polishing.

Three industrial classifications, SIC 1629 (Heavy construction, not elsewhere classified), SIC 1721 (Painting, paperhanging and Decorating) and SIC 3471 (Plating and polishing), account for approximately 55 percent of the abrasive blasting operations and employ about 78 percent of the abrasive blasters. The approximate population at risk is 100,000 workers.

Preliminary estimates of the additional costs of alternative (A) are listed below. The size of the range reflects variations in the stringency and timing of selected provisions of this alternative.

Table 2.—*Cost of Alternative A*

	Amount 1978 dollars (million)
Type of cost:	
Installed capital	13–185
Annual capital charge	3–44
Annual additional energy used	.01–8
Annual operating and maintenance	51–78
Total annualized	54–130

OSHA estimates that the alternative of banning sand would cost an additional $94 million in annual operating and maintenance costs because of the extra cost of substitutes for silica sand. Because sand sold for blasting is less than 3 percent of the sales of sand suppliers, the incremental effect on sand suppliers of banning sand would be minor.

As noted above, there may also be indirect costs caused by increases in health problems due to the possible hazardous properties of substitutes which may be used for sand. For example, the National Institute of Occupational Safety and Health has determined that some slag substitutes

break down, after blasting, into respirable particulates of highly toxic heavy metals.

These preliminary figures suggest that both alternatives are economically feasible for the industries affected. The agency is preparing an economic impact assessment; tentative results indicate that even if industry is able to pass on compliance costs completely to their customers, prices will increase by less than two-tenths of one percent if sand is banned (Alternative B), and by less than one-tenth of one percent if Alternative (A) is implemented. Impact on output, employment, and market structure are expected to be minor as well.

Related Regulations and Actions

Internal: OSHA intends to develop a new standard covering the use of silica in all industries. This new standard may change the current permissible exposure limit for silica and may apply to abrasive blasting operations.

External: The Mine Safety and Health Administration is also considering a change in the permissible exposure level for silica. In addition, it is considering banning its use in aboveground operations.

Active Government Collaboration

None

Timetable

NPRM—June 1980.
Regulatory Analysis—July 1980
Public Hearing—following NPRM.
Final Rule—June 1981.
Final Rule effective—to be determined

Available Documents

Public docket of the record of rulemaking on safety and health hazards of abrasive blasting operations (OSHA Docket No. H-102).

Economic and environmental impact statements will be available when a standard is proposed.

These documents will be available by mail and for review and copying at the OSHA Technical Data Center, Room S-6212, Third Street and Constitution Avenue, N.W. Washington, D.C. 20210. A fee is usually charged for copies of these documents.

Agency Contact

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DOL–OSHA

Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas (29 CFR Part 1926.800)*

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655; Contract Work Hours Act Amendment 1969, P.L. 91-54, 76 Stat. 357, 40 U.S.C. § 327 note; 29 CFR Part 1926.800.

Reason for Including This Entry

The Department of Labor (DOL) thinks this rule is important because it will significantly contribute toward the reduction of underground accidents and injuries. The proposed revision of this standard will ensure safer working conditions by correcting deficiencies in the existing standard. In addition, OSHA will incorporate plain language in an easier-to-use format and eliminate redundant, ambiguous, or inconsequential provisions.

Statement of Problem

During the five year period starting in 1971 at least six catastrophic incidents involving explosion, fire, or flooding took place at underground operations-tunnels, shafts, and related worksites. These disasters resulted in 48 deaths, 42 injuries, and millions of dollars in property damage, and the toll could have been greater except for a particularly fortunate set of circumstances at the time of the accidents. In addition, many workers in underground operations are subject to other life-threatening hazards on an almost daily basis. To reduce the incidence of future catastrophes, the Occupational Safety and Health Administration (OSHA) is revising its workplace construction standards for underground operations to cover hazards that are not currently regulated.

Currently, billions of dollars worth of underground construction projects are underway or scheduled. These include subway systems in five major cities, and numerous water and sewer lines and utility networks. OSHA estimates that up to 350,000 workers per year may be involved in situations that present repeated opportunities for major disasters. Tunnels and shafts for mining operations are regulated by the Mine Safety and Health Administration (MSHA).

OSHA promulgated safety and health regulations for tunneling operations on April 17, 1971. During the ensuing years of enforcement, interested parties have identified a number of problem areas.

For example, some rules were claimed to be excessively stringent. Under the current standard, fire-resistant fluids are required to be used in underground hydraulic systems. Equipment manufacturers and employers claim that the use of such fluids considerably reduces the lifespan of certain machinery and that alternative methods of protection, such as fire suppression, should be allowed. Conversely, others have suggested more specific rules to deal with potentially explosive gas atmospheres in tunnels, and the improvement of hoisting equipment to prevent the recurrence of past catastrophes.

In addition, some of the current rules need updating and clarification. As a result, the proposed standard will rely on more current information to prohibit those work conditions which needlessly contribute to the most serious accidents.

Alternatives Under Consideration

OSHA is considering the following alternatives:

(A) No revision; do not clarify and update the regulation, and do not expand the regulation's coverage. This option would allow underground hazards to continue unabated. For instance, the provisions for defining a gassy site, acceptable emergency procedures, site safety program, air quality, fire prevention, haulage, and hoisting are either not currently addressed or insufficient.

(B) Revise the regulations to address those unique hazards of underground work that require additional or special attention. For example, some sites have special ventilation requirements, others need special lighting, etc. This alternative has the advantage of addressing only the most important problems, such as clarifying the scope and providing for gas operations, emergency procedures, fire prevention, ground support, and haulage and hoisting operations.

The revision would incorporate performance-oriented standards (where criteria are set but where specific ways of meeting the criteria are not set) and thus provide greater flexibility in complying with the standard.

(C) Revise the regulation so that either one subpart or section of the regulation will address all the hazards of underground work. This option might produce a more comprehensive standard but would duplicate in some part, existing regulatory treatment of construction hazards that are not unique to underground work and would, thus, become excessively cumbersome.

OSHA prefers alternative (B), because it will deal with the major hazards

causing underground accidents in the most efficient and least costly way.

Summary of Benefits

Sectors Affected: The construction industry, and all other industries involved in the building and maintenance of undergournd facilities; employees of these industries; and the general public.

There are approximately 3,000 employees working on the construction of large, new underground tunnels to be used in water and sewer systems, rapid transit systems, highways, and railroads. An estimated 20,000 workers are engaged in other types of major underground construction projects, including underground power plants, underground storage and refrigeration, subsurface transmission of electric power, underground sewage treatment facilities, and subterranean military defense installments. Moreover, there are additional thousands of workers for utilities and other contractors who are involved in more routine construction tasks in already existing underground facilities, or are hired to extend, repair or build smaller tunnel networks. Many of these operations are included under the following Standard Industrial Classification (SIC) Codes: 1622 (bridge, tunnel and elevated highway construction); 1923 (water, sewer, pipeline communication, and power line construction); 1929 (heavy construction, not elsewhere classified); 1794 (excavating and foundation work); and 49 (electric, gas, and sanitary services).

Preliminary estimates indicate that 7,000 worker-injuries per year occur on major new underground construction projects. OSHA's ongoing analysis estimates that the regulation would prevent about 800 of these accidents and avoid 37,000 lost workdays per year. This is in addition to the real but presently nonquantifiable potential of the standard to eliminate major tunnel disasters from fire, explosion, flooding, etc. which have accounted for up to 38 fatalities in a single year (1971).

Fewer underground accidents will result in reduced lost wages and medical expenses. The general taxpayer will benefit to the extent that government welfare payments are lowered. Employers will benefit from reduced property damage, lower insurance premiums, and increased productivity as a result of reduced production downtime and lower labor turnover and training costs.

Summary of Costs

Sectors Affected: The construction industry, and all other industries involved in the building and maintenance of underground facilities; and the general public.

Preliminary estimates of the annual compliance costs for the new provisions of the proposed standard, in 1979 dollars, are about $1 million for tunneling operations, and about $3 million for other underground projects. The compliance costs amount to less than 0.2 percent of the value of the affected construction projects.

DOL's preliminary analysis of the proposed standard indicates that the regulation will not significantly disrupt any segment of the industry, and adjustments in prices, employment, and production will be minor. Taxpayers will be affected to the extent the revised regulation increases costs for government construction projects, and consumers will be affected as transportation or private utility companies pass on increased costs.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration (MSHA) has promulgated regulations for metal and nonmetal mining activities, including tunnel and shaft construction for mines, and OSHA has an existing construction tunnel and shaft regulation for all other construction.

External: The American National Standards Institute, Inc. is developing a voluntary standard for the construction of tunnels, shafts, and caissons. Also, a number of States, operating their own safety and health plans under an agreement with OSHA, have tunneling regulations. Some States mirror the OSHA regulations and others, such as California and Michigan, have developed their own regulations, which OSHA considers to be as effective as the Federal regulations. States with plans are required to update their standards to be as effective as the OSHA requirements.

Active Government Collaboration

The proposal will include the health and safety requirements for the design, permissibility, and suitability of mobile diesel-powered transportation equipment (Schedule 31) which the Bureau of Mines in the Department of Interior developed and which are now included in the Mine Safety and Health Administration (MSHA) regulations. Also, OSHA will propose that any self-rescuer breather apparatus for escaping from underground areas subject to smoke and fire hazards, be capable of generating its own oxygen supply when site conditions warrant. Such devices are jointly approved by MSHA and the National Institute for Occupational Safety and Health. OSHA will continue to coordinate regulatory activities dealing with similar hazards with MSHA.

Timetable

Economic Assessment—June 1980
Environmental Assessment—June 1980
NPRM—August 1980
Public Comment—60 days following NPRM
Informal Hearing—late fall 1980
Final rule—early 1981
Regulatory Analysis—undecided

Available Documents

Transcripts of public meetings held by the OSHA Construction Safety and Health Advisory Committee, 1974–1980.

Proposed rule, Tunnels, Shafts and Related Work Areas, 39 FR 10216, March 18, 1974.

Transcript of public hearing held on June 26, 1974.

Written comments received relative to the March 18, 1974 proposal.

These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DOL-OSHA

Safety and Health Regulations for Entry and Work in Confined Spaces in Construction (29 CFR Part 1926) and in General Industry (29 CFR Part 1910)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this rule is important because injuries and deaths would be reduced for a significant portion of the labor force in construction and general industry.

Statement of Problem

The agency continues to receive reports of injuries and deaths caused by entering and working in confined spaces, such as tanks, reactor vessels, vats, hoppers, vaults, and pits that are oxygen deficient or contain toxic or flammable atmospheres. Additionally,

rescue attempts into confined spaces often cause death or injury to the rescuer. A review of 6,000 preliminary fatality/catastrophe event reports from 1976 and 1977 indicated that 132 events were related to entry and work in confined spaces. These reports indicate that multiple injuries and deaths occur with each event, e.g. of these 132 events, there were 130 injuries and 143 fatalities. The technology is available to test these atmospheres prior to entry and to make them safe for human occupancy or to provide the appropriate protective equipment. A recent report published by the National Institute for Occupational Safety and Health, dealing with the hazards of confined spaces, has confirmed OSHA's opinion that regulatory action is urgent.

If the Agency does not take any action, the death and injury toll will continue to increase in frequency because of the increase in work taking place in confined spaces with contaminated atmospheres and the fact that many employers and employees seem to be unaware of the seriousness of confined-space hazards.

Alternatives Under Consideration

(A) OSHA will consider limiting the scope of coverage of this proposed regulation to those unique confined-space situations showing a high incidence of injury or fatality. These situations involve atmospheres containing an oxygen excess or deficiency, or flammable, toxic, corrosive, irritant, or asphyxiating atmospheres. This option would have a smaller impact on the economy than a general confined-space regulation, but it would also offer protection to fewer employees.

(B) OSHA is considering a second option requiring permits to be issued before beginning work in confined spaces, and requiring that more complete records be kept of near-injuries, injuries, and fatalities. At issue in this option is who would issue the permits, who would be required to obtain a permit, and who would be responsible for keeping records. This approach would force awareness of the hazards of confined spaces on employers and employees, by requiring a qualified person from industry to inspect the space and ensure that any proper precautions had been taken. More comprehensive data relating to injuries in confined spaces would be helpful in analyzing measures to be taken to prevent future injuries. The administrative problems for both DOL and industry associated with a permit system and the increased recordkeeping and reporting required by this approach are the drawbacks of this alternative.

OSHA is also considering exempting certain industries that perform work in confined spaces from the scope of the standard if it can be shown that voluntary compliance with an existing industry standard has been effective, or if there are existing standards that adequately cover those industries. Further, the agency intends to write a performance-oriented standard (where criteria are set but specific ways of meeting the criteria are not set) which will give employers greater flexibility in meeting the regulation's objectives.

Summary of Benefits

Sectors Affected: All industries with employees who work in confined spaces; such as tanks, reactor vessels, vaults, and pits; and employees in these industries.

Workers are seriously injured or killed in more than 10 percent of all confined space accidents. Data are presently unavailable to project annual frequency and severity rates.

The primary benefit of hazard reduction would be a decrease in employee injury, illness, and death. Property losses are usually not major in these cases, although there are exceptions.

Summary of Costs

Sectors Affected: All industries with employees who work in confined spaces: such as tanks, reactor vessels, vaults, and pits.

Employers will bear direct costs in the form of additional equipment and labor necessary for hazard evaluation and preventive measures. The largest cost impacts will accrue to employers who currently do not have programs and equipment for safe operation in confined spaces. At this time, we have no estimate of the number of workers at risk. Preliminary indications are that most employers already have programs that may not require extensive modification, and costs may fall most heavily on a small group of employers who have no programs in effect. If so, small contractors could encounter increased economic barriers to conducting confined space work. To lessen the requirement for the small contractors, however, would defeat the purpose of this regulation.

There are also special costs associated with a permit system if we select that option. Some permit systems, such as EPA's requirement for pesticides, involve permits issued by governmental agencies. OSHA is not contemplating this type of system. The OSHA approach is intended to establish responsibility with a knowledgable individual in the establishment to issue permits after determining that appropriate preconditions for entry have been (or will be) met. No cost estimates have been made, but it is not anticipated that this provision will be a major expense item.

If small contractors encounter economic barriers, the nature of confined-space work is such that market dominance by a limited number of companies is unlikely.

It is not likely that this regulation will cause costs of compliance in excess of $100 million. Price effects resulting from increased operating costs in industries with confined spaces will be minimal.

Related Regulations and Actions

Internal: There are existing paragraphs in 29 CFR Part 1926 that specifically reference confined or enclosed spaces. These are 1926.21(b)(6), 1926.154(a)(2), 1926.350(b)(4), 1926.352(g), 1926.353(b), 1926.353(c), and 1926.354(c)(1). Additionally, there are paragraphs that do not specifically address confined spaces but are relevant and to some extent address hazards encountered when working in confined spaces. These are 1926.103(b)(3), 1926.104, 1926.250(b), 1926.651(v), 1926.850(e), 1926.956(a), 1926.956(b), 1926.957(h)(2), 1910.94, and 1910.134.

The additional paragraphs in subparts C, D, E, and F of Part 1926 are of a general nature and would be referenced in a separate standard for confined spaces.

There are related OSHA regulations pertaining to confined spaces in the rules that govern Ship Repairing, Shipbuilding, Shipbreaking and Longshoring, including 1915.2(m), 1915.2(n), 1915.11, 1915.23, 1915.24, 1915.31, 1915.32, 1915.33, 1915.54, 1915.82, 1916.2(m), 1916.(2)(n), 1916.11, 1916.23, 1916.24, 1916.31, 1916.32, 1916.33, 1916.54, 1916.82, 1917.(2)(m), 1917.2(n), 1917.11, 1917.31, 1917.33, 1917.54, 1917.82, and 1918.93.

There are related OSHA regulations pertaining to confined spaces in the rules that govern General Industry and Agriculture, including 1910.194(d), 1910.252, 1910.261(b)(5) and 1910.268(o)(2) as well as provisions in those subparts of Part 1910 which cover walking and working surfaces, fire protection, protection from hazardous and toxic materials, and guarding from mechanical and electrical hazards.

On October 19, 1979, OSHA issued an ANPRM (44 FR 60334) for entry and work in confined spaces in general industry, Docket No. S-019. This was a

request for written information that would be of value to the agency in the development of a proposed standard.

On March 25, 1980, OSHA issued an ANPRM (45 FR 19266) for entry and work in confined spaces in the construction industry, Docket No. S-107. This also was a request for written information that would be of value to the agency in developing a proposed standard.

Drafts of the proposed regulation will be submitted to the Mine Safety and Health Administration in the Department of Labor.

External: American National Standards Institute (ANSI) has published Safety Requirements for Working in Tanks and Other Confined Spaces, ANSI Z117.1-1977. Organization Resource Counselors, Inc. has been developing a Proposed Performance Standard for Confined Spaces, and individual States such as California, Wisconsin, and Maryland have standards regulating work in confined spaces.

Active Government Collaboration

OSHA has held discussions with the National Institute for Occupational Safety and Health during the Institute's development of a criteria document on confined spaces. Drafts of the proposed regulation will be submitted to the Department of the Army, and the Office of Pipeline Safety in the Department of Transportation for comment.

Timetable

General Industry:
Informal Public Fact-Finding Meetings—May 1980
NPRM—late 1980
Public Comment Period—early 1981
Public Hearings—early 1981
Final Rule—early 1981
Regulatory Analysis—undecided
Construction:
NPRM—December 1980
Public Comment Period—60 days after publication of NPRM
Public Hearings—March 1981
Final Rule—August 1981
Regulatory Analysis—undecided

Available Documents

ANPRM (General Industry)—44 FR 60333, October 19, 1979, Docket No. S-019

ANPRM (Construction)—45 FR 19266, March 25, 1980, Docket No. S-107

Transcripts of the Informal Public Fact-Finding Meetings held in:
Houston, Texas—May 13 and 14, 1980
Denver, Colorado—May 20 and 21, 1980
Washington, D. C.—May 28 and 29, 1980

"Criteria for a recommended standard, *Working in Confined Spaces,*" published by the National Institute for Occupational Safety and Health, U.S. Department of Health, Education and Welfare, December 1979

American National Standard, Safety Requirements for Working in Tank and Other Confined Spaces, ANSI A117.1-1977, American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018

Comments received in response to these ANPRM's and other documents are available for review and copying in the Docket Office, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210.

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DOL-OSHA

Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry (29 CFR Part 1910) and in Construction (29 CFR Part 1926)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks this rule is important because it concerns a subject in which the public has shown a considerable interest, and it will also fill a gap in our current regulations and will consolidate the widely dispersed regulatory provisions related to lockout hazards.

Statement of Problem

The proposed regulation will protect employees from accidents caused by the failure to deactivate (lock out) and tag machinery, equipment, or systems while they are being worked on. Lockout/tagging is a term used to define a method and procedure which can prevent activation of the machinery, equipment, or systems while employees are performing the activities of maintenance, repair, servicing, or installation.

Evaluation of 125 fatality investigations on fixed machinery covering the two year period of 1974-1976 indicates that 46.4 percent (58) of the 125 fatalities were either directly or very closely related to the failure to properly deactivate and lock out equipment.

The regulation will apply with few exceptions to all equipment and systems in industries covered by Title 29 of CFR Part 1910, for General Industry and in Title 29 of CFR Part 1926, for the Construction Industry.

At present, lock out-related regulatory provisions are scattered throughout CFR Parts 1910 and 1926 and many of these provisions are inadequate because they only address lock out procedures for electrical power sources. The new standard will deal with the hazards associated with the more sophisticated machines in modern use, which use hydraulic, pneumatic, and electronic power sources, and will also address the potential energy latent in these systems.

OSHA is proceeding with a lock out and tagging rulemaking at this time in response to requests from national consensus organizations, labor unions, industry and trade associations, and public comments. If OSHA fails to initiate a rulemaking, lock out-related injuries and fatalities will continue to occur at the same rate.

Alternatives Under Consideration

OSHA is considering the following alternatives.

(A) Continue using the existing standards. Adopting this option means that accidents attributable to inadequate and outdated lockout provisions will continue, and compliance activity will also continue to rely on the General Duty requirement of the OSH Act. The advantage of this approach is that it would require no additional outlay of Agency resources; the disadvantages are that accidents and the lack of worker awareness of lockout hazards will continue.

(B) Revise the lock out-related provisions in all the subparts of 29 CFR Part 1910 (General Industry Standards) and Part 1926 (Construction Safety Standards). The advantage of this choice is that the lockout provisions pertaining specifically to a particular industry would be located in the appropriate subpart with all other industry-specific rules. The disadvantage of this option is that revising all the affected subparts would

take many years and be very expensive in terms of OSHA's money and personnel.

(C) Promulgate a new lockout and tagging standard that will apply, with few exceptions, to all machines, equipment, and systems used in industries covered by 29 CFR Parts 1910 and 1926. The disadvantage of this approach is that a general standard covering all industries may not be as responsive to the needs of a specific industry as one tailored to the industry. The chief advantage is that the Agency will be able to reduce the injury and fatality toll attributable to lock out-related causes in the most effective and timely fashion. OSHA presently favors alternative (C) for this reason.

Summary of Benefits

Sectors Affected: All manufacturing industries (SIC Division D), construction industries (SIC Division C), and machinery and process system users scattered throughout the transportation, communications, electric, gas, and sanitary services, wholesale, retail and service sectors (SIC Divisions E, F, G, and I); and workers in these divisions.

OSHA believes serious lock out-related incidents are on the increase as the use of more complex and sophisticated power sources becomes widespread in the industrial economy. This proposal would reduce the number of incidents. Although property losses are sometimes involved, the most significant losses result from injuries and fatalities to workers. Workers who suffer permanent disablements sustain large personal and economic losses, while employers lose skilled workers. Data to estimate trend increases for this type of accident are not currently available, but we will gather it during the rulemaking process.

Indirect benefits may accrue to machinery manufacturers if the regulation's performance requirements reduce product liability, as is anticipated.

Summary of Costs

Sectors Affected: All manufacturing industries (SIC Division D), construction industries (SIC Division C), and machinery and process system users scattered throughout the transportation, communications, electric, gas, and sanitary services, wholesale, retail, and service sectors (SIC Divisions E, F, G, and I).

Direct costs to employers will result from the increased cost of lockout devices and increased labor costs required by preventive lockout procedures and work practices. These costs will be partially offset by productivity increases associated with accident reduction. Some portion of these direct costs may be passed on to consumers in the form of lower machine profit margins in the event that machinery users postpone machinery replacements and reduce overall demand.

Related Regulations and Actions

Internal: The General Industry Standards, 29 CFR Part 1910, and the Construction Standards, 29 CFR Part 1926, contain widely dispersed lockout-related provisions. Examples can be found in 1910.145, 1910.179, 1910.213, 1910.218, 1910.261, 1910.262, 1910.263, and 1910.265.

External: The States of California, Michigan, and Washington presently have or have proposed regulations governing the locking out and tagging of energy sources. These States submitted plans under OSH Act U.S.C., §1667, which allows for the development and enforcement of State occupational safety and health standards if they are as effective as the Federal regulations. The American National Standards Institute, Inc. is developing a voluntary standard for lockout and tagout. The National Fire Protection Association is also developing a voluntary standard for locking out and tagging of electrical equipment.

Active Government Collaboration

OSHA is coordinating its efforts and sharing information with the National Institute for Occupational Safety and Health of the Department of Health, Education and Welfare, which has published a Request for Information on this topic in the *Federal Register* (45 FR 7006, January 30, 1980).

Timetable

General Industry:
ANPRM—May 1980
Public Comment Period—60 days after publication of ANPRM
Public Meetings—30 days after publication of ANPRM
NPRM—April 1981
Regulatory Analysis—undecided
Construction:
ANPRM—Spring 1980
NPRM—Mid-1980
Regulatory Analysis—Late 1980
Public Comment Period—60 days after publication of NPRM
Informal Public Meetings—after NPRM
Final Rule—early 1981

Available Documents

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DOL-OSHA

Standard for Occupational Exposure to Asbestos (29 CFR 1910.1001)*

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks this regulation is necessary to protect workers from the carcinogenic risks and other adverse health effects associated with exposure to asbestos.

Statement of Problem

An estimated 2.3 to 2.5 million employees have some degree of occupational exposure to asbestos. Of this total, 180,000 to 400,000 are in the construction industry and the remaining 2.1 million are in general industry. A significant number of these employees are exposed to airborne asbestos levels at OSHA's existing exposure limit (2,000,000 fibers per cubic meter) or higher. This level was established for the limited purpose of reducing the incidence of asbestosis, rather than cancer.

The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided data to OSHA which indicate that the present OSHA exposure limit may be inadequate to protect workers from asbestos-related disease. Exposure to asbestos can cause asbestosis (a diffuse, nonmalignant, scarring of the lungs), lung cancer, and mesothelioma (a cancer of the chest and abdominal cavity linings of exposed workers). Recent epidemiologic evidence indicates

these diseases may be induced at very low levels of exposure, and experimental data in animals suggest that all forms of asbestos present a health hazard.

OSHA is developing a proposal to revise the current standard for occupational exposure to asbestos. The regulation would set a permissible exposure limit (PEL) for employee exposure to asbestos, and affected industries would have the opportunity to implement control measures to achieve the PEL for their operations in the most cost-effective manner. Failure to promulgate new regulations will prolong the occurrence of disease, disability, and mortality associated with asbestos exposures.

Alternatives Under Consideration

The Agency is considering a range of alternative PELs, including:

(A) a 1,000,000 fiber/m^3 eight-hour time-weighted average (TWA) with a 5,000,000 fiber/m^3 ceiling (above which no employee may be exposed);

(B) a 500,000 fiber/m^3 TWA with a 5,000,000 fiber/m^3 ceiling; and

(C) a 100,000 fiber/m^3 TWA with a 500,000 fiber/m^3 ceiling. For each of these alternatives, other revisions to current provisions for engineering and work practice controls, hygiene facilities, medical surveillance, respirators, training, etc., may be included in the proposed regulations.

Studies indicate that all commercially available forms of asbestos are cancer-causing agents. Some scientists argue that all asbestos materials, therefore, should be regulated equally. Others believe that different asbestos forms display varying degrees of toxicity and that OSHA should develop separate standards based on data associated with each specific asbestos mineral. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for asbestos on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes, such as construction versus general industry.

We do not anticipate issuing an NPRM until fall 1980, and currently have no preferred alternative.

Summary of Benefits

Sectors Affected: Workers in manufacturing, retail trade, construction and service establishments which produce or use asbestos-containing products; establishments manufacturing substitutes for asbestos or asbestos-containing products; and the general public.

Affected industries include the primary manufacturers of asbestos products; secondary fabricators in the automobile aftermarket, shipbuilding and repair, and elsewhere; and the construction industry. The primary manufacturers are largely grouped in Standard Industrial Classification (SIC) Code 3292 (Asbestos products), and many of these establishments also perform some secondary fabrication. Shipbuilding and repair is included in SIC Code 3731. The automobile aftermarket includes establishments which repair, resurface, and repackage such friction parts as brake shoes and clutch faces. The establishments involved are located in SIC Code 55 (Automotive dealers and gasoline stations), SIC Code 3714 (Motor vehicle parts and repair), and SIC Codes 7538 and 7539 (General automotive repair shops, and automotive repair shops not elsewhere classified). Other secondary fabricators are located in SIC Code 3293 (Gaskets, packing, and sealing devices), and in many other SIC Codes too numerous to list here. Construction (SIC Codes 15–17) will also be affected where asbestos-containing products are used, such as roofing felt, asbestos-cement pipe, asbestos-cement siding, and some forms of floor tile.

Establishments which produce substitutes for asbestos or asbestos-containing products will also be affected. Although a complete enumeration of such substitutes and their respective SIC Codes is not included here, a partial listing is as follows: Substitutes for asbestos itself, in various uses, include fibrous glass (SIC Code 322), mica (SIC Code 329), graphite-carbon fibers (SIC Code 329), nylon (SIC Code 228), polypropylene (SIC Code 282), and others. A large number of substitutes also exist for asbestos-containing products. Iron or polyvinyl chloride pipe (produced in SIC Codes 33 and 307) can be substituted for asbestos-cement pipe. Substitutes for asbestos-cement siding include vinyl, aluminum, and wood siding; substitutes for vinyl-asbestos floor tile include pure vinyl tile, carpeting, and hardwood flooring.

The direct benefit we expect from controlling exposure to asbestos is a reduction in the incidence and prevalence of the health effects cited in "Statement of Problem." OSHA has not yet completed a quantitative analysis of the number of lives expected to be saved by reducing exposures to any of the alternative levels being considered. However, because of the large numbers of workers exposed, and the accumulated evidence on the toxicity of even low levels of asbestos exposure, the numbers are expected to be large. Such reductions in mortality and morbidity will result in reduced pain and suffering for employees, and in savings in medical expenses and lost output which would otherwise occur.

Indirect benefits from controlling asbestos exposures to any of the various alternative levels will include reductions in the burden placed on such public support programs as Medicare and Medicaid, Welfare, and Workers' Compensation. In addition, improved worker health and safer working conditions are likely to reduce employee turnover and raise labor productivity. Finally, further controlling asbestos exposures will stimulate a search for asbestos substitutes and for alternatives to asbestos-containing products, and it will induce employers to innovate improved control technologies. With less asbestos and fewer asbestos products used, consumers will benefit as incidental asbestos exposures will decline.

Summary of Costs

Sectors Affected: Workers and establishments in manufacturing, retail trade, construction and service industries which produce or use asbestos-containing products; and consumers of these products.

The costs of the regulatory options being considered are largely the capital and operating expenses which the regulated firms will incur in order to comply. Because these cost increases will raise the prices of asbestos-containing products, the quantity demanded of such products will decline. Higher prices of asbestos products will also result in a switch to presently unregulated substitutes. To the extent that some of the substitutes may have adverse health or safety effects themselves, these will also be costs of the regulation. Finally, it is possible that the regulation may result in both a one-time decline in the level of labor productivity and a decline in its rate of increase if firms are forced to use resources to provide protection rather than produce goods, or if firms' profits and, therefore, investment funds, are significantly diminished.

The direct costs of the regulatory alternatives which we can measure most easily are the capital and annual costs which asbestos producers and users will bear. The table below provides preliminary estimates of these costs for each regulatory alternative being

considered for the major sectors of the economy that will be affected.

Preliminatory Cost Estimates

[Millions of 1978 Dollars]

Industry sectors	Alternatives		
	(A)	(B)	(C)
Primary manufacturing:			
Capital	4	18	61
Total annual	17	25	61
Auto aftermarket:			
Capital	0.2	2.3	8
Total annual	140	141	151
Other secondary manufacturing:			
Capital	30	30	30
Total annual	141	14	14
Construction:			
Capital	36	88	250
Total annual	102	127	378
All sectors:			
Capital	70	138	349
Total annual	274	309	607

The annual costs in this table include both operating expenses and annualized capital costs computed using a five year depreciation rate and a ten percent rate of interest.

A further direct impact of the regulatory alternatives may be to raise product prices and to reduce production and employment in the sectors both directly and indirectly affected. The one-time price effects to be expected in the directly affected sectors, assuming full passthrough of annualized compliance costs, are as follows:

Estimated Percentage Increase in Prices Due to Regulatory Options

Industry sectors	Alternatives (percent)		
	(A)	(B)	(C)
*Primary manufacturing	.7	1.1	2.9
*Automative aftermarket	2.5	2.5	2.7
*Shipbuilding and repair	.05	.05	.05
*Other secondary manufacturing	.0	1.0	1.4
Construction	.05	.07	.2

The largest increases are in primary manufacturing for option (C), the most stringent of the three alternatives, and in the automotive aftermarket for all the alternatives. The sharp cost and price increase for option (C) in primary manufacturing is caused by the costs for the increased engineering controls which will be needed in order to comply with this option.

The large cost and price increases in the automotive aftermarket will occur because nearly all establishments would have to install a broad range of ventilation systems to attain any of the control options.

Declines in output and employment are not likely to be large. For the most stringent regulatory option being considered, the decline in employment will amount to about one percent of 1978 employment in the affected industries (the year for which the analysis was undertaken) or about 30,000 jobs. Of course, this number cannot be interpreted as the amount by which unemployment will rise as most of the workers will likely find jobs elsewhere, such as in establishments producing asbestos substitutes.

Total annual output of asbestos products will decline by $1 billion (in 1978 dollars) in the directly affected sectors if the most stringent standard is adopted. This amounts to .4 percent of these sectors' total production and is a gross overestimate of the impact on the gross national product because (1) most asbestos products are intermediate goods and are, therefore, double counted, and (2) most of the resources freed are likely to be reallocated to an alternative use where they will raise output and partially offset this decline.

A direct cost of the standard which cannot, at present, be measured is its potential impact on productivity growth. Some idea of the possible impact may be gleaned by noting the capital expenditures which might be required relative to the size of the industry. If a large fraction of industry capital funds are absorbed by the investments mandated by the standard, other investments might be diminished with a concommittant adverse impact on productivity growth. Primary manufacturing is likely to be the sector most seriously affected and compliance capital costs will range from .2 percent to 3.2 percent of 1976 sales, depending upon the regulatory alternative chosen. Clearly, there seems to be at least the potential for the most stringent option to diminish productivity growth.

Indirect costs attributable to additional regulation hinge on the estimated impact of the use of substitute products and their likely consequences for health, safety, and product quality. Costs associated with the most stringent alternative could result in a significant use of substitutes for asbestos fibers and asbestos-containing products. The extent of this substitution is under investigation and quantitative estimates are presently unavailable. The health and safety effects of likely substitutes are also being evaluated but, again, no qualitative or quantitative estimates can be ventured at this time.

Related Regulations and Actions

Internal: The existing OSHA standard for asbestos found at 29 CFR 1910.1001 of the agency's General Industry Standards, which specifies an eight-hour time-weighted average of 2,000,000 fibers/m^3 with a ceiling of 10,000,000 fibers/m^3, will be modified. Other provisions of the standard address monitoring, medical surveillance, training, respirators, recordkeeping, protective clothing, and methods of compliance.

On October 7, 1975, OSHA published a notice proposing to revise the current asbestos standard and to reduce the PEL to 500,000 fibers/m^3 (40 FR 3392). Analysis of the economic and technological impact of that and alternative exposure levels is being performed.

External: Regulatory measures are under consideration by the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC). EPA/CPSC published an ANPRM for asbestos use in October 1979. EPA currently has a national emission standard for asbestos (38 FR 8820) and CPSC regulates uses of asbestos in certain consumer products.

Active Government Collaboration

An OSHA/EPA/CPSC task group will coordinate development of an appropriate regulatory response to possible health hazards associated with asbestos. Information-sharing activities with other governmental agencies such as the National Institute for Occupational Safety and Health, the Food and Drug Administration, and the Department of Agriculture are underway.

Timetable

NPRM—fall 1980
Regulatory Analysis—fall 1980
Public Hearing—following NPRM
Final Rule—fall 1981
Final Rule Effective—to be determined

Available Documents

"Occupational Exposure to Asbestos," NPRM (40 FR 47652, October 7, 1975), and comments received in response to the NPRM (OSHA Docket No. H–033.)

"Criteria for a Recommended Standard . . . Occupational Exposure to Asbestos" (NIOSH–HEW, 1975); updated Criteria Document (1976).

These documents are available by mail and for review and copying at the OSHA Technical Data Center,
Room S–6212,
200 Constitution Avenue, N.W.,
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A fee is usually charged for copies of these documents.

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DOL-OSHA

Standard for Occupational Exposure to Cadmium (29 CFR 1910.1000, Table Z-2*)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks this regulation is necessary to protect workers from the carcinogenic risks associated with exposure to cadmium. We anticipate that this regulation will be significant in terms of costs and number of workers affected.

Statement of Problem

The National Institute for Occupational Safety and Health (NIOSH) has estimated that 100,000 employees have some degree of occupational exposure to cadmium. Cadmium is obtained commercially as a byproduct in the refining of zinc, lead-zinc, and copper-lead-zinc ores. Electroplating is, and has been, the leading use for cadmium, consuming from 45 to 60 percent of the amount produced each year. Cadmium is also used extensively for stabilizers in plastics, pigments, and alloys. These four categories account for 80 to 90 percent of cadmium used in the United States.

NIOSH and other sources have provided OSHA with data which indicate that while OSHA currently limits occupational exposures to cadmium to an eight-hour time-weighted average (TWA) of 0.1 mg/m^3 (100 ug/m^3) and 0.3 mg/m^3 (300 ug/m^3) ceiling for cadmium fume and 0.2 mg/m^3 (200 ug/m^3) TWA, 0.6 mg/m^3 (600 ug/m^3) for cadmium dust, a more comprehensive regulation of this toxic substance is necessary.

Workers risk developing a wide variety of adverse health effects from exposure to cadmium. Clinical diagnoses have shown that cadmium can produce adverse health effects to the respiratory system, ranging from chemical pneumonitis and emphysema to acute, and often fatal, pulmonary edema. The most common abnormality found in workers exposed to cadmium is proteinuria (kidney damage). Other health effects, such as anemia and osteomalacia (e.g., Itai-Itai disease) have been associated with cadmium toxicity. In addition, OSHA is investigating epidemiologic evidence in workers and experimental results in animals which suggest that cadmium or certain cadmium compounds have the potential to induce lung and prostate cancer.

OSHA is developing a proposal to revise the current standard for occupational exposure to cadmium. The regulation would set a permissible exposure limit (PEL) for cadmium, and affected industries would have the opportunity to implement engineering and work practice control measures to achieve the PEL for their operations in the most cost-effective manner. The proposed regulation may also require the employer to perform medical surveillance of exposed employees, periodic monitoring of the workplace environment, and employee training and education. If OSHA fails to regulate expeditiously, it will prolong the occurrence of the diseases, disability, and mortality associated with cadmium exposures.

Alternatives Under Consideration

The agency is considering a range of alternative-performance PELs applicable to all cadmium compounds (both dusts and fumes), including: (A) 40 ug/m^3 TWA with a 200 ug/m^3 ceiling, as recommended by NIOSH, and (B) the lowest TWA exposure limit technologically feasible, with no ceiling or with an appropriate ceiling. Other provisions requiring engineering controls, work practices, and hygienic facilities may supplement the PEL.

Studies indicate that at least some cadmium compounds associated with certain industrial processes are suspect carcinogens. Some scientists argue that all cadmium compounds should be presumed to be carcinogenic, and regulated as such. Others believe that the assessment of toxicity/carcinogenicity of various compounds should be done separately. OSHA will consider the merits of these regulatory options.

Still another approach is to establish regulations for cadmium on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where the potential for exposure exists.

Summary of Benefits

Sectors Affected: Workers and establishments in manufacturing industries using or producing cadmium, particularly electroplating, cadmium metal refining, manufacturing of pigments, plastics, alloys and nickel-cadmium batteries, and welding operations; and the general public.

The direct benefit of reducing occupational exposure to cadmium is a corresponding reduction in the number of cases of cadmium-related diseases which would have occurred in the absence of regulatory action. While a reduction in acute health effects and fatalities will be realized as soon as compliance is achieved, there will be a lag in the reduction of chronic diseases due to the long latency period between exposure to cadmium and the onset of clinical effects. However, after this initial period of adjustment, the benefits of reduced levels of exposure will continue to occur over time.

OSHA also expects indirect benefits to occur as a result of controlling cadmium exposures. For instance, pain and suffering and medical care costs (including hospitalization and physician services) will be reduced. To the extent that these costs are borne by public support programs, such as Medicaid, Medicare, and Workers' Compensation, the burden on society at large will be reduced. Also, reduced absenteeism and a cleaner workplace may contribute to productivity gains. In addition, affected industries are likely to develop technological innovations which may improve production processes in general.

OSHA is gathering information on occupational exposures to cadmium and will determine the magnitude of the benefits associated with the various regulatory alternatives.

Summary of Costs

Sectors Affected: Manufacturing industries using or producing cadmium, particularly electroplating, cadmium metal refining, manufacturing of pigments, plastics, alloys and nickel-cadmium batteries, and welding operations.

OSHA is currently developing a baseline profile of cadmium using and producing industries. This study will enable the agency to estimate the costs of various regulatory alternatives, provision by provision. The study examines current industry expenditures on occupational health and resultant exposure levels, market structure, potential substitutes, control technology, and other relevant variables. No estimates are available currently, but we believe that regulatory action may have a major impact because of the widespread use of cadmium and because many establishments will incur compliance costs.

Related Regulations and Actions

Internal: The existing OSHA Air Contaminants Standards for cadmium found at 29 CFR 1910.1000, Table Z–2, of the agency's General Industry Standards, will be modified. (PELs for cadmium fume are 0.1 mg/m³ TWA and 0.3 mg/m³ ceiling, and for cadmium dust 0.2 mg/m³ TWA and 0.6 mg/m³ ceiling). The Mine Safety and Health Administration has jurisdiction over metallic mines and, therefore, will be concerned with this regulation.

External: The U.S. Department of Defense would be impacted by the standard because cadmium has many applications in defense operations and programs.

This regulation is also of great concern to other government agencies including the Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Department of Agriculture (USDA), and the Consumer Product Safety Commission (CPSC). Industrial discharges of cadmium that reach ambient air, drinking water supplies, and, subsequently, food chains, are hazardous to humans and the environment.

EPA's Office of Research and Development prepared a health effects assessment of the air pollution potential of cadmium. The health effects study assesses the contribution of air, water, and food to determine the total body burden from cadmium. The EPA Office of Solid Waste used the report to establish proposed criteria for the use of solid waste containing cadmium on agricultural land. These criteria are intended to prevent increased exposure to cadmium in the food chain. EPA and FDA coordinated the development of the food chain criteria.

Active Government Collaboration

Information-sharing activities with the National Institute for Occupational Safety and Health, Consumer Product Safety Commission, Department of Agriculture, and Environmental Protection Agency are underway.

Timetable

NPRM—winter 1980
Regulatory Analysis—winter 1980, if required
Public hearing—following NPRM
Final Rule—to be determined
Final Rule Effective—to be determined

Available Documents

Request for Information on Cadmium—42 FR 5434, January 28, 1977
"Criteria for a Recommended Standard . . . Occupational Exposure to Cadmium" (NIOSH–HEW, 1976)

Public docket of the record of rulemaking, including the comments received in response to the Request for Information on Cadmium (OSHA Docket No. H–057)

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S–6212, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210. There is usually a fee charged for copies of these documents.

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DOL–OSHA

Standard for Occupational Exposure to Chromium (29 CFR 1910.1000, Table Z–1*)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) views this regulation as necessary to protect workers from the carcinogenic risks and other health effects associated with exposure to chromium and chromium compounds. A relatively large proportion of the work force is exposed to chromium compounds. The excessive risk of lung cancer observed at exposure levels near the current OSHA permissible exposure limit (PEL) and the upper respiratory tract irritation observed at exposure levels below the OSHA PEL demonstrate the urgent need for a reduction in the levels of occupational exposure.

Statement of Problem

As many as 8 million employees may be exposed to chromium and its compounds. In 1975, the National Institute for Occupational Safety and Health (NIOSH) submitted a criteria document to OSHA which recommended reducing the current OSHA PELs for "carcinogenic" hexavalent chromium compounds to 1 microgram (μg) per cubic meter as an 8-hour time-weighted average. (The current OSHA PEL for hexavalent chromium compounds is 100 ug per cubic meter.) Preliminary data indicate that over 135,000 workers are exposed to levels of hexavalent chromium greater than 10 ug per cubic meter as an 8-hour time-weighted average.

Chromium workers' risks include a wide variety of adverse health effects that are attributable to exposure to chromium and chromium compounds. There is evidence of dermatological effects (including skin ulceration and allergic contact dermatitis), respiratory effects (including perforation of the nasal membrane, nasal discharge, irritation of the throat, and respiratory spasms), and systemic effects (including liver damage, kidney abnormalities, erosion and discoloration of the teeth, perforation of the eardrum, and abdominal pain).

OSHA is investigating the numerous epidemiologic studies which indicate a large and significantly increased lung cancer risk for workers in the chromium chemical production industry. Additional studies suggest that a cancer hazard may also be present in the chromate pigment industry, the chromium plating industry, the ferrochromium alloy production industry, and chromate spray-painting operations. Experimental results in animals also suggest that chromium compounds are potential human carcinogens.

OSHA is developing a proposal to regulate occupational exposure to chromium and other chromium compounds as determined by available health and technological/economic feasibility data. The regulation would set a permissible exposure limit (PEL) for chromium, and affected industries would be permitted to implement engineering and work practice controls of their choice to comply with this PEL in the most cost-effective manner. The regulation may also require the employer to perform medical surveillance of exposed employees, periodic monitoring of the workplace environment, and employee training and education. Failure of OSHA to regulate expeditiously will prolong the occurrence of the incidence of diseases, disability, and mortality associated with exposures to chromium.

Alternatives Under Consideration

The agency has under consideration a range of alternative performance PELs, including:

(A) a 10 μg/m³ eight-hour time-weighted average (TWA) with a 25 μg/m³ ceiling above which no employee may be exposed,

(B) 1 μg/m³ TWA with a 10 μg/m³ ceiling, and

(C) the lowest technologically feasible TWA with no ceiling or with an appropriate ceiling (such as 10, 25, or 50 μg/m³). Other provisions requiring

engineering controls, work practices, and hygienic facilities may supplement the PEL. The agency has asked for public comment on other possible alternatives for limiting workers' exposures to chromium.

Studies indicate that workers exposed to industrial processes involving exposure to chromium compounds have an increased risk of lung cancer. Some scientists argue that all chromium compounds should be presumed to be carcinogenic and regulated as such. Others believe that carcinogenic and noncarcinogenic forms of chromium can be identified, and that OSHA should develop separate standards. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for chromium on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where the potential for exposure exists.

Summary of Benefits

Sectors Affected: Industries in which workers are exposed to chromium: workers in those industries; manufacturing of chromium substitutes and substitute products; and the general public.

This regulation will affect industries in the following Standard Industrial Classifications: 2819 (Chromates and Bichromates), 2816 (Pigments), 2851 (Paints), 2865 (Plastic colorants), 2893 (Printing inks), 2899 (Plating compounds), 2899 (Water treatment compounds), 2865 (Dyes), 2819 (Catalysts), 311 (Leather tanning and finishing), 3479 (Spray painting), 3471 (Electroplating), 1799 and 7692 (Welding), 3339 (Primary chromium refining), 1721 (Painting traffic lanes), 5194 (Tobacco manufacturing), 3312 (Stainless steel), and 5133 (Textiles).

Other than studies which indicate a potential cancer hazard among spray painters and chromium platers, OSHA has not yet collected information on the risks workers may face in industries which use chromium products. (Those industry segments where the product is not physically or chemically changed (e.g., involving no grinding, drilling, polishing, or heating of the material) will probably not be covered by the proposed regulation.) Some of the substitutes for chromium compounds, including lead, cadmium, and organic pigments, may also be potential hazards. Relative toxicities of substitutes are not known.

Risks to the general public are not well-documented. EPA regulations call for no visible emissions from stainless steel plants and require reporting of chromium effluents.

At this time, no estimates have been made of the magnitude of occupational disease attributable to exposure to chromium. The direct benefit of reducing occupational exposure to chromium, however, is a corresponding reduction in the number of cases of chromium-induced malignant and nonmalignant diseases, prolonged life expectancy for workers, and an increase in the lifetime earnings of workers. While a reduction in the acute health effects will be realized as soon as compliance is achieved, there will be a lag in the reduction of cancer incidence because workers will continue to develop cancer from past exposures to chromium compounds because of the long latency period between exposure to chromium and the onset of clinical lung cancer. However, after this initial period of adjustment, the benefits of reduced exposure levels will continue to accrue over time.

OSHA also expects indirect benefits to occur as a result of controlling chromium exposures. Medical care costs for employees (including hospitalization and physician services) will be reduced to the extent that these costs are borne by public support programs such as Medicaid, Medicare, and workers' compensation. Another area where benefits can be expected is in the disbursement of social security disability payments and welfare payments to disabled workers and their families. Also, reduced absenteeism and a cleaner workplace may contribute to productivity gains. In addition, affected industries are likely to develop technological innovations that may improve production processes in general.

OSHA will gather more data on the benefits of the regulatory alternatives prior to proposal of this regulation. No information is available yet on the benefits to firms that manufacture chemical substitutes and/or control technology.

Summary of Costs

Sectors Affected: Industries in which workers are exposed to chromium.

Those industries listed in the summary of benefits section and any others that may be identified after further study will incur compliance costs as a result of this regulation.

The chart below compares initial estimates in 1976 dollars of the direct costs of compliance with the various PELs (for hexavalent chromium only.) The total annualized cost estimate is the sum of the annual operating costs and the annualized capital costs. Annualized capital costs were calculated with a standard capital recovery formula using an 18 percent rate of return and a 10-year average life of equipment.

Preliminary Cost Estimates

In millions of 1976 dollars

Alternative	Capital	Annual Operating	Total Annualized
(A)	104	63	85
(B)	196	120	160
(C)	194	63	103

These direct costs of compliance may result in several indirect effects. Analysis to date indicates that the chromate pigment production and use (paints, dyes, inks) industries will incur larger costs than other industrial sectors. Because there are competitive substitutes in this market, the demand for pigments containing chromium will probably decline. For other pigment applications, metal finishing uses, and manufacture of stainless steel, there are no available substitutes for chromium. In these cases, preliminary analysis indicates that compliance costs will be passed on to consumers. Negligible price changes are projected for chromate production, because small compliance costs will be spread over a large volume of production, resulting in very small price increases per pound. Compliance in the catalyst production industry is not expected to generate significant price changes because the cost of a catalyst is a very small portion of the cost of the final product. Negligible price changes are also projected for the textile mill users because of low compliance costs.

Minor changes in the number and size distribution of firms are likely to occur in pigment production, water treatment compound formulation, and chrome alloy welding. OSHA will also examine the proposed regulation's effects on employment and international trade.

The economic impact of regulating all chromium compounds as opposed to hexavalent forms is not presently known. OSHA will determine the additional costs of this action.

Related Regulations and Actions

Internal: The OSHA Air Contaminants Standards found at 29 CFR 1910.1000, Table Z-2, of the Agency's General Industry Standards, specify a maximum PEL of one milligram per 10 cubic meters of air as chromic acid and chromates. This is the equivalent of 100 $\mu g/m^3$ and is

calculated as an 8-hour TWA. Table Z–1 specifies a ceiling exposure value of 0.1 milligram per cubic meter with a notation to avoid skin contact for tert-Butyl chromate as chromium trioxide. Table Z–1 also specifies a PEL of 0.5 mg/m^3 for soluble chromic and chromous salts and 1 mg/m^3 for metallic chromium and insoluble salts.

External: The Environmental Protection Agency (EPA) has issued the following regulations for the control of chromium pollution: (1) .05 mg/liter in drinking water, (2) 4 mg/liter effluent guideline in wood preserving, and (3) 1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) in the manufacture of chromium metal and ferroalloys, and 0.1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) as hexavalent chromium. In addition, EPA has proposed the following regulations: (1) 0.5 mg/liter in leachate from hazardous wastes, and (2) 4.2 mg/liter (daily maximum) and 1.6 mg/liter (30 day average) in electroplating effluents.

Active Government Collaboration

We are sharing information with the National Institute for Occupational Safety and Health and the Environmental Protection Agency.

Timetable

NPRM—fall 1980.
Regulatory analysis—fall 1980, if required.
Final Rule—summer 1981.
Final Rule effective—to be determined

Available Documents

ANPRM—41 FR 18869, May 7, 1976.

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI)," (NIOSH–HEW, 1975).

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromic Acid," (NIOSH–HEW, 1973).

Public docket of the record of rulemaking on the 1975 NPRM–Docket H–033

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S–6212, Third Street and Constitution Avenue, N.W. Washington, D.C. 20210. A fee is usually charged for copies of these documents.

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DOL–OSHA

Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities (29 CFR 1910)

Legal Authority

The Occupational Safety and Health Act, 29 U.S.C. 655; Secretary of Labor's Order 8–76 (41 FR 25059), 29 CFR Part 1911

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this rulemaking is important because we anticipate that this regulation will cause significant economic costs to the affected industries.

Statement of Problem

Workers in the grain handling industry are exposed to safety and health hazards associated with fires and explosions as well as organic dust, fungicides, and biologic growths. For example, in late 1977 and early 1978, fires and explosions that occurred in grain handling facilities killed more than 60 persons and injured numerous others. OSHA responded to these disasters by issuing a grain elevator hazard alert for the purpose of providing industry with recommended safety and health guidelines. OSHA also contracted with the National Academy of Sciences to study the causes of these fires and explosions to better understand the problem and to seek recommendations.

OSHA has also increased the number of inspections directed at recognized hazards within grain handling facilities, but enforcement personnel have encountered problems in applying existing OSHA standards to control the hazards in grain handling facilities because present standards do not address the most serious safety and health problems. Enforcement personnel believe that a gap exists because of the lack of specific OSHA standards concerning grain handling facilities. Interested employee groups have also requested OSHA to develop grain handling facilities standards.

OSHA believes that continued absence of regulation will not be in the best interest of employers, employees, or the country. Although the annual number of fires and explosions involving grain elevators is highly variable, there has been no indication of any decrease in the number of explosions occurring in grain handling facilities because of voluntary measures, such as the grain elevator hazard alert. On the contrary, there seems to be a continuation of past experience even after the efforts put forth to inform affected groups of the hazards.

During 1979, there were 20 grain handling facilities that suffered serious fires or explosions in the United States, resulting in devastation, several deaths, and more than 15 injuries. Already in 1980 there have been at least eight explosions or serious fires that caused several deaths and serious injuries.

In addition there is no specific OSHA health standard protecting the 225,000 grain elevator workers and the additional 450,000 grain processing workers from the health hazards particular to grain handling facilities. These hazards include exposure to grain dust, pesticides, and the biological agents associated with grain. Exposures to these substances can result in various acute and chronic health effects including allergies, dermatitis, respiratory disease, and cancer.

The present regulations that apply to these health hazards are incomplete. For example, OSHA currently regulates exposures to dust (permissible exposure level of 15 mg/m^3) under 29 CFR 1910.1000, Table Z–3. These regulations for "inert" or "nuisance dust," however, are not specific for organic dust, such as grain dust, nor do they include provisions for exposure monitoring, personal protective equipment, or other control measures. Studies indicate that exposure to grain dust also exposes workers to toxicological hazards from fumigants used to protect the grain.

OSHA also has permissible exposure limits for some 160 substances which may be used as pesticides (29 CFR 1910.1000, Tables Z–1 and Z–2). However, these standards cover only a small percentage of the total number of pesticides manufactured and formulated in this country. In addition, they establish only airborne concentration limits and general control requirements for the 160 pesticides and do not address other protective measures, such as exposure monitoring, personal protective equipment, and medical surveillance. Thus, the existing standards are not comprehensive enough to fully control worker exposure to the health hazards of pesticides in grain handling operations.

OSHA does not currently regulate occupational exposures to harmful fungi, molds, and bacteria, or their toxins.

Alternatives Under Consideration

Safety Options: In addition to voluntary measures which have already been attempted, there are at least three options that can be considered.

The first option is to promulgate specific standards for the grain handling industry. This approach would simplify

enforcement activities, and could minimize the possibility of fires and explosions in grain handling facilities. The standard would address new as well as existing facilities in a comprehensive manner. The major disadvantage would be the cost impact on the grain handling facility operators in modifying their plants.

The second option is to develop specific standards for new grain handling facilities but include special, less stringent standards for existing facilities. This option would permit due consideration of the economic burden on older facilities by not requiring these facilities to meet the more stringent standards designed for new facilities.

The third option is to develop specific standards for new and major rehabilitated facilities with an exemption for all existing facilities. This approach would be similar to that taken by the Environmental Protection Agency in their regulation of pollutants for grain handling facilities. However, this option would only partially close the gap in current OSHA standards. It would complicate enforcement activities, and the major problems in older facilities would go unchecked.

Health Options: We are considering two major regulatory approaches for controlling hazards in grain handling facilities:

The first option is a single total grain dust standard low enough to control the health hazards of grain dust, pesticides, and biological agents. This approach would include provisions to establish a permissible exposure limit for grain dust, provide proper work practice procedures for working with fumigated grain, and require controls to minimize exposures to grain dust and biological agents as well as pesticides.

The second option is three separate general industry standards to individually regulate grain dust, pesticides, and biological agents. Under this alternative we could develop a specific grain dust standard or a more general organic dust standard. Similarly, we could develop a standard to provide protection against employee exposure to pesticides and another to address the biologically derived hazardous material. (Although OSHA is developing a generic standard for exposure to pesticides, the anticipated scope of the regulation covers only the manufacture and formulation of pesticides. We are currently not considering industry-wide regulation for specific biological hazards.)

Summary of Benefits

Sectors Affected: Grain handling facilities; workers in these facilities; and grain producers, shippers, and users.

The proposed regulation will affect the following industries: cash grains (SIC 011), crop preparation for market (SIC 0723), grain mill products (SIC 204); bakery products (SIC 205; distilled liquor, except brandy (SIC 2085); trucking, local and long distance (SIC 421); farm product warehousing and storage (SIC 4221); deep sea domestic transportation (SIC 442, 443 and 444); and grain wholesale (SIC 5153). Grain handling facilities are scattered throughout the grain-producing states, with major bulk terminals at proximate domestic and export distribution points along the Great Lakes and on the east, west, and gulf coasts.

This proposal would reduce explosions and fires in the Nation's 15,000 grain handling facilities, which continue to plague the industry despite substantial industry motivation to adopt preventive measures. During 1979, 20 major fires and explosions resulted in 15 injuries and several deaths, and one explosion in late 1977 caused 36 deaths. In such instances, property losses often exceed $25 million. Insurance premiums are high, and coverage is sometimes difficult to obtain. In addition, increasing evidence indicates the potential for serious health hazards resulting from worker exposure to grain dust as well as toxic fumigants and biologic agents in the dust.

Catastrophic explosions occur at a rate of more than five per year and have ranged as high as 15 within a single year. Under such circumstances, secondary economic losses to producers and shippers could easily result in annual direct and indirect property losses exceeding $200 million. Insufficient data presently make it difficult to estimate medical care costs, lost income, and other substantial personal losses in these cases, but these costs are also very substantial, as reflected by numerous liability case settlements. It is apparent that workers and their employers will benefit directly from any reduction in workplace hazards that is achieved by regulatory action. In fact, most affected parties seem to agree that action is needed.

Grain producers and consumers will benefit indirectly from the reduction in economic losses that currently are pushed back to the producers through lower grain prices or higher storage fees, or pushed forward to the consumer through higher prices. Also dependents of workers and local communities will benefit indirectly from any reduction in grain industry accidents, which are frequently catastrophic to local communities.

Summary of Costs

Sectors Affected: Grain handling facilities, and OSHA.

OSHA has not yet initiated studies to estimate direct costs, but anticipates that this proposal will be a "major action under E.O. 12044." Ventilation equipment will be expensive, but probably will be necessary to reduce explosion and fire hazards throughout the grain facilities, and to reduce health hazards at employee work stations. We will require grain-monitoring equipment and associated recordkeeping, along with preventive maintenance beyond that presently performed. These direct costs will be offset to some extent by reduced losses.

Under application of any final regulation, older facilities may bear a disproportionately higher share of the compliance costs because they lack the safety provisions that are designed into newer facilities, and because retrofitting is typically more expensive. Geographic impacts appear to be evenly spread among the grainhandling facilities.

Employers will incur indirect overhead and administrative costs. Additionally, some share of OSHA resources will be diverted from other standards development and enforcement activities. These indirect costs will be incurred by any program that can effectively control grain handling hazards.

Related Regulations and Actions.

Internal: None.

External: The Department of Agriculture (USDA), in particular, the Federal Grain Inspection Service (FGIS), enforces the United States Grain Standards. The Environmental Protection Agency (EPA) regulates the application of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that EPA promulgated in 1972. The National Institute for Occupational Safety and Health and the Department of Energy are involved in grain dust research. The Council of Wage and Price Stability and the Office of Management and Budget will want to take active parts in the economic analysis that will be required for the regulation.

Active Government Collaboration

OSHA has established working relationships with the Environmental Protection Agency to determine EPA's jurisdiction regarding pesticides. We have held meetings with USDA Federal Grain Inspection Service personnel to obtain health-hazard information

regarding exposure monitoring of the Federal Grain inspectors. The National Institute for Occupational Safety and Health is providing data from in-house and conttract studies on the health hazards of grain handling. Both the USDA and NIOSH are participating in OSHA's informal public meetings scheduled during the spring of 1980.

Through the National Academy of Sciences panel on grain elevator explosions, criteria development for this rulemaking effort is being interfaced with EPA, the U.S. Coast Guard (USCG,) USDA, and NIOSH.

Timetable

ANPRM—fall 1980.
NPRM—to be determined.
Regulatory analysis—to be determined.

Available Documents

"Occupational Safety and Health Hazards in Grain Handling Facilities Request for Comments and Information and Notice of Informal Public Meetings," 45 FR 10732, February 15, 1980

Public docket of the rulemaking record, Docket H–117. These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flammability Standards for Crewmember Uniforms (14 CFR Part 121)

Legal Authority

Department of Transportation Act, § 6(c), 49 U.S.C. § 1655(c); Federal Aviation Act of 1958, as amended, §§ 313(a), 601, and 604, 49 U.S.C. §§ 1354(a), 1421, and 1424; 14 CFR Part 121.

Reason for Including This Entry

The Federal Aviation Administration (FAA) thinks these proposed rules are important because they will impose a major increase in costs or prices on the airline industry.

Statement of Problem

The FAA has found that many uniform items worn by flight crewmembers are highly flammable when exposed to fire and other sources of ignition. Tests performed by the National Bureau of Standards of the Department of Commerce under contract to FAA established that fabrics presently used in making uniforms for crewmembers would not resist the effects of flame and heat flux in survivable cabin fires, and could prevent crewmembers from helping passengers in such situations. Among other actions, the FAA is considering establishing standards of flammability and resistance to heat flux for materials used in crewmember uniforms.

Alternatives Under Consideration

Possible alternatives to establishing flammability standards for crewmembers are:

(A) No regulation; do not require uniforms worn by crewmembers to meet any flammability standard. Current materials used to make uniforms provide maximum comfort, a range of styling, and are easily cleaned. However, they are constructed of conventional fabric that is flammable and may provide inadequate protection from radiant heat in cabin fires which people could survive if they wore adequate protective clothing. Also, without protective clothing, crewmembers may be incapable of performing necessary functions in certain emergencies.

(B) Require crewmembers to put on special garments such as firemen wear in case of a fire. This option was fully explored and reported in FAA Report No. FAA–RD–77–18. Although the garment provides maximum protection from flame and radiant heat, it is very expensive and difficult to put on.

(C) Require that crewmember uniforms meet a standard similar to the current children's sleepwear standards. This is a performance standard that requires that materials used for children's sleepwear resist ignition when exposed to flame, and self-extinguish rapidly. Materials which satisfy the children's sleepwear standard must be flame-resistant, but need not protect the wearer from radiant heat transferred through clothing.

(D) Require crewmember uniforms to meet a test measuring resistance to ignition and ability to self-extinguish, as well as a standard designed to protect the wearer from injury from the transfer of radiant heat through clothing.

We regard Alternative (D) as the most desirable alternative, because crewmembers must be adequately protected from both flame and radiant heat injury if they are to perform their duties adequately in an emergency.

Currently, technology in the textile industry permits the establishment of a standard that protects wearers from both flame and radiant heat. Most fabrics can be treated to increase their protective qualities. In addition, fire-retardant wool and cotton are available in a wide range of colors and weights. These fire-retardant fabrics are woven of both natural and synthetic fire-retardant fibers to maximize wearability and protection. Synthetic fabrics such as Nomex are available in a variety of weights. Although these synthetics provide the greatest protection to the wearer, their range is somewhat limited because of problems with colorfastness. In the past, Nomex has been used primarily by fire and police agencies, and color choice was not a problem. If demand for more variety increases, a wider range of colors may be developed.

Although certain fabrics such as polyester have limited fire-retardant qualities, other fabrics of similar weight and purpose may be substituted. Fire-retardant fabrics are available that are comparable to conventional fabrics with respect to durability, color choice, style and tailoring capability, and fabric-weight range. The fire retardant properties of some fabrics can be retained through the useful life of the garment. For other fabrics, it could last through at least 50 wash/cleaning cycles.

Summary of Benefits

Sectors Affected: Air carrier flight crewmembers and passengers.

The benefits expected from the proposed flammability standards would be increased safety for crewmembers and passengers. Flightcrews would be safer in case of fire, which would increase safety for the traveling public.

Summary of Costs

Sectors Affected: Manufacturing of textile mill products, and apparel and other textile products; the air transportation industry; and air passengers.

The cost per uniform would increase, causing an economic impact on the user

or purchaser. The U.S. textile and clothing industry would be affected by the economic impact of producing new materials and clothing made from these materials. The air carrier industry would bear the cost, possibly through increased airfare, which would directly affect air passengers. No specific cost information is available at this time. We will include it in the Regulatory Analysis.

Related Regulations and Actions

Internal: Parts 121 and 135 of the Federal Aviation Regulations and FAA Report Nos. FAA–RD–75–176 and FAA–RD–77–18.

External: Federal Rule, Flammability Standard for Children's Sleepwear, 16 CFR 1616.5(a)(b)(c)(i)(ii). State and local governments have established clothing standards for some hazardous professions, such as those for firemen.

Active Government Collaboration

The National Transportation Safety Board's comments on ANPRM 75–13 recommended that the scope be expanded to include clothing of all crewmembers, to give them the same protection as flight attendants. The National Bureau of Standards developed the technical basis for the flammability standard.

Timetable

The FAA is proposing standards to be listed in appendices to 14 CFR Part 121. The following are action and future action dates:

NPRM—July 1980
Comment Period—for hearing, June 6, 1980; for NPRM, 90 to 120 days after we issue the NPRM
Draft Regulatory Analysis—will accompany NPRM
Final Rule—pending
Effective Date of Regulation—36 months after we issue amendment

Available Documents

ANPRM 75–13, issued March 13, 1975, is available from the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rule Docket (AGC–24), Docket No. 14451, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

You can get copies of FAA reports entitled "Development of a Proposed Flammability Standard for Commercial Transport Flight Attendant Uniforms," Report No. FAA–RD–75–176, and "Development of a Fire Protective Overgarment for Use by Air Carrier Flight Attendants," Report No. FAA–RD–77–18, from the National Technical Information Service, Springfield, VA 22161.

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DOT-FEDERAL HIGHWAY ADMINISTRATION

Hours of Service of Drivers (49 CFR Part 395*)

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304. Department of Transportation Act, § 3, 49 U.S.C. § 1655.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because any change in the hours of service regulations that restrict when a driver may work could have a major economic impact on both the trucking industry and consumers, causing considerable controversy.

Statement of Problem

The FHWA is considering revising the regulations that limit the driving hours and prescribe rest periods for drivers of vehicles engaged in interstate or foreign commerce. It is taking this action in response to: (1) numerous requests from public interest groups, labor organizations, motor carriers, and individual drivers; (2) research studies showing driver fatigue to be a cause in commercial motor vehicle accidents; and (3) a 1974 decision of a Federal District Court involving a suit brought by PROD, Inc., an interest group representing some commercial truck drivers who sought judicial review of the FHWA's failure to initiate rulemaking proceedings on the hours of service regulations. The suit was dismissed by the court to allow the FHWA to begin rulemaking. The dismissal allowed PROD to reinstate the suit in 18 months if the FHWA had failed to initiate rulemaking.

The objective of this regulation is to increase the overall safety of the Nation's highways through the revision of current regulations governing the hours of service for drivers of commercial trucks and buses engaged in interstate or foreign commerce.

The FHWA currently limits, by regulation, the hours of service for drivers, as part of its overall responsibility for the safe operation of motor carriers. Research studies dating from the mid–1930s have indicated that fatigue causes narrowing of vision and inattention, which make drivers miss signs and signals, and results in highway accidents. In 1978, more than 34,000 commercial motor vehicle accidents were reported to the Bureau of Motor Carrier Safety; many of these were single-vehicle and other accidents that involved running off the road without apparent cause. The FHWA suspects that fatigue was a factor in many of these cases.

If we do not take regulatory action, we may be unable to prevent fatigued drivers from traveling the Nation's highways, thereby allowing a potentially dangerous situation to continue.

Alternatives Under Consideration

Some of the alternatives to current regulations that FHWA is studying include longer off-duty periods for drivers between driving or work assignments and mandatory rest periods during long driving assignments. FHWA is also considering simplifying the methods drivers use to record hours of service, in order to reduce the paperwork burden on both the driver and the motor carrier companies. In addition, the FHWA is considering requirements related to the following: (1) maximum weekly work hours, (2) maximum on-duty time, (3) minimum off-duty time, (4) driving hours or mileage limitations, (5) driver relief periods, (6) elimination of intermittent off-duty periods which extend the overall length of the work day, (7) mandatory meal periods, and (8) special provisions for night-driving assignments.

Providing simpler methods for recording hours of service would eliminate the industrywide complaints about the drivers' logs, and may increase compliance. The other proposed regulatory actions would provide stricter controls over drivers' work habits, but they would not necessarily increase compliance.

Summary of Benefits

Sectors Affected: Users of highways, including bus drivers, truckers, and the general public; the interstate trucking industry; interstate bus lines and bus charter services; shippers and users of goods transported by truck or bus; and passengers and tour groups that normally travel by bus.

The FHWA believes that revisions to regulations on the hours of service for drivers would help reduce driver fatigue and ensure alertness, thereby eliminating the risk of fatigue-related accidents. This, in turn, would increase the overall safety of the Nation's highways.

The FHWA expects that the revised regulation would have economic benefits, because there would be fewer fatalities and injuries and less property damage caused by highway accidents. In addition, motor carriers' operating expenses would be reduced because of fewer accidents, lower insurance premiums, and reduced compensation payments. The FHWA does not have an estimate of the savings that would occur as a result of these regulations. Many factors impair drivers' alertness. The FHWA cannot distinguish those accidents that would be prevented by changing these regulations from those that would be prevented by taking other actions.

Summary of Costs

Sectors Affected: Interstate trucking industry; interstate bus lines and bus charter services; interstate truckers and bus drivers; shippers and users of goods transported by truck or bus; and passengers and tour groups that normally travel by bus.

The FHWA expects that the costs resulting from these regulations may be high. Revising the hours of service regulations to restrict the hours that a driver may work could increase payroll expenses for motor carriers because they may need additional drivers. This could increase other operating expenses for motor carriers, resulting in increased costs to passengers and shippers for truck and bus transportation and, eventually, for goods consumed. The initial rough estimate of increases in expenses to motor carriers exceeds $100 million annually. This estimate, however, does not consider any offsetting benefits, such as reduced vehicle downtime, minimized delays in cargo delivery, and lower insurance premiums that could result from fewer accidents.

Related Regulations and Actions

Internal: Current FHWA regulations restrict hours of service of drivers (49 CFR Part 395).

The FHWA has initiated a test program, beginning May 1, 1980, to evaluate alternatives to drivers' daily logs.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—November 1980 Draft Regulatory Analysis—will accompany NPRM
Final Rule—March 1981

Available Documents

ANPRM—41 FR 6275, February 13, 1976

Second ANPRM—43 FR 21905, May 22, 1978

Bureau of Motor Carrier Safety Docket MC–70–1

Sixteen reports or professional journal articles are referenced in the second ANPRM, 43 FR 21905, May 22, 1978

"PROD, Inc., et al v. Brinegar," Civil Action 2098–73, U.S. District Court, District of Columbia (May 20, 1974). This is a decision in which the District Court dismissed, without prejudice to renew in 18 months, a suit brought against DOT by PROD, Inc., a group representing professional drivers. The suit sought judicial review of the FHWA's failure to institute rulemaking proceedings on "hours of service."

"Effects of Hours of Service, Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue," October 1978, available through the National Technical Information Service, Springfield, VA 22161 (DOT HS–803799)

Bureau of Motor Carrier Safety dockets are available at the Federal Highway Administration, Room 3402, 400 Seventh Street, S.W., Washington, D.C. 20590.

Agency Contact

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DOT–FHWA

Minimum Cab Space Dimensions (49 CFR Part 393)

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304. Department of Transportation Act, 49 U.S.C. § 1655.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because it could necessitate redesigning the cab portion of a truck to make it larger for safety purposes. This may reduce the amount of cargo space available and possibly increase costs for the trucking industry.

Statement of Problem

All States and the District of Columbia impose restrictions on total vehicle length for trucks. Most of these restrictions range from 55 to 65 feet; 75 feet is the maximum length that any State allows. However, there are no regulations for the minimum size of the cab portion of trucks. Thus, drivers of heavy commercial vehicles must sometimes drive trucks with cab dimensions that make them uncomfortable, thereby increasing fatigue and the likelihood of an accident. The extent of the problem is unknown.

FHWA's preliminary investigations suggest that the older truck cabs, whose dimensions may cause problems, are being phased out. However, reports from drivers' organizations have stated that vehicle manufacturers, in response to customer requests, are manufacturing new trucks with smaller cab dimensions in order to enlarge the space available for cargo. Reducing the size of the cab can make the driver uncomfortable and the engine less accessible for inspection. It can also place excessive weight on the steering axle, making the truck harder to steer and overloading the front tires, which can cause flats. Some studies have linked highway accidents with these conditions.

If the size of the cab actually increases accident rates by causing driver fatigue, failure to require adequate cab size through regulation could result in continued accidents.

Alternatives Under Consideration

The alternatives in this case are to regulate or not to regulate. (Any regulations would apply only to new trucks.) If, in fact, there is a serious safety problem related to cab size, a possible alternative to rulemaking is to propose voluntary model advisory standards for minimum cab space dimensions. The National Highway Safety Advisory Committee Report of March 1977 recommended this approach.

Within the rulemaking process, certain factors should be considered. One is whether certain types of weight classes of vehicles should be exempted from the regulations. Another is whether to restrict manufacturers from placing cabs over engines. A third is the safety of different length cabs matched with different length trailers.

If the FHWA either suggests voluntary standards or pursues the regulatory route, the driver would have a better driving environment, which would lead to safer vehicle operation. Voluntary standards would give the industry an opportunity to comply without the need for Federal regulation in this area. If the industry failed to comply, regulation would be necessary, with the associated disadvantages of additional recordkeeping requirements and

reporting burdens. Any regulation would have to take into account the factors described above. The obvious advantage of the regulation is that is would ensure compliance.

Summary of Benefits

Sectors Affected: Users of highways, including the interstate trucking industry, truckers, and the general public.

The benefit of this regulatory action would be to reduce wheel and axle overloading and protect the driver's work place, thereby reducing the risk of accidents to all highway users. FHWA does not know at this time what dollar savings to expect as a result of reduced accident involvement or avoidance. The percentage of accidents that would be avoided through regulatory action is unknown, but the risk would be reduced.

Summary of Costs

Sectors Affected: Manufacturing of truck cabs; the interstate trucking industry; and shippers and users of goods transported by truck.

These regulations may necessitate substantially redesigning the cab portion of some trucks. Initially, the manufacturers would bear the financial burden of accomplishing this redesign and retooling. This would lead to an increase in the cost of trucks to users. Unless the States change the allowable overall length of a tractor/semi-trailer cargo space, this could result in smaller loads and the need for additional vehicles and drivers to ship the same amount of goods. All of these factors could increase shipping costs and eventually result in consumer price increases for all items carried by truck. Specific estimates of the costs are not available at this time.

Related Regulations and Actions

Internal: None.
External: Fifty States and the District of Columbia have regulations limiting overall vehicle length.

Active Government Collaboration

None

Timetable

NPRM—September 1980
Draft Regulatory Analysis—will accompany NPRM

Available Documents

ANPRM—43 FR 6273, February 14, 1978
Bureau of Motor Carrier Safety Docket MC–79
"Interior Cab Dimensions of Heavy Duty Vehicles," February 1980, in the Bureau of Motor Carrier Safety Docket MC–79
"Driver Profile and Body (Anthropometric) Data on Interstate Truck Driver," April 1977, available through the National Technical Information Service, Springfield, VA 22161 (PB273514/AS)
"A Study of Heat, Noise, and Vibration in Relation to Driver Performance and Physiological Status," October 1974, available through the National Technical Information Service, Springfield, VA 22161 (PB238829)
"Cause and Control of Commercial Vehicle Accidents Involving Front Tire Failure," August 1975, available through the National Technical Information Service, Springfield, VA 22161 (PB245863)
Bureau of Motor Carrier Safety dockets are available at the Federal Highway Administration, Room 3402, 400 Seventh Street, S.W. Washington, D.C. 20590.

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DOT—FEDERAL RAILROAD ADMINISTRATION

Alerting Lights Display—Locomotives (49 CFR Part 222)

Legal Authority

Federal Railroad Safety Act of 1970, § 202(a), 45 U.S.C. § 431(a); Locomotive Inspection Act, 45 U.S.C. § 22 *et seq.*

Reason for Including This Entry

The Federal Railroad Administration (FRA) has included this entry because of the degree of controversy the ANPRM and the NPRM evoked, and because of the cost impact on the railroad industry.

Statement of Problem

Each year hundreds of persons are killed and thousands are injured in accidents at rail-highway grade crossings (the intersections of railroad tracks and highways at the same level). The National Grade Crossing Inventory maintained by the Department of Transportation (DOT) indicates the following number of grade crossings: 217,068 public, 140,653 private, and 3,609 pedestrian. During the period from 1968 to 1978, there was an annual average of 1,232 fatalities and 3,803 injuries resulting from accidents of all types at rail-highway grade crossings. In 1978, the most current year for which the FRA has analyzed data, there was a total of 12,435 crossing accidents of all types resulting in 1,021 fatalities and 4,256 injuries. The majority of accidents, injuries, and fatalities occurred at public crossings.

To reduce the number of these accidents, the FRA is proposing to require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. FRA is taking this action at the present time in response to: (1) congressional interest as reflected in legislation proposed during the past several sessions to require strobe lights on locomotives, and (2) technological advances in types of lighting devices. FRA believes that corrective action is necessary because the probable consequence of inaction would be a continuation of the current accident level.

Alternatives Under Consideration

FRA has considered several alternatives to the status quo.

The first option, and the one that FRA is proposing, would require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. The lights would provide additional warning to motorists who are approaching public grade crossings. A specific requirement would result in a uniform system of warning lights that motorists would associate with the presence of a railroad locomotive. One possible disadvantage is that the locomotive engineer may be distracted by the reflection caused by a pulsating light.

A second alternative would be to rely on voluntary action by the railroads to install and display alerting lights on railroad locomotives. In an attempt to stimulate such voluntary action, FRA would use existing studies and data indicating that highly conspicuous alerting lights reduce accidents. There are drawbacks to this alternative. First, many railroads probably would not install alerting lights. Many railroads question the effectiveness of the lights and others do not want to commit the necessary funds. If motorists are to associate alerting lights with the presence of a locomotive, the lighting system must be uniform. Second, lights with differing characteristics (color, location, flash rate, and intensity) might be installed on the locomotives. Again, uniformity of the lights used would improve the effectiveness of the system for motorists.

FRA also considered two other alternatives to determine the relative cost-effectiveness of alerting lights. One

alternative is to install active warning systems (lights, bells, and gates) at all public rail-highway grade crossings; the other is to eliminate all public crossings by separating public highways from rail lines (by overpasses and underpasses). These alternatives were less cost-effective than alerting lights and prohibitively expensive—in 1980 dollars, approximately $4 billion for active warning systems and $200 billion for grade separation.

FRA believes the first alternative is the most cost-effective and readily available overall approach. It would result in a uniform alerting device that motorists would associate with the presence of a locomotive. Active warning systems and grade separations will continue to be superior options, however, at specific high-risk crossings.

Summary of Benefits

Sectors Affected: Users of highways, and the railroad transportation industry.

The proposed rule would benefit the driving public because of the anticipated reduction in rail-highway grade crossing accidents, injuries, and fatalities. Accident reduction would also have a beneficial impact on the railroad industry by reducing the costs associated with rail-highway grade crossing accidents.

A study done for the FRA, "Analysis for NPRM—Strobe Lights on Locomotives" (from here on referred to as the Study), estimated that 124 fatalities, 566 injuries, and 1,414 accidents would be avoided each year if an alerting lights system using xenon strobe lights were employed. The Study estimated the total annual benefit to be $65 million, produced by the anticipated accident reduction. The net present value benefit in 1980 dollars, including all societal benefits, was estimated to be $432.6 million (with present value calculations based on a 20-year project evaluation and a 10-percent discount rate). The net present value benefit is the estimated dollar savings for the full 20-year period, after subtracting the costs involved, and calculating a discount to reflect the current value of future cost savings. The Study used actual and estimated cost figures for evaluation of fatalities, injuries, property damage, lost use of the rail line, and other costs. Moreover, the probable decrease in injuries and fatalities is of great importance in itself, in addition to the economic benefits.

Summary of Costs

Sectors Affected: The railroad industry; shippers and users of goods transported by rail; and rail passengers.

The railroad industry would absorb the initial cost of installing alerting lights. The proposed rule may affect shippers and the general public if the short-term costs to railroads exceeds the short-term benefits, because this could lead to rate increases.

The initial cost of installing alerting lights would be approximately $21 million over a 3-year period. This would be substantially offset by the anticipated reduction in costs related to grade crossing accidents. In the short term, costs might exceed benefits. According to the Study, however, the estimated present value cost in 1980 dollars of application and subsequent maintenance of an alerting lights system using xenon strobe lights is $32.3 million (based on a 20-year evaluation), while the economic impact is estimated to be a benefit of $61.4 million to the railroads.

If the short-term costs due to the capital expense of installing alerting lights exceed the short-term benefits, the financial condition of the railroad industry could necessitate recovering these costs through rate increases. (See, "A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.) Because the cost of installing alerting lights is only $21 million over a 3-year period, the effect on rates would not be large.

Related Regulations and Actions

Internal: FRA requires that railroads report all grade crossing accidents (49 CFR Part 225). FRA publishes each year a "Rail-Highway Grade Crossing Accident/Incident Bulletin." In addition, FRA has published and periodically updates the National Grade Crossing Inventory. Railroad locomotives are required by 49 CFR 230.231 to have a headlight. In addition, the Federal Highway Administration has authority under 23 U.S.C. § 130 to fund the construction costs of projects that eliminate hazards at rail-highway grade crossings.

External: None.

Active Government Collaboration

None

Timetable

Final Rule—July 1980

Available Documents

NPRM—44 FR 34982, June 18, 1979
ANPRM—43 FR 9324, March 7, 1978
Draft Regulatory Analysis
"A Prospectus for Change in the Freight Railroad Industry," October 1978, a preliminary report by the Secretary of Transportation
Analysis for NPRM—"Strobe Lights on Locomotives," Input Output Computer Services, Inc., May 26, 1978
DOT Transportation Systems Center Study—"Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," November 16, 1978

The above documents are available from the Agency Contact listed below.

Agency Contact

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DOT—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Heavy Duty Vehicle Brake Systems (49 CFR Parts 571.105* and 571.121*)

Legal Authority

National Traffic and Motor Vehicle Safety Act, § 103, 15 U.S.C. § 1392.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks this rule is important because of the high level of public and congressional interest.

Statement of Problem

Various Federal safety standards apply to truck, bus, and trailer brake systems (Federal Motor Vehicle Safety Standards No. 106, "Brake Hoses," No. 116, "Brake Fluids," and No. 121, "Air Brake Systems"). Although these standards have improved heavy truck braking performance considerably, problems with braking systems remain, and heavy truck accident rates are increasing. NHTSA is examining the long-range issues related to braking systems for trucks, buses, and tractor-trailers.

The number of people killed while riding in heavy trucks increased from 847 in 1975 to 1,248 in 1978—an increase of 47 percent. In addition, the number of deaths involving automobiles and heavy trucks increased from 2,086 in 1975 to 2,959 in 1978. Roadside inspections, which the Bureau of Motor Carrier Safety (BMCS) of the Federal Highway Administration (FHWA) conducted, indicate an unacceptably high number of poorly maintained trucks. In a recent BMCS inspection survey of 273 heavy trucks, the inspectors put 57 percent of the trucks out of service. Half of these

violations were attributable to the braking system. In another BMCS survey of 1,400 vehicles, 51 percent had brakes that were not adjusted properly; inspectors found that 17 percent of these vehicles were unsafe for highway operation.

If the Agency does not take any action, the number of deaths resulting from accidents involving heavy trucks is likely to continue.

Alternatives Under Consideration

NHTSA has issued an ANPRM to solicit comments on the Agency's long-range course of action regarding medium- and heavy-duty truck braking performance. Although it is too early in the regulatory process to identify specific alternatives and their advantages and disadvantages, general areas of consideration include:

(A) Establishing performance requirements in one or more of the following areas: (1) brake adjustment; (2) stability of the vehicle during stopping; (3) fade resistance, or stopping power for brakes exposed to high brake temperatures caused by prolonged or severe use; (4) contamination of brake systems by road dust, water, etc.; and (5) reliability and maintainability. The NHTSA standards apply to types of vehicles rather than to how they are used. Therefore, rulemaking related to devices that act on the engine rather than on the brakes to help slow the vehicle during mountain-descents will probably be up to the BMCS or to State governments. These agencies have the authority to regulate vehicles in use.

(B) Other possible approaches include: (1) issuing a public advisory notice on ways to improve fade resistance, (2) establishing criteria for total brake system performance and stopping distance capability, (3) increasing State vehicle inspection programs, (4) teaching drivers how to avoid accidents, and (5) requiring vehicle manufacturers to improve the design of vehicles to enhance the driver's vision and ability to brake rapidly.

Summary of Benefits

Sectors Affected: Users of highways, including the trucking industry, truckers, bus lines, bus charter services, bus drivers, and the general public; and manufacturing of trucks, buses, tractor-trailers, and braking systems.

The benefits this rulemaking would achieve depend on specific performance requirements, which have not yet been determined. The chief benefit would be a reduction in the number of accidents related to the braking systems in heavy trucks. The purpose of the ANPRM is to make the public aware of NHTSA's concerns, to outline our research plans, and to solicit relevant comments from the trucking industry.

Summary of Costs

Sectors Affected: Manufacturing of trucks, buses, tractor-trailers and braking systems; purchasers of buses, trucks, and tractor-trailers; and the general public.

Generally, the manufacturers would incur costs for designing new brake systems or components. Ultimately, such costs would be passed on to consumers through higher prices. However, until the regulatory requirements are defined, it is not possible to specify the overall economic impact.

Related Regulations and Actions

Internal: NHTSA issued an ANPRM (44 FR 9783) on February 15, 1979. The ANPRM proposed to establish a new Air Brake Standard (No. 130) for trucks, buses, and trailers over 10,000 pounds gross vehicle weight rating (GVWR) to replace Air Brake Standard No. 121. The new Air Brake Standard would reinstate a stopping distance requirement to replace the one invalidated by the decision of the U.S. Court of Appeals for the Ninth Circuit in *PACCAR* v. *NHTSA and Department of Transportation*, 573 F 2d 632 (9th Cir. 1978), cert denied, 439 U.S. 862 (Oct. 2, 1978). NHTSA also issued an NPRM (44 FR 60120) that would amend existing Standard No. 121. That amendment would require all vehicles with a GVWR over 10,000 pounds to have service brakes on all wheels.

External: None.

Active Government Collaboration

None

Timetable

NPRM—to be determined
Draft Regulatory Analysis—will accompany NPRM
Final Rule—to be determined

Available Documents

ANPRM—45 FR 13155, February 28, 1980
Draft Regulatory Analysis
NHTSA Docket No. 79-03, Notice 03

All documents are available for review in the Docket Section, NHTSA, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590.

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DOT-NHTSA

Pedestrian Protection (49 CFR Part 571)

Legal Authority

National Traffic and Motor Vehicle Safety Act, § 103, 15 U.S.C. § 1392.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks that this rule is important because the performance requirements associated with the proposal probably would necessitate redesigning the front ends of all passenger cars. This may have an annual effect of $100 million or more on the economy. The rule also would benefit pedestrians by reducing the number of injuries and deaths resulting from accidents with passenger cars.

Statement of Problem

NHTSA has been interested in pedestrian safety since the agency was formed. Each year, there are nearly 130,000 accidents involving pedestrians and motor vehicles. NHTSA is concerned about the number and severity of the injuries in these mishaps: pedestrians suffer an average of four injuries, of varying severity, in each accident. Federal, State, and local agencies have designed numerous programs to reduce this figure. Nevertheless, approximately 8,000 pedestrians die annually in accidents with motor vehicles.

NHTSA decided to initiate this rulemaking when results from the agency's pedestrian impact protection research program showed that it was possible to design the front ends of vehicles to reduce injury to a pedestrian in an accident.

Follow-up research has indicated that the severity of an injury, especially to a pedestrian's lower body, can be reduced when the front ends of vehicles are designed so that they use more energy-absorbing materials, such as rubber or plastic. Because the proposal would not help prevent accidents involving pedestrians and motorists, we expect to measure the benefits in terms of reducing the severity of injuries and increasing the number of lives saved.

Data from the agency's accident file show that the frontal structure of passenger cars is the major cause of a large percentage of pedestrian injuries. The only approach likely to change this

situation is rulemaking to require automobile manufacturers to make the front ends of vehicles safer. If the agency takes no action, the current number of pedestrian fatalities and injuries will stay the same or possibly increase.

Alternatives Under Consideration

The agency has considered the following options:

(A) Require manufacturers of passenger cars to design the front ends of these vehicles so that pedestrians would suffer fewer injuries if they were hit;

(B) increase efforts to improve operating systems of vehicles, such as braking and lighting, so that collisions with pedestrians will be avoided;

(C) establish a comprehensive program to teach drivers and pedestrians how to avoid accidents involving pedestrians and motor vehicles; and

(D) encourage Federal, State and local government agencies to build pedestrian overpasses or underpasses in locations where numerous accidents occur.

To reduce accidents involving pedestrians and motor vehicles, the agency is currently implementing Option (B) by issuing motor vehicle safety standards; it is implementing Option (C) by providing States with funds for educational programs. However, because the number of pedestrian deaths and injuries is still too high, we think Option (A) is the most effective way to lower this figure. Option (D) is outside the authority of the agency, but it is also a potential way to reduce pedestrian accidents, deaths, and injuries.

Summary of Benefits

Sectors Affected: Domestic and foreign manufacturing of passenger cars and parts; suppliers of materials, such as steel, aluminum, and plastics, used in constructing the front ends of vehicles; body repair shops; and pedestrians.

NHTSA is developing an analysis of the benefits for the proposed rulemaking. The chief benefit would be to reduce the number and severity of injuries to the lower body of a pedestrian struck by a passenger car. Consequently, there would be fewer deaths and injuries in accidents involving pedestrians and motor vehicles.

Summary of Costs

Sectors Affected: Domestic and foreign manufacturing of passenger cars and parts; and purchasers and users of passengers cars.

NHTSA is currently developing an analysis of the expected costs of the proposed rulemaking. Generally, the costs to the manufacturers would include initial redesign, material substitution, and additional tooling. We expect design changes to reduce the weight and, therefore, the cost of some vehicles, but to increase the weight and cost of others. The agency is considering these factors in deriving the expected manufacturer costs. We anticipate that manufacturers will pass along any additional costs to consumers. NHTSA will examine how much it would cost the consumer to operate a vehicle over its lifetime to determine the difference between vehicles that do not meet the standard and vehicles that do.

Related Regulations and Actions

Internal: The most closely related NHTSA standard is the Part 581-Bumper Standard. The proposal's performance requirements may require modification of this standard.

External: None.

Active Government Collaboration

None

Timetable

NPRM—October 1980
Draft Regulatory Analysis—will accompany NPRM

Available Documents

None yet.

Agency Contact

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DOT—U.S. COAST GUARD

Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (46 CFR 31, 34, 38, 40, 54, 98, and 154)

Legal Authority

The Port and Tanker Safety Act of 1978, P.L. 95–474, § 5, 92 Stat. 1480 (1978).

Reason for Including This Entry

This proposal concerns the safe shipping of bulk liquefied gas in existing ships that have been designed for this purpose. The safety of this cargo and class of vessels has been a general public concern for several years.

Statement of Problem

Existing U.S. ships for carrying liquefied gas, which are called gas ships, were designed and constructed in accordance with current Coast Guard standards. The Coast Guard developed these standards as the need for ships capable of carrying extremely cold liquefied gas grew. However, there has never been an internationally accepted set of design, equipment, and construction standards, and virtually every nation uses its own unique standards. This has created problems because not all countries recognize each other's standards. Therefore, an individual ship must comply with the standards of each country with which it wants to trade. To alleviate this situation, the international community in 1976, agreed upon a uniform set of standards for gas ships, developed by the International Maritime Consultative Organization (IMCO). This is known as the Existing Gas Ship Code. The Coast Guard needs to evaluate the impact of this code on the U.S. fleet, so we have issued an ANPRM for public comment.

Alternatives Under Consideration

The Coast Guard has issued an ANPRM to gather information for future rulemaking. At this time, the Coast Guard is analyzing basic information on the estimated amount of equipment that the IMCO code would require, the purchase price of such equipment, the availability of the equipment, the time needed for delivery and installation, and projected costs. Based on the comments we receive in response to the ANPRM, we will develop various alternatives.

Summary of Benefits

Sectors Affected: The general public; the marine environment; manufacturing of liquefied gas cargo vessels; and water transportation of bulk liquefied gas.

The Coast Guard expects that any proposed regulation would ensure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the minimum standards for their equipment, material, and construction. Although there have been no catastrophic accidents involving this type of vessel, routine Coast Guard inspection of existing ships has shown that, in terms of safety, some approaches to vessel construction and equipment are superior to others. The Coast Guard expects that having internally uniform rules would help the industry by eliminating confusing conflicts between various standards accepted in different parts of the world. In addition, this proposal

would protect the marine environment by lowering the risk of the accidental discharge of liquefied gas.

Summary of Costs

Sectors Affected: Manufacturing of liquefied gas cargo vessels; water transportation of bulk liquefied gas; and users of this product.

Through an ANPRM issued in July 1977, the Coast Guard is examining the economic effect of implementing the IMCO Existing Gas Ship Code. Final estimates will not be available until we complete the regulatory analysis. One of the primary purposes of the ANPRM is to provide the information necessary to assess the costs of the regulation accurately. The Coast Guard will attempt to find the most cost-effective method of implementing the international requirements.

Any regulatory action would directly affect owners and operators of gas ships, who probably will pass costs on to the general consumer.

Related Regulations and Actions

Internal: On May 3, 1979, the Coast Guard published rules for new self-propelled vessels carrying bulk liquefied gases, which are based on the IMCO Gas Code for new ships. The rules were effective on May 31, 1979.

External: IMCO Existing Gas Ship Code.

Active Government Collaboration

None

Timetable

NPRM—December 1980. This project has been delayed because other regulatory proposals have had priority over the limited USCG resources available for drafting
Draft Regulatory Analysis—will accompany NPRM

Available Documents

ANPRM—42 FR 33353, June 30, 1977
Documents available from Agency Contact.

Agency Contact

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes (40 CFR Part 191)

Legal Authority

Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2201(b)

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because it is a critical step towards developing disposal methods for high-level and other long-lived radioactive wastes which are now unregulated and would pose serious health problems to current and future generations of people. In addition, we estimate that the cost for implementing these standards will exceed $100 million (1978 dollars).

Statement of Problem

It is important to ensure proper management and disposal of high-level radioactive wastes because they represent a significant health risk to the population of the United States. Large quantities of these wastes already exist and more are being produced in national defense programs, commercial nuclear power plants, and research reactors. At present, 70 million gallons of high-level defense wastes are stored in various liquid and solid forms on three Federal reservations in the States of Idaho, South Carolina, and Washington. Nuclear fuel rods, after having been used to generate electrical power, are removed from the reactor and are referred to as spent fuel. The current inventory of spent fuel is about 6,000 tons. The spent fuel is being temporarily stored in holding ponds at the sites of nuclear power plants. Over the next few years this spent fuel inventory is expected to grow at a rate of about 600 tons per year from reactors currently licensed to operate. EPA estimates that by issuing these standards, cancer deaths resulting from these wastes will be limited to less than 10 per 100 years over the first 10,000 years after the wastes are disposed.

Our program to develop these standards began in 1976 as part of an interagency effort to speed up development and demonstration of a high-level waste repository. The program was announced as part of President Ford's Nuclear Waste Management Plan on October 27, 1976. President Carter established an Interagency Review Group (IRG) on Waste Management in March 1978 to review existing programs and recommend new policies where necessary. After holding several public hearings on its draft report, the IRG prepared a final report to the President in March 1979. This report recommended that EPA accelerate its programs to set standards for nuclear waste management and disposal activities. President Carter approved this recommendation as part of his Program on Radioactive Waste Management which he announced on February 12, 1980.

If EPA took no action this would further delay the Federal waste management program and could have significant environmental consequences. Delay in developing disposal methods results in longer storage of existing wastes in surface facilities requiring human control. Such storage is not necessarily a danger under normal conditions. The wastes, however, are more vulnerable to accidental release in surface storage than they would be in disposal facilities. The chances for environmental damage are greater the longer the wastes are stored in existing sites. Furthermore, the lack of a solution to this problem has caused serious uncertainty about the future use of nuclear energy in the United States. This uncertainty makes both national and local energy policy more difficult and has many indirect adverse economic and environmental effects.

Alternatives Under Consideration

The disposal system for high-level radioactive waste has yet to be designed and demonstrated. As a result, we are evaluating two basic types of environmental protection standards, and a third option which combines certain aspects of both.

Option (A). We could develop a standard establishing general principles to govern disposal methods without setting quantitative standards. These principles would specify broad design requirements for disposal systems such as: (1) designing multiple manmade barriers and using natural barriers to prevent release of the wastes, (2) disposing of the wastes so that future generations could recover and relocate them, if necessary, and (3) designing disposal systems to reduce potential releases to the lowest levels reasonably achievable. Such requirements would reduce some of the uncertainties of the disposal systems to be developed, which must work for very long times. However, they would not place any clear limit on expected environmental effects.

Option (B). We could set numerical performance requirements for disposal systems without using general principles like those discussed in Option (A). These environmental protection standards would then be compared against the predicted performance of a proposed disposal system to determine whether the system should be approved. Such an approach would allow complete flexibility in meeting the objectives; however, it would rely upon predictions over very long time periods and such predictions involve many uncertainties.

Option (C). Combine both types of standards discussed above. This will require long-term predictions of disposal system performance to determine if environmental protection objectives are met. The general principles will require conservative design approaches which will protect the environment as much as possible even if these long-term predictions are wrong.

We believe that Option (C) provides the most reliable protection of the general population and the environment.

Summary of Benefits

Sectors Affected: The general public.

The primary benefit of these standards is the protection of human health. Because the Federal government has yet to design and demonstrate the disposal system, we are unable to determine accurately the health impact resulting from these standards. We estimate that the number of premature cancer deaths that would be caused by disposal in compliance with our standards would not exceed 1,000 over the first 10,000 years after disposal of the wastes. This is an average of one death every 10 years. Because our estimates are conservative, there is a good chance that actual disposal systems would result in fewer cancer deaths than we estimate.

Many sectors of society, especially environmental groups, State governments, and Members of Congress, have stated that nuclear power should not continue to be used while the problem of high-level radioactive waste disposal remains unsolved. Nuclear power now provides approximately 13 percent of the Nation's power supply. While EPA is neither for nor against nuclear power, we believe that these standards are the first step towards solving the problem of disposing of high-level radioactive wastes, so that the Nation can decide whether or not nuclear power will continue to be part of our energy system.

Summary of Costs

Sectors Affected: Commercial nuclear power plants, consumers of electricity supplied by nuclear power, Federal defense waste management programs, and NRC.

The high-level radioactive waste disposal program will be initially financed by the Federal government. According to the provisions of President Carter's spent-fuel policy, utilities will pay a one-time full cash recovery charge to the Federal government for the transfer of spent fuel. Military produced wastes are to be managed and disposed of by the Federal government.

We calculated the cost impact of these standards by estimating the cost of the additional steps the Federal government would have to take to be in compliance. Based largely on data and analyses performed by the Department of Energy (DOE), we estimate that in the year 1990 (the year we assume the waste program will be established) these standards will result in an incremental annual cost to commercial waste management of no more than $600 million (1978 dollars). This cost impact amounts to less than a 1 percent increase in national average electricity rates.

We also estimated that the standards would cause an increase of less than $1.7 billion (1978 dollars) over the total cost of the reference defense waste management program (assuming on-site disposal of high-level waste in geological repositories as the reference program), which is estimated to cost about 3.7 billion (1978 dollars).

The Nuclear Regulatory Commission (NRC) is responsible for implementing these standards.

Related Regulations and Actions

Internal: The part of these standards that covers normal waste management operations is coordinated with our Environmental Radiation Protection Standards for Nuclear Power Operations (40 CFR Part 190) to provide consistent exposure standards for all uranium fuel cycle operations.

External: The Nuclear Regulatory Commission (NRC) is responsible for implementing these standards. To accomplish this, NRC is currently developing regulations for Disposal of High-Level Radioactive Wastes in Geologic Repositories (10 CFR Part 60); see their entry in this Calendar.

Active Government Collaboration

We established an interagency working group to help us develop these standards. The agencies represented are the Nuclear Regulatory Commission, the Department of Energy, and the United States Geological Survey.

Timetable

NPRM—June 1980
Regulatory Analysis and Environmental Impact Statement—June 1980; under preparation
Public Hearings—several public hearings will be conducted during the public comment period, at times and places that we will announce in the **Federal Register**
Public Comment Period—180 days following publication of NPRM
Final Rule—June 1981
Final Rule Effective—June 1981

Available Documents

ANPRM—41 FR 235, December 6, 1976

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EPA-OANR

Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer (40 CFR Part 61)

Legal Authority

The Clean Air Act, as amended, §§ 111, 112, and 301(a), 42 U.S.C. §§ 7411, 7412, and 7601(a).

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this policy is important because it will set a precedent in establishing how EPA will regulate airborne carcinogens under the Clean Air Act, and include the role of risk assessment and economics in the regulatory process.

Statement of Problem

Cancer is the second leading cause of death in the United States. One American in four is expected to contract some form of cancer in his or her lifetime, and one in five is expected to die from the disease. The most recent statistics show a continued increase in the total incidence of cancer, resulting principally from increases in lung cancer.

Studies of human cancer rates and their worldwide geographical variations, and observations of incidence rates in migrant populations, have revealed that factors in the human environment are

probably responsible for a large proportion of cancers. "Environmental factors" in the broad sense include chemical exposures from smoking, diet, occupation, drinking water, and air pollution; various forms of radiation, including sunlight; and some forms of severe physical irritation. Although the uncertainties are great, estimates by the World Health Organization, other prominent institutions, and individual experts suggest that these factors may cause 60 to 90 percent of all human cancers.

Although airborne carcinogens may induce cancer at a number of areas in the body, lung cancer is thought to be the principal form of cancer related to air pollution. While cigarette smoking is probably the most important cause of lung cancer in the United States, many scientists believe that various air pollutants increase the risk of cancer from smoking and other carcinogenic insults. Available estimates also indicate that occupational exposures to chemicals are responsible for a significant portion of the incidence of lung cancer in the United States.

Through preliminary examination of industries producing chemicals and radioactive materials, and of air sampling results, EPA has identified over 50 known or potential chemical carcinogens and numerous radioactive materials which may be emitted into the atmosphere. Many of these substances are synthetic organic chemicals that have been in commercial use only since the 1930s. Because cancer induced by exposures to small amounts of airborne carcinogens may not appear for 15 to 40 years after exposure, it is still too early to detect the full effects of these chemicals on human health. Thus, it is both prudent and, in view of the large number of people potentially affected, important to reduce or contain emissions of known or suspected atmospheric carcinogens in order to prevent future problems before we actually observe them.

We have, since 1971, listed three airborne carcinogens (asbestos, vinyl chloride, benzene) as hazardous pollutants under § 112, "National Emission Standards for Hazardous Air Pollutants," of the Clean Air Act. As required by § 112, we have developed and are continuing to develop emission standards for significant sources of these pollutants. In addition, we are evaluating a number of other potentially carcinogenic substances to determine whether action under § 112 is appropriate. We have found our actions on airborne carcinogens to be hampered by the lack of a policy, developed with public participation, that would guide our use of § 112 to control airborne carcinogens.

Specifically, we need publicly stated, legally binding policies and regulatory mechanisms to: (1) determine the carcinogenicity and carcinogenic risks of air pollutants for regulatory purposes, (2) establish priorities for evaluating the need for and implementing additional regulatory action, (3) specify the degree of source control required in general under § 112 and indicate how we will determine that level of control in setting individual standards, and (4) provide more extensive public involvement in the Agency's decisionmaking on the regulation of airborne carcinogens.

Alternatives Under Consideration

We describe a number of alternatives in the proposal document (44 FR 58642, October 10, 1979). Beyond that, the principal alternative is to have no formal policy. Under this alternative, EPA would continue with a case-by-case approach for regulating airborne carcinogens under § 112 of the Clean Air Act. This strategy would allow the Agency maximum regulatory flexibility, but would not give either the general public or the regulated industry sufficient information to enable them to participate fully in the rulemaking process. In addition, the alternative of no policy would not resolve the difficulties which EPA has encountered in the listing of airborne carcinogens and in the subsequent development of emissions regulations. It also does not recognize the need for procedures to ensure that available resources are allocated to the most important or tractable problems on a priority basis.

Under the policy, we will list under § 112 those airborne substances identified as high probability human carcinogens which present a significant carcinogenic risk to public health as a result of air emissions from one or more categories of stationary sources. Where applicable, we will propose generic standards for control of fugitive emissions from industrial sources. We will submit these standards concurrently with the listing to expedite reductions in emissions which can be achieved through good housekeeping practices in the manufacturing, handling, or use of hazardous materials. We will use risk assessments to determine priorities for further regulation of significant source categories and in the evaluation of residual risk.

At a minimum, the policy requires new and existing sources which present or would present significant cancer risks to apply best available technology (BAT) to control emissions of listed airborne carcinogens. BAT for new sources represents the most advanced level of control adequately demonstrated, considering economic, energy, and environmental effects. For existing sources, the determination of BAT also considers the impacts and technological problems associated with the retrofitting of control equipment. Controls more stringent than BAT may be imposed if the risk remaining after the application of BAT is unreasonable, or, for new sources, if EPA's criteria for risk avoidance associated with plant siting cannot be met.

Our proposed policy contains no reporting requirements.

In most cases, emission standards we establish pursuant to our proposed policy will be in the form of performance standards, rather than specific design standards. Design, operating, or equipment standards will be used only when performance standards are not practical.

In addition, the new source-siting provisions of the policy allow a new source owner to use an emission offset mechanism to locate a new source of airborne carcinogens in an area where other such sources exist or where the owner has difficulty in meeting emission requirements for the new source.

Summary of Benefits

Sectors Affected: The general public.

Generic and emission standards that we develop for sources of airborne carcinogens under the proposed policy will reduce cancer risks for large segments of the U.S. population exposed to airborne carcinogens in the ambient air. The greatest benefits will be to individuals who live in the immediate vicinity of characteristic source types.

While low levels of potentially carcinogenic substances have been detected in many parts of the country, the areas of greatest concern are densely populated urban centers and areas with a high concentration of chemical manufacturing industries. In the latter case, the proposal would benefit populations in the Gulf Coast (Louisiana and Texas), the Kanawha Valley (West Virginia), and Northern New Jersey.

The proposed policy will significantly improve EPA's regulatory effort in identifying and controlling airborne carcinogens. Proposing generic standards for certain categories or sources concurrent with listing under § 112 will provide significant reduction in emissions pending development of final § 112 standards.

A mechanism for establishing regulatory priorities will ensure that we

address the most important or tractable problems first. The policy also provides for increased public understanding of and participation in EPA's actions and allows EPA to give earlier notice of its findings and regulatory intent to State and local regulatory authorities and to industries.

Summary of Costs

Sectors Affected: Source types emitting carcinogenic substances into the atmosphere, including establishments which mine or manufacture minerals, inorganic chemicals, radioactive substances and byproducts, and synthetic organic chemicals; petroleum refining; and users of these products.

Our preliminary analyses have identified a number of source types which may emit carcinogenic substances into the atmosphere. Most of these types fall into one of the following six broad groups: (1) mining, smelting, refining, manufacture and end-use of minerals and other inorganic chemicals; (2) combustion processes, coke ovens, incinerators, power plants, etc.; (3) petroleum refining, distribution, and storage; (4) synthetic organic chemical industries and end-use applications and waste disposal; (5) mining, processing, use and disposal of radioactive substances and radioactive by-products; and (6) sources of noncarcinogenic emissions which are chemically transformed into carcinogens in the atmosphere.

We intend the proposed rule only to guide the Agency in identifying and controlling airborne carcinogens. In its present form, we cannot assess its regulatory effects quantitatively. This policy will, however, provide a basis for impact assessments in subsequent regulatory actions that are taken in accord with its provisions.

Related Regulations and Actions

Internal: Other offices within EPA which are also in the process of developing carcinogen control programs include the Office of Pesticides and Toxic Substances, the Office of Water and Waste Management, and the office of Mobile Source Air Pollution Control. A program is also underway to develop an agencywide cancer policy.

External: Related external efforts include the development of a national cancer policy by the member agencies of the U.S. Regulatory Council, the recent report by the Risk Assessment Work Group of the Interagency Regulatory Liaison Group (IRLG) on the identification of carcinogens and the quantitative assessment of risks; a staff paper by the White House Office of Science and Technology Policy on the identification, characterization, and control of potential human carcinogens; and a report to the President by the Interagency Toxic Substances Strategy Committee.

Other regulatory agencies that are involved in this area include the Occupational Safety and Health Administration, which published a final policy for regulating occupational exposure to carcinogens on January 22, 1980, (45 FR 5002), the Food and Drug Administration, and the Consumer Product Safety Commission. Nongovernmental groups which have expressed interest in or made recommendations on the control of carcinogens include the Environmental Defense Fund, the American Industrial Health Council, and the Natural Resources Defense Council.

Active Government Collaboration

The Agency has presented testimony at the public hearings held after the Occupational Safety and Health Administration proposed its carcinogen policy. We have also provided information briefings for the Interagency Regulatory Liaison Group and members of the President's Council on Environmental Quality, the Council on Wage and Price Stability, Congressional staff, and interested State air pollution agencies. We have participated in the proposed policy regulating chemical carcinogens issued by the Regulatory Council on October 17, 1979 (44 FR 60038).

Timetable

Science Advisory Board Review—June 1980
Public Comment Period—October 10, 1979, to August 12, 1980. Comments should be sent to: Central Docket Section, Room 2903B Waterside Mall, 401 M Street, S.W. Washington, D.C. 20460, ATTN: OAQPS 7914.
Final Rule—December 1980.
Regulatory Analysis—none

Available Documents

"Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer," NPRM, October 10, 1979, 44 FR 58642

"National Emission Standards for Hazardous Air Pollutants—Generic Standards," ANPRM, October 10, 1979, 44 FR 58662

"Summary of Responses and Proposals—Testimony and Written Submissions", EPA Public Hearings on Regulation of Carcinogenic Air Pollutants, Washington, D.C., March 23, 1978

Testimony presented at public hearings in Washington, D.C., Boston, MA, and Houston, TX the week of March 10, 1980 as well as the written comments received

These documents as well as others referenced in the proposed policy are available in public rulemaking docket number OAQPS 79-14. The docket is open for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at: Central Docket Section, Room 29039, Waterside Mall, 401 M Street, S.W. Washington, D.C. 20460.

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EPA-OANR

Remedial Action Standards for Inactive Uranium Processing Sites 40 CFR Part 192*

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, § 206, 42 U.S.C. § 2022

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks these standards are important because the Federal and State governments cannot undertake the remedial actions Congress authorized until we have promulgated standards for them. People, primarily of the Rocky Mountain States and Pennsylvania, who live or work near tailings areas are very interested in all aspects of the remedial action program.

Statement of Problem

The soils and rocks which make up the earth's crust contain radioactive uranium and thorium isotopes (radionuclides). Almost all human activities which involve removing and processing materials from the earth's crust can result in the release of some of these radioactive materials into the atmosphere. These releases can become potentially hazardous when:

1. The activity involves handling materials that contain concentrations of these radionuclides significantly above the average concentrations in soil;

2. These radionuclides are concentrated during processing to a

level significantly above the average concentrations in soil; or

3. The radioactive material is redistributed from its place in nature into a pathway where humans can be exposed to it.

Uranium mining operations involve removing large quantities of ore-containing uranium and its radioactive decay products in concentrations up to 1,000 times greater than are normally found in the natural terrestrial environment. After mining, the ores are shipped to uranium mills for separation of the uranium from the other materials in the ore. After the mill crushes and grinds the ore, the uranium is dissolved, precipitated, dried, and packaged as "yellow cake" ($U3O_8$). The residues of the process, normally in the form of a wet sand, are discharged to a disposal area where the liquids are evaporated or partially recycled.

The tailings disposal area consists of a pond and a dry beach area. The size of each component depends on the amount of water that is recycled, the rate of evaporation, and the amount of raw ore being milled. In areas of high evaporation, large dry beach areas are exposed. Radioactive emissions from these areas result from wind erosion of the tailings and diffusion of radioactive radon gas out of the tailings. In addition, radioisotopes and other toxic substances may seep into ground water. The release of radon gas from piles of uranium mill tailings exposes people in the immediate vicinity of the tailings site to radioactivity and, to a lesser extent, exposes more distant populations. Windblown radioactive particulates from tailings sites and direct gamma radiation constitute secondary sources of radiation exposure. If the tailings are uncontrolled, EPA estimates that approximately 200 premature deaths per century could occur in the national population from radiation-induced lung cancer resulting from emissions from these sources. These effects would be divided approximately equally between people who live within five miles of the inactive tailings piles and those in the rest of the country. Health effects from potential contamination of ground water resources are not included in this estimate. The radioactive components in the tailings will remain hazardous for hundreds of thousands of years.

In addition to the hazards posed by tailings piles are those from tailings which have been removed from the piles. In source areas, tailings have been used in construction, often as fill under buildings. Radioactive gas from the tailings may then enter the buildings and raise indoor radioactivity well above normal levels. Congress recognized that unless it acted, tailings from inactive processing sites might pose a continuing health hazard. Therefore, with the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Congress authorized a joint Federal and State program to perform remedial actions for inactive uranium-processing sites according to standards EPA would set. Under the terms of UMTRCA, the Department of Energy (DOE) has designated 25 eligible inactive processing sites. Tailings piles at these sites contain more than 26 million tons of residual radioactive materials on more than 1,030 acres of land. In addition, DOE is working to designate additional lands and buildings which are affected by tailings from these sites. However, UMTRCA also provides that no remedial actions may be undertaken until EPA has promulgated standards.

Alternatives Under Consideration

EPA's standards for uranium mill tailings will be standards of general application. They are standards which define environmental radiation conditions which must not be exceeded, but they do not specify the means of remedying existing excesses. UMTRCA requires DOE to conduct the remedial action program. We are developing the standards based on currently available knowledge of the potential harmful effects of uranium mill tailings, and the technology and costs of avoiding them. With regard to the form and content of the standards, we are considering the following alternatives:

1. *Disposal Standards.* EPA is considering an entire range of options from no control to virtually complete control of releases of radioactivity and of nonradioactive toxic substances from tailings. We find that means of providing long-term control of radon releases are available. We are examining the health benefits and costs of controlling these releases to alternative levels which are (A) significantly above the radon release rates characteristic of undisturbed land areas, (B) within the normal range of release from undisturbed lands, or (C) significantly below average rates from such lands.

We currently favor alternative (B) because it avoids nearly all the harmful effects of radon releases and appears to be technically and economically achievable. Alternative (C) is neither needed nor is it clear that it is reasonably achievable.

We are also considering whether we should prohibit releases of radioactive and nonradioactive toxic substances from tailings to water, or should limit releases to levels which preserve water quality for potential uses, including drinking and agriculture. Although information is very limited, we currently believe that a standard prohibiting any releases may be very difficult to implement, and is not clearly needed. We prefer standards for uranium mill tailings disposal which prohibit degrading the existing quality of underground and surface water bodies.

The health protection the disposal system ultimately affords depends on the control levels and the time over which they are maintained. We are examining the technical and economic reasonability of requiring effective control for (a) several hundred years, (b) hundreds to thousands of years, and (c) longer than tens of thousands of years. We currently believe it reasonable to apply the disposal standards for at least 1,000 years. Applying them for very much longer periods would be impractical for general application.

2. *Cleanup Standards for Contaminated Open Land.* We are considering alternative standards for cleanup of contaminated open land as follows:

(A) Standards which would reduce residual radiation levels to local natural background levels.

(B) Standards which would limit the residual radioactivity to levels which may be above local background, but are still within a common natural range of values.

(C) Standards which limit residual radiation to levels significantly above normal background.

Alternative (A) would be unreasonable because the measurements required to distinguish small elevations above background radioactivity would be unproductively expensive. We believe alternative (B) is technically and economically reasonable, and the residual risk will be very small in practice. Therefore, we feel alternative (C) is not warranted.

3. *Cleanup Standards for Buildings.* Tailings have sometimes been used as construction materials for buildings. This can cause elevated indoor radioactivity and increased risk of lung cancer for occupants who breathe radioactive particles in the air. In developing remedial action standards for this condition, we are considering earlier recommendations by the U.S. Surgeon General for a similar situation at Grand Junction, Colorado, and guidance provided by EPA to the State of Florida regarding indoor radioactivity. We are also considering alternative standards which take account of this earlier guidance, and which reflect current assessments of the health effects of the indoor

radioactivity. The standards will take the form of "action levels," i.e., specifications, which, if exceeded, will require remedial action.

We could set action levels in terms of the total indoor radioactivity concentrations, or as an increment above average natural background levels. We prefer to express the indoor radon decay product action level in terms of total radon decay concentration, because background levels cannot be determined separately in practice. Indoor gamma radiation levels are much more easily determined, however, so we prefer to express the gamma radiation standard as an increment above background. In all cases, the standards will apply to radiation which may reasonably be attributed to tailings, not to other causes.

Summary of Benefits

Sectors Affected: People living near inactive uranium mill tailings sites designated by DOE for remedial actions under UMTRCA, which are located in Arizona, Colorado, Idaho, New Mexico, North Dakota, Oregon, Texas, Pennsylvania, Utah, and Wyoming; and the general public.

The disposal standards will avoid virtually all detrimental effects of uranium mill tailings for as long as the standards apply. Based on current population distributions, we estimate about 200 lung cancer deaths per century caused by radon emissions from tailings piles will be avoided. The number may be larger if populations increase, or if population centers develop near piles which are now remote from people. Furthermore, surface and ground water will be protected from degradation by the tailings. Individuals who live or work in contaminated buildings will benefit from application of the cleanup standards. Finally, applying the cleanup standards for open land will result in conditions which do not require further control. This could make several thousand acres of land available for use, and avoid a potential future administrative burden.

Local economies could benefit from decreased unemployment and increased business activity associated with performing the remedial actions to comply with the standards. The remedial actions would also virtually eliminate the inequitable distribution of risk associated with the tailings, which is now greater for people who live or work near the piles or in contaminated buildings than it is for the general population. After disposal, the radiation risk for such people will be within the normal range of natural background values.

Summary of Costs

Sectors Affected: The Federal government; affected States; and the general public.

The Federal government will bear 90 percent of the costs of the remedial action program and the affected States will bear 10 percent. The Federal government will bear all the costs of remedial actions on Indian lands.

The costs of meeting the disposal standards of all the tailings piles eligible under UMTRCA are difficult to estimate, primarily because methods should be chosen on a site-specific basis. We estimate the average one-time cost of meeting the standards we currently propose to be about $1 to $6 million (1978 dollars) per site if the existing site is suitable, and $6 to $13 million (1978 dollars) per site otherwise. Disposal costs for all sites would therefore be about $21 to $273 million. More restrictive standards, which would limit radon releases from tailings to well below release rates from normal soils, could require much costlier methods of disposal.

A DOE contractor (Ford, Bacon and Davis, Utah Inc.), using interim cleanup criteria, previously estimated that cleanup costs for open lands and buildings would be about $10 million (1978 dollars). Even allowing for increased costs under the cleanup standards we now prefer, which are very difficult to estimate, tailings disposal is still by far the largest cost component of the remedial action program.

During the performance of the remedial actions, localities will be subjected to increased traffic, dust, and other side effects of earth-moving and construction operations. Disposal operations may require large quantities of clay and soil for covering the tailings. Contaminated open land will be subjected to scraping and digging by the cleanup operations. The environmental effects of these land disturbances will vary with the site.

Related Regulations and Actions

Internal: 1. Radiation protection guidance for remedial actions on residences on Florida phosphate lands.

2. Draft proposed standard for high-level radioactive waste (in development).

3. Proposed standards for treatment, storage, and disposal of hazardous wastes under the Resource Conservation and Recovery Act.

4. Draft Clean Air Act Standards for radioactive materials (in development).

5. Proposed Environmental Protection Criteria for Radioactive Wastes, and applicable Federal Radiation Protection Guidance.

6. Clean Water Act regulations.

7. National Interim Primary Drinking Water standards.

8. EPA Air Carcinogen Policy.

9. Resource Conservation and Recovery Act.

External: Under UMTRCA, the responsibility for selecting and performing remedial actions which satisfy EPA's standards is given to the Department of Energy. Any States which share the cost must fully participate, and the Nuclear Regulatory Commission must concur. Any affected Indian tribe and the Department of Interior must be consulted when Indian lands are involved. In addition, the Department of Justice has responsibilities related to determining the responsibility, if any, of any private parties for remedial actions

Active Government Collaboration

The President's Energy Coordinating Committee has formed a subcommittee to oversee Federal implementation of UMTRCA. The subcommittee is chaired by the Administrator of the Environmental Protection Agency. Other participating agencies are the Nuclear Regulatory Commission, and the Departments of Justice, Energy, and Interior. These agencies, which all have responsibilities under UMTRCA, have formed a staff-level working group which plans necessary interagency coordination and reviews draft documents as appropriate.

Timetable

NPRM—Disposal Standards—June 1980
Final Rule—Cleanup Standards—October 1980
Final Rule—Disposal Standards—December 1980
Final Rules Effective—60 days after promulgation
Regulatory Analysis—EPA will not develop an analysis, because we expect the cost of implementing the standard in any calendar year will be less than the $100 million criterion EPA has established for requiring an economic analysis
Public Hearing—EPA plans to conduct public hearings on the NPRMs, but has not established a date or location for the hearings at this time. We will announce the dates and locations in the **Federal Register.**
Public Comment Period—The public will have at least a 60-day comment period before the agency issues the final rules

Available Documents

From the Congress—Public Law 95–604 Uranium Mill Tailings Radiation Control Act (UMTRCA); House Report No. 95–2480, Pt. I, Committee on Interior and Insular Affairs; House Report No. 95–1480, Pt. II, Committee on Interstate and Foreign Commerce, House Document Room, H–226 Capitol, Washington D.C. 20515

From DOE—"Phase II, Title I, Engineering Assessment of Inactive Uranium Mill Tailings Sites" by Ford, Bacon and Davis, Utah Inc., Technical Library, Bendix Field Engineering Corp., P.O. Box 1569, Grand Junction, Colorado, 81502 (Microfiche copy only, nominal charge per report)

From EPA/ORP–OANR–460—"EPA Development of Standards for Uranium Mill Tailings and Uranium Report on Mining Wastes—Call for Information and Data," **Federal Register** notice, 44 FR 33433, June 11, 1979

From EPA/ORP–OANR–460—"EPA Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands—Radiation Protection Recommendations and Request for Comment," **Federal Register** notice, 44 FR 38664–38670, July 2, 1979

From EPA/ORP–OANR–460—"Interim Cleanup Standards for Inactive Uranium Processing Sites," **Federal Register** notice, 45 FR 2736b–27368, April 22, 1980

From EPA/ORP–OANR–460—"Proposed Cleanup Standards for Inactive Uranium Processing Sites," **Federal Register** notice, 45 FR 27370–27375, April 22, 1980

EPA documents listed above are available at 401 M Street, S.W., Washington, D.C., 20460. Additional documents, when they become available, will be placed in Docket No. A–79–25 which is located in the EPA, Central Docket Section, Room 2903B, 401 M Street, S.W., Washington, D.C. 20460.

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EPA–OFFICE OF PESTICIDES AND TOXIC SUBSTANCES

Chemical Hazard Warning Labels (40 CFR Parts 765 and 766)

Legal Authority

Toxic Substances Control Act, 15 U.S.C. §§ 2605(a)(3) and (c)(1); 15 U.S.C. §§ 2607(a)(1) (A) and (B), 15 U.S.C. § 2625(c).

Reason for Including This Entry

These regulations may have a significant impact on at least some segments of the chemical industry and may cause the industry initial costs of $100 million or more.

Statement of Problem

Industrial workers are exposed in their jobs to a large number of chemical substances and mixtures, many of which present health or safety hazards. Approximately 47,000 substances are produced for commercial purposes. This number only accounts for *substances;* far more of the chemical products manufactured or imported for commercial purposes are *mixtures,* composed of combinations of these substances. Existing data indicate that as many as 25 percent of these substances present health and/or safety hazards. Exactly how many of the estimated 300,000 chemical products—counting both substances and mixtures—are hazardous is not known.

Manufacturing industries employ approximately 20.5 million people; the chemical industry alone employs approximately 1.1 million, including professionals (such as chemists and chemical engineers) and a variety of production, maintenance and repair, and janitorial workers.

During production there are many opportunities for workers to be exposed to hazardous chemicals. Exposure may occur as workers maintain and repair industrial systems; as they handle raw materials, intermediates, and finished products; or as a result of breakdowns, leaks, and spills. Workers also may be exposed continuously to airborne concentrations of hazardous chemicals.

In 1977 the National Institute of Occupational Safety and Health published the National Occupational Hazard Survey. The results indicated that approximately 7.5 million workers were exposed to trade-name products containing at least one of approximately 400 substances that the Occupational Safety and Health Administration (OSHA) then regulated. Workers who were exposed experienced, on the average, exposures to seven hazards simultaneously (the survey recorded exposures to different substances or exposure to the same substance through different routes [e.g., inhalation and dermal contact] as distinct exposures).

The Bureau of Labor Statistics (BLS) reported approximately 168,000 new cases of occupational illness in 1976 and 162,000 in 1977. But underreporting of occupational illness is a major problem, in part because the chemical causes of many acute and chronic occupational illnesses remain unrecognized. These BLS data indicate that 91,900, or 54.7 percent, of occupational illnesses in 1976 and 93,800, or 57.9 percent, of occupational illnesses in 1977, other than malignant or benign tumors, were caused directly by exposure to chemicals.

To deal with this problem, EPA is planning to promulgate a rule requiring manufacturers and importers of chemical substances and mixtures presenting acute health or safety hazards to label containers of these chemicals with warning statements and precautions for use. The agency will simultaneously be promulgating a rule requiring similar labeling for carcinogenic substances and mixtures.

Some chemical manufacturers already place adequate hazard warning labels on containers of their products. EPA has reviewed a sample of labels that industry currently uses voluntarily and has found that many provide clear and comprehensive hazard information. In some cases, indeed, labels provide extensive information. However, many companies use labels that are incomplete, inconsistent, or inaccurate. These rules will make mandatory an activity that is now voluntary, and, in doing so, will ensure that all workers who are exposed to chemical hazards have access to information about these hazards and about the precautions they can take against them.

Alternatives Under Consideration

The principal alternatives to this rule that the agency is considering are (1) taking no regulatory action, (2) using some method other than labeling to provide hazard warning information, and (3) limiting the scope of the labeling rules in some way.

Alternative (1), taking no regulatory action at this time, would benefit the chemical industry, as the industry would incur no compliance costs. However, there would be no impetus for current labeling practices to improve, and there would be no corresponding improvement to workers' health and safety. The agency would incur no cost, but would miss an opportunity to use its resources for a form of regulation that could produce continuing benefits at a relatively low annual cost to industry, long after industry and the agency have made the initial investment.

Alternative (2), requiring some form of hazard warning other than labels, breaks down into three separate alternatives: (a) require manufacturers and importers to provide workers with material safety data sheets (MSDS) on

each hazardous chemical, (b) require manufacturers and importers to provide workers with training about the hazards they may encounter from chemicals in the workplace, and (c) require manufacturers and importers to provide a combined program of worker training, MSDSs, workplace posting, and container labeling.

MSDSs can be very complete and can offer information that will be useful to management, occupational health specialists, and labor organizations, as well as to workers. But they do not offer immediate and easy-to-understand information to the worker at the site of potential exposure to a hazard. Without labeling as a supplement, the worker may not be able to connect a given container of a chemical with the specific MSDS containing the relevant information.

Training programs can be very useful in warning workers of chemical hazards. They can be tailored to a specific company's needs. But costs can be extremely high, especially to small companies, and the costs of a federally mandated program, which would need to require a perhaps undesirable degree of standardization in training programs, would be even higher. An additional disadvantage is that the benefits of a training program would be lost without the kind of written reinforcement that labels and MSDSs would provide.

A combined program of container labels, MSDSs, workplace posting, and worker training programs would provide the most complete hazard warnings by combining the advantages of several information sources while avoiding the disadvantages that would result from using any one of them in isolation. However, the cost of such a comprehensive program, both to industry and the agency, would be prohibitive.

The agency has decided to require container labeling, because it provides an immediate source of hazard information at the site of exposure to chemicals in the workplace, at a relatively low cost. This approach has the same focus as current industry practice, and workers are familiar with systems of labeling on which the proposed rules are based.

Alternatives for the rules' scope of applicability are to have them apply to (A) all hazardous chemicals distributed in commerce, (B) chemical substances but not mixtures, and (C) large volume chemicals only.

Alternative (A), applying the rules to all hazardous chemicals distributed in commerce, is the agency's choice. Alternative (B) has the advantage that it would be easier for industry to comply with the rules. It would eliminate the difficulties of determining the hazards of mixtures, and it would apply to a much smaller set of chemicals. In addition, current voluntary industry standards already cover far more chemical products than would be covered by rules with such a narrowed scope. For these reasons, the agency believes that to narrow the scope of the rules in this way would result in virtually meaningless rules.

Alternative (C) is to have the rules apply only to large volume chemicals. A relatively small number of chemicals accounts for a large percentage of the production volume. But because many of these are produced by automated processes which reduce human exposure, these large volume chemicals may not account for most of the worker exposure to chemical hazards. In addition, while each incident of exposure might be small, the number of exposed individuals is still large. To limit the scope of the rules in this way would lower the cost considerably, but would probably not reduce worker exposure enough to justify it.

The proposed rules as they are presently written provide substantial flexibility, so that companies which are essentially in compliance now need not redesign their labels. Compliance will be on a phased schedule, allowing industry to take advantage of information it develops for substances in developing information for mixtures. Because mixtures are composed of combinations of substances, the rules will require manufacturers of substances to comply earlier than manufacturers of mixtures. The rules will require recordkeeping to document industry decisions to label or not to label a given product.

These rules require the disclosure of information, and in this respect employ an innovative regulatory technique. When information about the hazards of chemicals in the workplace is widely available to workers and to occupational health specialists, they may modify their behavior accordingly and thus eliminate the necessity, in some cases, for more restrictive forms of regulatory action.

Summary of Benefits

Sectors Affected: Workers in most industries.

The primary benefit of these labeling regulations will be that industry will provide information to industrial workers, through labels supplied by the manufacturers of hazardous chemicals, about the hazards to which their work exposes them. The agency expects that workers will use this information to protect themselves from injury and illness that may result from exposure to hazardous chemicals. The knowledge so gained should result in reduced exposure to chemical hazards and reduced occurrences of occupational injury and illness resulting from such exposure. A regulatory analysis is in progress. Even when it is complete, however, the benefits of these rules will not be altogether quantifiable.

The indirect benefits of the labeling regulations may be great. Once workers have adequate hazard information, they can work with management to control or eliminate most hazardous exposures. Companies that use chemicals may stop using the most hazardous, thereby creating incentives for the development of safer substitutes and/or better exposure controls for specific uses.

Summary of Costs

Sectors Affected: Most segments of the chemical industry.

Chemical companies will incur initial costs for developing information and designing labels. Ongoing costs will include the costs of producing the necessary number of labels for a given year's production and the administrative costs of recordkeeping and periodic updating of labels. The agency awaits completion of its regulatory analysis for quantitative information on these costs.

Related Regulations and Actions

Internal: None.

External: OSHA of the Department of Labor will be proposing a rule requiring that labels on containers of hazardous chemicals in the workplace disclose the chemical identity of the contents.

Active Government Collaboration

EPA and the Occupational Safety and Health Administration have been coordinating the development of their respective labeling rules and will be proposing them in the **Federal Register** simultaneously.

Timetable

NPRM—July 1980.
Regulatory Analysis—will be published with NPRM
Public Hearings—schedule not yet set
Public Comment Period—following NPRM
Final Rule—July 1981
Final Rule Effective—not yet determined

Available Documents

None

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EPA-OPTS

Pesticide Registration Guidelines (40 CFR Part 163, Subparts A-P)

Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 a(c)(2)(A), 136f, 136w (1978).

Reason for Including This Entry

The Environmental Protection Agency (EPA) estimates that cost to registrants (principally chemical companies whose products are registered or who apply for registration of their products) will be approximately $1.4 billion over the next ten years to meet the Guidelines requirements.

Statement of Problem

With certain limited exceptions, EPA must, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), register all pesticides before manufacturers and formulators can legally distribute and sell them in the United States. The purpose of requiring registration of a pesticide is to permit EPA to determine if: (a) its composition is such as to warrant the proposed claims for it; (b) its labeling and other material required to be submitted comply with the requirements of the Act; (c) it will perform its intended function without unreasonable adverse effects on the environment; and (d) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

FIFRA expressly requires the EPA Administrator to publish Guidelines to specify the kinds of information required to support a registration application. Our proposed Guidelines specify the health and safety data that registrants of different types of pesticide products must submit, and the testing methods to be used in developing these data.

Prospective registrants (primarily pesticide manufacturers and formulators) are responsible for both the testing and submittal of test results to the agency in support of their registration applications.

In addition, FIFRA expressly requires that currently registered pesticides be reregistered expeditiously. In many cases, the registrants of these pesticides will now have to submit health and safety data that meets FIFRA requirements, either because they had not previously submitted the data or because they had submitted inadequate data.

Without these Guidelines, the following problems would inevitably result: registration applications would often be incomplete or inadequate, applicants would spend unnecessary time and money because requirements were not delineated or clarified, and EPA would not be able to perform registration reviews efficiently. These are the problems that existed before the proposed Guidelines were first published.

Alternatives Under Consideration

Section 3(c)(2)(A) of FIFRA requires that "The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time." Therefore, we are not considering alternatives to publication of the Guidelines. The agency is analyzing public comments on the portions already proposed (see "Available Documents"), and is considering these comments to improve the nature and clarity of the proposed data and testing requirements.

Summary of Benefits

Sectors Affected: Pesticide and agricultural chemical manufacturing; chemical/biological testing laboratories; EPA; agriculture; and the general public.

This regulation will effect establishments in the following SIC classifications: (SIC 2879) pesticides and agricultural chemicals; (SIC 281) agricultural pest control chemicals, such as insecticides, fungicides, and herbicides; (SIC 286) DDT, BHC, 2,4-D carbamates, etc.; and (SIC 32) agricultural lime products.

The guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the agency requires (though there are some provisions for waiving some requirements under some circumstances). Manufacturers and formulators, therefore, will be able to plan their research and development programs with greater certainty, thereby saving money and time. The chemical/biological testing industry will also benefit from increased business because of some additional requirements and because of the standardized requirements that improve planning and efficiency. The Guidelines will benefit the agency by improving the quality of data available for decisionmaking, and also by allowing for more efficient processing of applications. Farmers and the general public will benefit generally from having safer pesticides available.

Summary of Costs

Sectors Affected: Pesticide and agricultural chemical manufacturing; farmers; and the general public.

EPA estimates that, to meet the Guidelines requirements over the next ten years, it will cost registrants approximately $336 million for the data call-in program, $273 million in remaining data for registration standards, $600 million for data to support new registrations, and about $150 million for data to be required by those subparts of the Guidelines yet to be proposed. (The annual costs would be slightly higher during the first five years than during the latter five years.)

The projected cost represents expenditures for conducting laboratory and field testing, and developing the reports of such tests. While registrants will initially bear the cost, we expect that the cost will be passed on to the pesticide users, with farmers as the major users. The per-farm cost was estimated in 1978 to be $45 to $50 per year, which included $15 for costs of new requirements in the Guidelines.

We do not expect these Guidelines to have any significant effect on employment in the pesticide industry, or to have any other nationally significant economic effects. We do expect producers of some pesticides of small economic significance to withdraw their products from the market rather than go to the cost of developing the required data. In this situation, consumers, including farmers, will ordinarily choose other available pesticides rather than have no pesticide for pest control use.

Related Regulations and Actions

Internal: EPA also is developing testing standards for chemical substances and mixtures under the Toxic Substances Control Act (TSCA). As far as possible, EPA will make the pesticide testing methods prescribed by the Guidelines consistent with the TSCA testing standards. The Good Laboratory Practice standards we are developing under TSCA and FIFRA, which prescribe uniform standards of performance for toxicological testing, will also be consistent.

External: Under the aegis of the Interagency Regulatory Liaison Group, five Federal agencies (EPA, the Food and Drug Admininstration, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, and the Department of Agriculture) are jointly developing guidelines describing test methods and

standards that will meet all five agencies' needs.

Active Government Collaboration

Agencies and other government groups that we have consulted or have provided assistance in Guidelines development include members of the Interagency Regulatory Liaison Group, the National Cancer Institute, and the Departments of the Interior; and Agriculture. The latter department is required by FIFRA to comment on proposed and final regulatory documents.

Timetable

Final Rules—between June and November 1980 for those portions already published as NPRMs. Additional portions of the Guidelines, which will be published as NPRMs between June 1980 and March 1981, are Subpart G—Product Performance; Subpart H—Label Development; Subpart I—Experimental Use Permits; Subpart J—Hazard Evaluation: Nontarget Plants and Microorganisms; Subpart K—Exposure Data Requirements; Subpart L—Hazard Evaluation: Nontarget Insects; Subpart M—Data requirements for Biorational Pesticides; Subpart O—Chemistry Requirements: Residue Chemistry; and Subpart P—Data Requirements for Pesticide Disposal.

Public Comment Periods—will vary from 60 to 90 days, depending on the size and complexity of the proposal.

Regulatory Analysis—an economic impact analysis on those portions of the Guidelines was published in 1978: "Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S.", 43 FR 39644, September 6, 1978. This analysis covered the costs of those subparts (Subparts B, D, E, and F) that would elicit about 90 percent of the total costs of the Guidelines. With the publication of each subsequent subpart, we will make available brief analyses set in the context of the incremental and total costs of the Guidelines. Following or concurrent with the publication of most subparts as final rules, we will publish an overall regulatory analysis for the entire Guidelines.

Available Documents

We have published the following portions of the Guidelines as NPRM:

Subpart B—Introduction, 43 FR 29606, July 10, 1978. (This subpart will become Subpart A when published final)

Subpart C—Registration Procedures (interim final), 40 FR 41788, September 9, 1975

Subpart D—Chemistry Requirements, 43 FR 29696, July 10, 1978. (This subpart will be divided into three subparts when published final: D—Product Chemistry, N—Environmental Fate, and O—Residue Chemistry)

Subpart E—Hazard Evaluation: Wildlife and Aquatic Organisms, 43 FR 29696, July 10, 1978

Subpart F—Hazard Evaluation: Humans and Domestic Animals, 43 FR 37336, August 22, 1978

Subpart F—Hazard Evaluation: Humans and Domestic Animals, two additional general sections on good laboratory practices for toxicology testing, 45 FR 26373, April 18, 1980 (This proposal will be separated from Subpart F when developed into a final rule)

"Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S.," 43 FR 39644, September 6, 1978, is also available

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EPA-OPTS

Premanufacture Notification Requirements and Review Procedures (40 CFR Part 720)

Legal Authority

Toxic Substances Control Act (TSCA), § 5, 15 U.S.C. § 2604

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because the regulations may have a substantial economic impact on the chemical industry.

Statement of Problem

To prevent public health risks and environmental contamination before potentially toxic substances are widely used and dispersed, Congress included a section on premanufacture notification in the Toxic Substances Control Act (TSCA) of 1976. This section requires a manufacturer to notify the Environmental Protection Agency (EPA) of his intent to manufacture or import a new chemical substance, and to submit information concerning that substance which the Agency can use to assess the risks associated with its manufacture, processing, or distribution in commerce, use, or disposal. On the basis of this assessment and an evaluation of economic considerations and other relevant factors, EPA will make decisions concerning the reasonableness of any risk and will take appropriate action to obtain more information or data, regulate production or use, or require reporting by manufacturers, processors, or distributors of chemicals once the substance is in commerce. If EPA does not regulate the substance during the premanufacture notification period, the manufacturer may begin production (subject to regulation under any other laws).

To implement the notification process, EPA proposed a set of premanufacture notification rules and forms for public comment on January 10, 1979. In response to comments received on its initial proposal, EPA revised and reproposed the forms and certain portions of the rules on October 16, 1979. The rules, when final, will clarify the statutory obligations of manufacturers and importers of new chemical substances to provide information to EPA on the substances, and will also clarify the Agency's procedures for reviewing the information. The forms will provide a detailed specification of the information they must submit and the formats in which they should supply the information. The manufacturers are responsible for assembling the information. EPA must decide, generally within 90 days of receiving the information, whether the substance in question presents an unreasonable risk to human health or the environment, and, if so, what action to take.

Alternatives Under Consideration

EPA must resolve several significant issues in this rulemaking. Among them are the scope and level of detail of information to be required; the identification of specific chemical substances for which industry must submit premanufacture notifications to EPA; policies regarding the confidentiality of information submitted; the extent to which the submitter must contact prospective customers to obtain relevant data; supplemental reporting; and whether and how EPA determines that submissions meet its requirements. EPA is considering other approaches to resolving these and related issues based on the comments received from industry and public interest groups which suggested alternatives to the initial proposal. (See "Available Documents," NPRM for Proposed Rules and Other Issues–44 FR 59764, October 16, 1979).

Summary of Benefits

Sectors Affected: The general public.

The premanufacture review process will benefit public health and the environment by preventing the production, use, or disposal of new

chemicals which present unreasonable risks. By preventing potential hazards at an early state, EPA can minimize economic dislocation, especially that which would result if a chemical is in full production, and use is withdrawn. Adverse employment effects and the obsolescence of plant equipment will be substantially reduced by early regulation. Preventing toxic chemicals from entering the environment also will decrease lost workdays and hospitalization costs that result from worker exposure to toxic chemicals.

Summary of Costs

Sectors Affected: The chemical industry, including manufacturing and importing; and users of chemical products.

EPA is conducting an in-depth study of the premanufacture notification requirements in order to determine, with a greater degree of confidence, the nature of the costs and economic effects of this rulemaking. These effects will include those on research and development programs; industry sales, growth and profitability; and the structure of the chemical industry. EPA will use the results of this study in making final decisions on how to implement the premanufacture notification program. Preliminary results of this analysis estimated that the notice form proposed in January 10, 1979, would cost between $2,500 and $22,500 to complete for each notice submitted. Estimates for the October 16 reproposed, shortened form indicated that completion of the revised form would cost between $1,155 and $8,925. It has also been estimated that approximately 400 notices would be submitted per year. Therefore, the total cost of providing the notice forms in a typical year would be between $462,000 and $3,570,000 (1979 dollars). October 16 cost estimates also included costs per claim of between $0–$6,400 for asserting and substantiating claims of confidential business information.

Related Regulation and Actions

None

Active Government Collaboration

Other Federal agencies that have been involved in this rulemaking include the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Food and Drug Administration, the Department of Transportation, and the Bureau of the Census.

Timetable

Proposed Economic Analysis and Regulatory Analysis—July 1980
Public Comment Period—July
Final Rule—September 1980

Available Documents

NPRM for Premanufacture Notification Requirements and Review Procedures, 44 FR 2242, January 10, 1979

Discussion of Premanufacture Testing Policy and Technical Issues, 44 FR 16240, March 16, 1979

Interim Policy Statement, 44 FR 28558, May 15, 1979. NPRM for Rules and Other Issues, 44 FR 59764, October 16, 1979 (Docket number OTS–050002)

These documents are available from the Agency Contact listed below.

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EPA–OPTS

Rules Restricting the Commercial and Industrial Use of Asbestos Fibers (40 CFR Part 763)

Legal Authority

Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601, 2605

Reason for Including This Entry

The Environmental Protection Agency (EPA) has included this action because of its potential economic impact on the asbestos industry. The economic cost of the rule will probably exceed $100 million. We may prohibit a large portion of the domestic production and importation into the United States of asbestos-containing products.

Statement of the Problem

Epidemological studies have established that exposure to asbestos fibers greatly increases a person's chance of contracting lung disease, particularly asbestosis and lung cancer. Since the turn of the century tens of thousands of Americans have suffered from asbestos-related diseases.

EPA is concerned that in spite of past governmental regulation of asbestos millions of Americans may be exposed to levels of asbestos which significantly increase the risk of contracting asbestos-related diseases. (Past regulations are cited below under Related Regulations and Actions) Currently, more than two million workers are exposed to asbestos fibers (at levels higher than background) in their places of employment. In addition, the 159 million Americans who live in urban areas may be exposed to asbestos fiber levels which significantly increase the risk of contracting asbestos-related diseases. EPA is concerned that asbestos fiber emissions from the mining, millings, processing, or distribution of asbestos or from the use, misuse, or disposal of asbestos-containing products might cause significant pollution of urban air.

It is difficult to estimate the number of people who will contract asbestos-related diseases at current exposure levels. Data on mortality rates are available for workers who are exposed to asbestos fiber levels considerably higher than general population exposures. EPA will extrapolate to predict risks for the general population.

EPA is conducting this regulatory program because the agency is not convinced that existing regulations have adequately protected the public. These regulations have focused on limited aspects of the asbestos exposure problem, such as worker exposures and air emissions from manufacturing facilities and a few consumer products. Regulation under the Toxic Substances Control Act (TSCA) would eliminate unreasonable human health risks from all asbestos-related activities.

If EPA does not promulgate a rule in this area, a large number of people might die from asbestos-related diseases each year.

Alternatives Under Consideration

The extent of EPA action will depend on the seriousness of the problem and the extent to which other Federal agencies take additional actions to reduce risks. EPA is considering the following alternative actions: (1) prohibiting the manufacture and processing of asbestos for nonessential uses, (2) prohibiting the manufacture and processing of asbestos for specific uses, (3) restricting the quantity of fibers which may be mined or imported, allocating quotas to businesses, and allowing industry to decide which uses will be restricted, (4) requiring labeling of asbestos-containing products, (5) regulating under laws other than TSCA, and (6) not regulating.

EPA's choice of a regulatory program will depend on the seriousness of the risks and the identification of the major sources of exposure. EPA suspects that much of the asbestos to which the public is exposed comes from emissions caused by mining, milling, and processing asbestos fibers; emissions resulting from the use of asbestos-containing products may not be as significant. In that case, EPA would want to reduce mining, milling, and

processing risks as much as is reasonable (option [1]).

If mining, milling, and processing present unreasonable risks, it would not be necessary for EPA to investigate emissions from all individual products in order to regulate. Calculating exposures from these products would require a herculean effort and would greatly delay the agency's ability to reduce risk. Further, regulating only selective uses would provide considerably less public health protection than a more inclusive rule. Therefore, EPA is unlikely to choose option (2). If EPA implements either option (1) or option (2), the agency will need to grant exemptions for essential uses—those uses which produce major social benefits and for which substitutes do not exist.

Option (3) is a possible substitute for either of the first two options. Allocation of quotas could be a very difficult process and could result in some inequities within industry. Further, at this time it is not clear that the economic impact of such an approach would be any less than option (1). The major advantage of option (3) over option (1) is that the marketplace, rather than EPA, would decide which uses of asbestos should continue.

EPA is considering imposing a labeling requirement (option [4]) either in addition to or in lieu of other requirements. A labeling rule would have considerably less economic impact than options (1), (2), or (3), and it would also provide less direct protection to public health.

Finally, EPA is considering either regulating under other Federal laws administered by EPA or not regulating in deference to other Federal agencies. Several comments on the ANPRM (44 FR 60056, October 17, 1979) indicated that industry does not consider TSCA to be an appropriate authority for regulating asbestos and that further Federal regulation, if needed, should be implemented under other laws, particularly the Occupational Safety and Health Act. EPA is not currently convinced that if the Occupational Safety and Health Administration (OSHA) lowers its workplace standard to 0.1 fibers per cubic centimeter, (as it has announced its intention to do), its action will sufficiently protect workers and the general public. EPA will consider the impact of any likely future OSHA action on its evaluation of human health risks from exposure to asbestos. Nevertheless, in spite of action by OSHA, EPA may find that it is necessary to restrict production and importation of products containing asbestos.

Any action by the Consumer Product Safety Commission (CPSCC) would not affect production of industrial asbestos-containing products, and these production processes may cause significant fiber emissions.

A combination of EPA actions under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, the Resource Conservation and Recovery Act, and other laws might significantly reduce asbestos-related risks. However, the EPA Administrator might find that it is in the public's interest to regulate under one law (TSCA) than several laws, particularly if the risk reduction achievable under one TSCA rule will be the same as or greater than the combined impact of several regulations under other laws.

Summary of Benefits

Sectors Affected: The general public; asbestos workers; and manufacturing of asbestos substitutes.

At this early stage of development of EPA's rule it is impossible to estimate benefits in quantitative terms. Regulation will decrease the incidence of asbestosis and lung cancer in the United States, thus decreasing the number of worker days lost because of worker sickness, increasing space available in hospitals, and decreasing costs due to illness and premature death.

EPA regulation of asbestos should increase demand for substitutes such as fiberglass, ceramic fibers, polyvinyl chloride, and ductile iron pipe. Therefore, manufacturers and distributors of substitutes should benefit from regulation.

Summary of Costs

Sectors Affected: The asbestos industry: asbestos mining, manufacturing of asbestos products, wholesale trade (including importing); importers, and users of asbestos products and substitute products.

Because EPA has not completed its analysis of economic effects, cost estimates are not available. Asbestos mines and asbestos processors will be forced to reduce production, and many processors will be forced out of the asbestos business. EPA plans to regulate in a manner which will allow asbestos processors time to convert to substitutes. Small businesses may seek aid from the Small Business Administration in order to obtain capital to convert. It is too early to predict the effect of regulation on employment. EPA hopes that jobs lost from the asbestos industry will be offset by job gains in substitute industries. Substitute products generally cost more than asbestos-containing products, and these costs will be passed on to consumers.

Related Regulations and Actions

Internal: EPA has established National Emission Standards for Hazardous Air Pollutants for several asbestos sources under the Clean Air Act, 42 U.S.C. § 7401 *et. seq.* EPA is developing effluent guidelines regulating wastewater discharges of asbestos under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et. seq.*, as amended in 1972 and 1977. It is also considering additional regulation of asbestos in drinking water under the Safe Drinking Water Act, 42 U.S.C. § 3006 *et seq.*

The agency is investigating the development of a rule to require surveys to determine whether asbestos hazards are present in public schools because of deteriorating insulation. EPA is also considering requiring appropriate corrective measures where it finds hazards. (See 44 FR 54676, Sept. 20, 1979). Other existing asbestos sources that the Agency may control in the future include public buildings where asbestos was used as an insulation or decorative material and merchant ships, where asbestos is widely used as insulation.

EPA regulations directed specifically to asbestos are found in 40 CFR Part 61 (air) and Parts 129 and 427 (water).

External: EPA and CPSC both published ANPRMs on October 17, 1979 in the **Federal Register** (44 FR 60053). These ANPRMs were prefaced by a Joint Statement of Cooperation signed by the EPA Administrator and CPSC Chairman. The statement indicated how the two agencies will cooperate and direct their regulatory efforts to minimize reporting requirements and other burdens on industry, and to improve overall public health. EPA is planning to promulgate a rule under § 8(a) of TSCA to require manufacturers and processors of asbestos fibers to submit economic and exposure information. EPA is also planning to promulgate a rule under § 8(d) of TSCA requiring industry to submit unpublished health and safety studies relating to asbestos. CPSC is planning to issue a general order requiring manufacturers and private labelers of some categories of consumer products to submit information on the use of asbestos in those products. CPSC will not require the submission of information already submitted to EPA.

OSHA plans to lower its workplace standard for asbestos exposure (8 hour time weighted average) from 2f/cc (fibers per cubic centimeter) to 0.1 f/cc.

This action is in response to a recommendation in April, 1980 by the joint National Institute for Occupational Safety and Health (NIOSH)—OSHA Asbestos Work Group that "a new occupational standard be promulgated which is designed to eliminate nonessential asbestos exposures, and which requires the substitution of less hazardous and suitable alternatives where they exist."

CPSC—16 CFR Parts 1145, 1304, and 1305; OSHA 29 CFR Part 1910; FDA—21 CFR Parts 121, 128, 133, and 191; DOT—49 CFR Parts 170–189; MHSA—30 CFR 55, 56, 57, and 71.

Active Government Collaboration

To maximize the effectiveness of this proposed rule, EPA is coordinating either directly or through the Interagency Regulatory Liaison Group (IRLG) with the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), the Food and Drug Administration (FDA), the Mine Safety and Health Administration (MSHA), and the Department of Transportation (DOT).

Timetable

NPRM—winter 1980–81
Public Comment Period—120 days following NPRM
Public Hearings—during public comment period
Final Rule—1982
Final Rule effective—1980s, possibly staggered, depending on the scope of the rule
Regulatory analysis—EPA will prepare a regulatory analysis in accordance with E.O. 12044

Available Documents

ANPRM for Asbestos-Containing Materials in School Buildings—44 FR 54676, September 20, 1979. ANPRM for Commercial and Industrial Use of Asbestos Fibers, 44 FR 60056, October 17, 1979. (Comment period extended, 44 FR 73127, December 17, 1979.)

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EPA–OPTS

Test Rule for Chemical Substances and Mixtures—Chloromethane and Chlorinated Benzenes (40 CFR Part 771)

Legal Authority

Toxic Substances Control Act, §§ 4 and 26 (15 U.S.C. §§ 2603 and 2625).

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because we need data to assess the risk of injury to human health caused by exposure to the chemicals chloromethane and chlorinated benzenes. This rule is also significant because it is the first rule the Agency has proposed under § 4 of the Toxic Substances Control Act (TSCA) which will require manufacturers and processors of chemical substances to perform testing to assess the health effects of toxic substances.

Statement of Problem

Section 4 of TSCA gives the Environmental Protection Agency the authority to require that manufacturers and/or processors of chemicals test these chemicals for possible adverse effects on human health or the environment. To implement § 4, we are in the process of developing, proposing, and promulgating test standards and test rules. A test standard is a description of the scientific methodology and analysis to be used in testing for an effect. A test rule is a regulation requiring manufacturers and processors of specific chemicals to test these substances for certain effects according to appropriate test standards. The agency establishes a reasonable timetable in which industry must complete the development of the test data.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to make recommendations to the EPA Administrator, in the form of a list, regarding chemical substances that should receive priority consideration in the agency's development of test rules. For the most part, chemicals to be included in test rules come from the semiannual recommendations made by the ITC. The committee's eight members represent the Council on Environmental Quality, the Department of Commerce, the Environmental Protection Agency, the National Science Foundation, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, the National Cancer Institute, and the Occupational Safety and Health Administration.

The ITC, in its Initial Report (42 FR 55026, October 12, 1977), recommended that chloromethane be tested for carcinogenicity, mutagenicity, teratogenicity, and other chronic effects, and emphasized its concern about chloromethane's effects on the central nervous system, liver, kidney, bone marrow, and the cardiovascular system.

We have completed our analysis of data on the health effects of and levels of exposure to chloromethane. Approximately 300 to 500 million pounds of choromethane are manufactured annually in the United States. We believe that the level of human exposure to chloromethane during manufacturing and processing may pose unreasonable risk to human health. Our analysis of studies showing gene mutations in bacteria, chromosomal changes in plant cells, neurotoxicity, birth defects, embryo and fetal toxicity in test animals, and other data indicate that exposure to chloromethane may cause cancer and structural birth defects in humans. Because of these findings and the estimated levels of human exposure, we are proposing requirements for industry to test for the health effects of chloromethane in our first test rule.

Monochlorobenzene and dichlorobenzene were also contained in the ITC's initial report. The ITC recommended the development of rules that would require industry to test these chlorinated benzenes for potential to cause cancer, gene mutation and chromosomal aberration, structural birth defects, and other chronic environmental effects, and also recommended requiring an epidemiological study. The ITC's third report (43 FR 50630, October 30, 1978) added the higher chlorinated benzenes, (tri-, tetra-, and penta-), to the priority list and recommended testing requirements for the same effects.

Our investigation of the chlorinated benzenes indicates that the annual domestic production volume ranged from over one million pounds of pentachlorobenzene to 325 million pounds of monochlorobenzene. Exposure to the liquid chlorobenzenes is due to their use as a functional fluid in transformers, process solvents, solvents in formulated products, and synthetic intermediates, while exposure to the solid forms results from their use as synthetic intermediates and pesticides. Workers are exposed to chlorinated benzenes during manufacture, processing, and use, consumers are exposed to certain chlorobenzenes in their use, and the general population may be exposed from environmental

concentrations resulting from manufacture, processing, use, and disposal of the substances.

Our analysis shows that exposure to the chlorinated benzenes may present an unreasonable risk of cancer, structural birth defects, and reproductive and subchronic/chronic effects. These conclusions are based on (1) their chemical structural similarity to known carcinogens and teratogens; (2) the tumor promoting activities of chlorinated benzene metabolites; and (3) studies showing, among other things, mutagenic effects, birth defects, embryo- and fetotoxic responses, and reproductive effects in animals; and (4) reports of adverse effects on human livers and blood production. Because of these findings and the potential for human exposure, we are proposing health effects testing requirements for the chlorobenzenes in the first test rule.

Alternatives Under Consideration

The alternatives available to us are quite limited. Under TSCA, if EPA finds that (1) a chemical may present an unreasonable risk of injury to human health or the environment, or a chemical may enter the environment in substantial quantities or result in significant human exposure, and (2) there are insufficient data or experience to characterize its effects on health or the environment, and (3) testing is necessary to develop such data, we must require industry to conduct testing and there is no alternative to issuing a test rule. However, we will encourage industry to begin testing of a chemical before a test rule is proposed. If such testing is satisfactory, it could obviate the need for a test rule.

Another alternative is to conduct testing in governmental facilities or under contract to the government. We will take this approach where it would be inappropriate or infeasible to require testing by the chemical industry, but heavy reliance on this approach would be in direct conflict with TSCA, which states that the development of data on health and environmental effects "should be the responsibility of those who manufacture and those who process chemical substances and mixtures."

Summary of Benefits

Sectors Affected: Workers in establishments manufacturing chloromethane and chlorinated benzenes; users of these chemicals; and the general public.

The data generated from the testing required by this rule would permit EPA to assess the risk to human health of manufacturing, processing, and use of chloromethane and the manufacturing, processing, use, and disposal of the chlorinated benzenes. If the Agency finds this risk to be unreasonable, it may take action to reduce human exposure under one of its authorities or recommend regulation by another agency such as OSHA. The testing required by this rule could potentially benefit the workers who manufacture or process these chemicals, the consumers of these chemicals, and the general public.

Summary of Costs

Sectors Affected: Manufacturing of chlorinated benzenes, including some manufacturers and processors of industrial solvents, dyes, organic intermediates, pesticides, and solvent-carrying chemicals; and manufacturing of chloromethane, including manufacturers and processors of some silicone products, chlorinated hydrocarbons, butyl rubber products, herbicides, and lubricating greases and oils.

The costs of complying with these rules is estimated to be $0.8 million for manufacturers and processors of chloromethane and $2.4 million for the manufacturers and processors of the chlorinated benzenes.

Related Regulations and Actions

Internal: We proposed health effects test standards for various effects on May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054) and standards for Good Laboratory Practices for Health Effects on May 9, 1979 (44 FR 27362).

We also published a proposed rule under TSCA § 8(d) that would require persons to submit all unpublished health and safety studies concerning all chemicals recommended for testing by the Interagency Testing Committee (44 FR 77470, December 31, 1979).

We are planning to publish a Proposed Statement of Exemption Policy and Procedure relating to the granting of exemptions from § 4 testing.

We are also planning to announce our tentative decision not to require health effects testing for acrylamide, a compound suspected of entering surface water and ground water through its use as a chemical grout, a wastewater treatment chemical and other industrial applications. This conclusion is based on animal studies that demonstrate the consistent induction of nervous system disorders at very low exposure levels, and we believe that any further information gained through testing would not affect regulatory actions designed to reduce human exposure to acrylamide. Acrylamide was included in the ITC's second list of chemicals (43 FR 16684, April 19, 1978) to be considered by EPA for test rule development.

External: Under the aegis of the Interagency Regulatory Liaison Group, the EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

Active Government Collaboration

Other Federal agencies that have been or will be consulted include the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, National Cancer Institute, and National Institute of Environmental Health Sciences.

Timetable

NPRM—June 1980
Public Hearings on NPRM—third quarter, FY 1980
Publication of final rule—fourth quarter, FY 1981

Available Documents

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules; Proposed Good Laboratory Practice Standards for Health Effects, 44 FR 44054, July 26, 1979

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 27334, May 9, 1979

The Interagency Testing Committee established under TSCA has issued four reports making recommendations on chemicals to be covered by TSCA testing rules:

First Report: 42 FR 55026, October 12, 1977

Second Report: 43 FR 16684, April 19, 1978. OTS Docket 040004

Third Report: 43 FR 50630, October 30, 1978. OTS Docket 040005

Fourth Report: 44 FR 31866, June 1, 1979. OTS Docket 410001

Fifth Report: 44 FR 70664, December 7, 1979. OTS Docket 410001

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EPA—OFFICE OF WATER AND WASTE MANAGEMENT

Control of Organic Chemicals in Drinking Water (40 C.F.R. Part 141)

Legal Authority

The Safe Drinking Water Act, as amended, § 1412, 42 U.S.C. § 300(f) *et seq.*

Reason for Including This Entry

This regulation is likely to impose costs of over $100 million on the economy.

Statement of Problem

Recent technological developments in sophisticated analytical measurement techniques have resulted in the identification of numerous organic contaminants in drinking water that may pose a health risk to consumers. On November 29, 1979, EPA published regulations designed to control one class of these organic chemicals, the trihalomethanes (THMs). Future measures to control organic chemicals in drinking water are proceeding through two related approaches:

(1) Treatment Technique Requirement for the Control of Synthetic Organic Chemicals—to be reproposed late 1980 to early 1981.

(2) Control of volatile organics in drinking water; to be proposed late Summer 1980.

(1) Treatment technique requirement:

Synthetic Organic Chemicals.

Synthetic organic chemicals are chemicals which enter sources of drinking water as a result of industrial discharges, spills, sewage discharge, and urban and rural rainwater runoff (nonpoint sources). Some of these organic chemicals are either known or suspected carcinogens. The list of synthetic organic chemical contaminants that have been found at least once in drinking water has grown to over 900. Because of the technical infeasibility of controlling every synthetic organic contaminant individually by setting a Maximum Contaminant Level, (MCL), EPA has determined that control of a broad spectrum of organic chemicals by a treatment technique (granular activated carbon [GAC]) or equivalent technology would be appropriate in certain locations where substantial risk of contamination exists. The intent of these regulations is to improve the quality of drinking water at the tap and reduce the health risk to the public from long-term exposures to synthetic organic chemicals in drinking water. This proposal would amend EPA's National Interim Primary Drinking Water Regulations, or equivalent regulations adopted by the States, which apply to all public water systems in the United States.

Alternatives Under Consideration

The alternatives being considered include requirements for community water systems to install GAC, or its equivalent, if they serve more than 10,000 people and use sources of drinking water which are vulnerable to contamination by synthetic organic chemicals. The reproposed regulations will consider, among other possibilities, changes in the application of the GAC technology, in that the GAC requirement might be achieved by replacing sand with GAC in existing filter beds, and the frequency of reactivation (removal of adsorbed organic chemicals from the GAC) of the GAC would be specified in the regulations. Frequencies for reactivation of the GAC under consideration range from six months to one year.

Since the original proposal, criteria for determining which public water systems are vulnerable to contamination by synthetic organic chemicals have been re-evaluated and the reproposed regulations may specify rivers or stream segments that are considered to be subject to such contamination. These water sources will be chosen through an evaluation of the number and type of industrial/municipal discharges upstream of drinking water intakes, an estimate of the transportation of industrial and agricultural chemicals on the water way and the potential contamination by non-point sources (e.g., urban runoff).

Summary of Benefits

Sectors Affected: The general public; municipally and privately owned water supply systems; and all other segments of the water supply industry, including consulting sanitary engineers, analytical chemists, equipment manufacturing, and wholesale and retail trade.

The reproposed treatment technique for control of synthetic organic chemicals will provide protection to a larger population at a lower per capita cost (upwards of 80 percent of the American population at a per capita cost of $2.60 to $7.10) than would the original (1979) proposal (52 percent of the population and $7.10 to $26.10, respectively). The reproposed technique provides broad spectrum protection from synthetic organic contaminants and could be implemented two to three years earlier than the original proposal.

Summary of Costs

Sectors Affected: Municipally and privately owned water supply systems; users of GAC treated water; and State and local governments.

The estimated total national capital cost to implement this reproposal is $333 million over three years (in 1980 dollars). We estimate that such expenditures will increase local water rates by approximately $5 per year per family of three in those communities whose water supply system would install GAC facilities.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contamination of water would be indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, and Water Quality Criteria.

External: State programs would deal with decisions on variances and exemptions from the regulations, and would provide technical assistance to public water systems making changes in their treatment processes.

Active Government Collaboration

Supporting documentation for the health basis of the proposed regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Products Safety Commission, Occupational Safety and Health Administration, and the Food and Drug Administration. Also, we have gained data supporting development of criteria to determine if public water systems are vulnerable to contamination by synthetic organic chemicals through cooperation with the Coast Guard, and Departments of Transportation and Commerce.

Timetable

Reproposed NPRM—late 1980 to early 1981
Public hearings (to be announced)—Spring 1981
Final Rule—late 1981

Available Documents

ANPRM—41 FR 28991, July 14, 1976
"Drinking Water and Health," National Academy of Sciences, 1977
"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975
"National Organics Monitoring Survey," EPA, Office of Drinking Water.
"Statement of Basis and Purpose for an Amendment to the National Interim Primary Drinking Water Regulations on a Treatment Technique for Synthetic Organic Chemicals," EPA, Office of Drinking Water, 1977

"Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1977

"Draft Interim Treatment Guide for the Control of Synthetic Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, 1978

"Revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1978

"Operational Aspects of Granular Activated Carbon Adsorption Treatment," EPA, Municipal Environmental Research Laboratory, 1978

NPRM—43 FR 5766, February 9, 1978

National Academy of Sciences Study on Granular Activated Carbon, 1979

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II. Control of Volatile Organics in Drinking Water

Recent information indicates that a number of volatile organic chemicals exist in both raw and finished drinking waters, particularly in ground water supplies which have been contaminated by improper waste disposal practices. Accordingly, revisions to the existing NIPDWR will be proposed to include MCLs for certain volatile organic chemicals. At this time, contamination of drinking water by the volatile organics has been found to be most serious in ground waters in urbanized and industrial areas. The levels of occurrence, coupled with the suspected carcinogenicity and toxicity of several identified compounds, appear to support the setting of MCLs for several of the following compounds:

- Trichloroethylene
- Carbon tetrachloride
- Tetrachloroethylene
- 1,2-Dichloroethane
- 1,1,1-Trichloroethane
- 1,1-Dichloroethane
- Dichloroethylenes (3)
- Methylene chloride
- Vinyl chloride

If EPA takes no action with regard to the above chemicals, a possible health risk to the public will continue to exist and the overall quality of drinking water will be suspect in those ground water areas.

Alternatives Under Consideration

Specific options are being developed and alternatives will be separately evaluated for each contaminant. MCLs will be proposed only after careful evaluation of the best available evidence in the areas of epidemiology, toxicology, analytical methods, quality assurance, monitoring requirements, feasibility and efficiency of competing treatment methods, and economic impacts. MCLs are now being developed for the following compounds: trichloroethylene, carbon tetrachloride, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, and vinyl chloride.

Summary of Benefits

Sectors Affected: The general public; municipally and privately owned water supply systems; and all other segments of the water supply industry, including consulting sanitary engineers, analytical chemists, equipment manufacturering, and wholesale and retail trade.

These MCLs will have their greatest impact on small water supply systems which currently employ little or no treatment. The public served by such systems will, in particular, realize the benefits of this proposal. The water supply industry will benefit from increased demand for their service. It is impossible at this time to assign direct monetary values to the benefits to be realized under this proposal. Such benefits include a lessening of public exposure to toxic substances in drinking water and a consequent safeguarding of public health.

Summary of Costs

Sectors Affected: The general public; State and local governments; and municipally and privately owned water supply systems.

The public in general will be the principal group affected by this proposal, as the users will undoubtedly bear the costs of any necessary modifications to their water supply systems. This will particularly be true for users of small water supply systems which currently employ little or no treatment. No estimates of the economic impact are available at this time.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contaminants of water are indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, and Water Quality Criteria and Hazardous Waste Disposal Controls.

External: State programs would be expected to deal with decisions on variances and exemptions from the regulations and to provide technical assistance to public water systems making changes in their treatment processes.

Active Government Collaboration

Supporting documentation for the health basis of any proposed regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Products Safety Commission, and the Food and Drug Administration. In addition, the National Academy of Sciences and the National Drinking Water Advisory Council will be consulted during the MCL development.

Timetable

Proposed Rule—late Summer 1980
Public hearing (to be announced)—late Fall 1980
Final Rule—Summer 1981

Available Documents

"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.

"National Organics Monitoring Survey," EPA, Office of Drinking Water.

"Interim Treatment Guide for Controlling Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, January, 1978.

"Occurrence of Volatiles in Drinking Water," EPA, Office of Drinking Water, Criteria and Standards Division, March 1980.

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EPA-OWWM

Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste From Generation to Final Disposal. (40 CFR Parts 260, 261, 262, 264, 265, and 266)

Legal Authority

Resource Conservation and Recovery Act of 1976 (RCRA), as amended, §§ 3001, 3002 and 3004, 42 U.S.C. § 6921, § 6922 and § 6924.

Reason for Including This Entry

These regulations are important because they will initiate, for the first time on a national level, management of

hazardous solid waste from generation to final disposal.

Statement of Problem

The Environmental Protection Agency (EPA) estimates that more than 54 million metric tons of hazardous waste is generated annually in the United States. Hazardous waste includes toxic chemicals, pesticides, acids, caustics, flammables, and explosives. Of this hazardous waste, EPA estimates that 90 percent is managed by practices that will not meet these proposed new Federal standards. A variety of health and environmental damages result from improper management practices, the most frequent of which are direct contact with toxic waste; fire and explosions; groundwater contamination by leachate; surface water contamination through runoff or overflow; air pollution by open burning, evaporation and wind erosion; and poisoning through the food chain. The amount of hazardous waste will increase by 30 percent in the next decade, primarily because other environmental laws have curtailed emissions into the air, waterways and oceans.

EPA has information on more than 400 cases of damage to human health or the environment caused by improper hazardous waste management. One such case, Love Canal in Niagara Falls, New York, resulted in the evacuation of 239 local families. The cost to the State and Federal governments is estimated at about $36 million for clean up, relocating residents, health and environmental testing services, and other associated expenses. This does not include the cost of secondary consequences, such as possible increases in birth defects, miscarriages, and hepatic and respiratory disorders. With as many as 30,000 hazardous waste disposal sites posing potential public health and environmental threats, hundreds of millions of dollars in damages and remedial costs could result if the problem is left unattended.

Alternatives Under Consideration

We studied a number of alternatives prior to this proposed rulemaking and, also, as a result of public comment and new information, during the development of the final regulations. We are considering a number of significant changes to the regulations that may require reproposal, partial promulgation, or promulgation of interim final rules for §§ 3001 and 3004. In the preamble to the final rules, EPA will discuss in detail the alternatives considered and the reasons for their selection or rejection.

The proposed regulations provide two mechanisms for determining if a waste is hazardous: (1) a set of characteristics and (2) a list of specific wastes. The proposed regulations include four (ignitable, corrosive, reactive, and toxic) of eight characteristics originally considered. Because test methods are not fully developed or validated for the other four characteristics (radioactive, infectious, phytotoxic, and teratogenic and mutagenic), we excluded these characteristics.

The proposed regulations exclude hazardous waste generated by households, farmers, retail establishments, and others who generate less than 100 kilograms per month. This exclusion assumes that small amounts of hazardous waste will be disposed of in land disposal facilities approved under Subtitle D of the Resource Conservation and Recovery Act (RCRA) of 1976 and, therefore, will not pose a hazard to human health or the environment. We are considering whether or not we should increase or decrease the size of the small-generator exemption prior to promulgation of the regulations.

There are several reasons which will affect what these regulations will cover: the number of wastes we define as hazardous; the definition of "small" if we exempt small generators from regulation; and the number of wastes we define as "special wastes." The special waste category, as proposed, defers most treatment, storage, and disposal standards for certain wastes of high volume but low hazard, such as those produced by utilities, mining, oil and gas drilling, and cement kiln operations.

Eliminating the special waste category is a regulatory choice. In addition, candidate special wastes may be altered as the result of proposed Congressional amendments to the pending RCRA reauthorization bills. These amendments will address special wastes (either by deferral or exemption), such as utility wastes; solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and uranium ore; and cement kiln dust waste.

Time-phasing the implementation of the regulations could help reduce the potential burden on environmentally acceptable disposal sites. Disposal capacity is currently limited and generators may be unable to find adequate disposal facilities. Public opposition to siting may delay the development of additional landfill capacity. The phasing approach could help assure that the most serious environmental problems are addressed first if a degree of hazard approach is used. We designed all alternatives under consideration to make efficient use of limited disposal capacity.

Delineating degrees of hazard is difficult, and was not reflected in the proposed waste classification regulations. A risk-oriented hazard system for regulations affecting treatment, storage, and disposal facilities could tailor design and operating standards to correspond to the character and hazard of the wastes. However, the risk of a particular waste in a particular location depends as much on the management situation as on the inherent hazard of the waste. Myriad combinations of wastes, site-specific designs, and operating conditions make regulations based on this approach extremely difficult and presumptive. The regulations, as proposed, reflect the similar management needs of most hazardous wastes. They establish standards for each of the several methods of disposing, treating, and storing hazardous waste (landfilling, application to the land, treatment in surface impoundments such as holding or aeration ponds, and incineration), that do not vary according to the waste.

The proposed treatment, storage, and disposal standards are applicable to most facilities that handle hazardous wastes, except those mentioned previously. Phased-facility permitting and notes and variances included in the proposed regulations offer alternatives for accommodating possible difficulties associated with retrofitting existing facilities.

A House amendment to the RCRA reauthorization bill proposes to exempt existing wastewater treatment facilities from regulatory control if they demonstrate certain environmental safeguards. Both bills propose mechanisms for the Administrator to require separate standards for new and existing facilities which would ease the regulations' burden on existing facilities.

Other choices are to design alternative standards for the facilities, to enhance implementation by those in existence or close to start-up of operations, and to ease the technical and economic impact of the regulations on them.

EPA is making potentially significant changes to the RCRA § 3004 technical standards. Short of the full set of technical, financial, and administrative requirements contained in the proposed regulations for treaters, storers, and disposers of hazardous waste, EPA will, at a minimum, finalize the interim status standards under § 3004. Owners and operators of treatment, storage, and disposal facilities will have to begin properly storing wastes and meeting

interim status standards, including administrative standards for security, recordkeeping, reporting, visual inspection, training of personnel, contingency plans, closure, and financial responsibility.

The proposed technical standards for hazardous waste facilities are based primarily on design and operating standards intended to achieve complete containment or destruction of the waste. These are backed up by ambient air, water, and groundwater performance requirements in the event the specified designs do not achieve expected levels of health and environmental protection. The approach we are developing for the final regulation is a system based on application of "Best Engineering Judgment" for permitting individual treatment, storage, and disposal facilities. With this approach, as an alternative to design and operating standards, we will provide judgment factors, a decision model, and/or design and operating guidance to facilitate application of Best Engineering Judgment to each permit case.

The three proposed hazardous waste regulations are part of a series of seven required by Subtitle C of the Resource Conservation and Recovery Act of 1976 to initiate a national hazardous waste management program.

RCRA required that EPA promulgate the hazardous waste regulations within 18 months of enactment of the law (by April 1978). Despite suit against EPA by environmental organizations and the State of Illinois, EPA did not meet this deadline because of the enormous complexity of the task. This delay was caused by the number of public comments received, the amount of supporting data and documentation needed, and the complexity of the technical and policy issues. The U.S. District Court approved EPA's proposed schedule for development of the Subtitle C regulations before the fall of 1980.

Summary of Benefits

Sectors Affected: The general public.

By issuing these regulations, EPA is creating a framework for the control of hazardous wastes which would otherwise contaminate groundwater, surface waters, and soils, poison humans and animals; and cause air pollution, fires, and explosions. These regulations will require proper hazardous waste management that will reduce the incidence of damage to human health and the environment and save hundreds of millions of dollars in the costs associated with clean-up, emergency response, and health and environmental damages (such as occurred at Love Canal, mentioned previously).

Comprehensive regulatory controls over the generation, movement, storage, and treatment of hazardous wastes may also help reduce opposition to the siting of hazardous waste management facilities. Overcoming the barrier of local opposition will allow siting of management facilities at environmentally secure sites and further reduce the possibility of damages to health and the environment.

Summary of Costs

Sectors Affected: All industries generating hazardous waste, especially manufacturing; public and private waste management; and the general public.

Although these regulations affect most industries throughout the country, the manufacturing industries most affected by the proposed regulations are: textile mill products; industrial inorganic chemicals; plastic materials; drugs; paints; industrial organic chemicals; explosives; agricultural chemicals, including pesticides; petroleum refining; lubricating oil and greases; rubber products; leather tanning and finishing; primary metal industries; plating and polishing of metals; special industrial machinery; electronic components; and batteries. Eight sectors are likely to experience some plant closures and job losses. These sectors include electroplating; wool fabric dyeing and finishing, mercury cell chlorine, leather finishing, mercury smelting and refining; and secondary copper, secondary lead, and secondary aluminum smelting.

The estimated annual compliance cost attributed to the Interim Status Standards part of the RCRA hazardous waste regulations is $510 million. Of this, $303 million is associated with closure/post-closure liability requirements, $57 million is attributable to treatment and disposal, and $15 million is associated with recordkeeping and reporting. Monitoring and testing, administration, training, and contingency planning account for the remaining $135 million. The total cost represents less than 0.2 percent of the annual value of the production for those affected industries examined.

The regulations will also affect the public and private hazardous waste management industry. In all, some 380,000 generators, transporters, treaters, storers, and disposers of hazardous wastes will be brought into the regulatory program. The affected industrial segments will probably pass on the increased costs to the public, resulting in a nominal increase in prices of selected consumer items.

Industries which presently dispose of hazardous waste at their own facilities may begin to ship their waste to off-site facilities rather than incur the costs of upgrading their disposal facilities to comply with the regulations. This is likely to cause a short-run shortage of disposal capacity, which will increase demand for new sites. This capacity shortage and rigorous standards for facilities may result in a nominal increase in the cost of disposal.

The governmental costs associated with the implementation and maintenance of the hazardous waste management program are estimated at $20 to $35 million per year. We currently estimate that 35–41 states and territories will assume the program while EPA operates a Federal program in the remaining 15–21.

Because Texas, Ohio, Pennsylvania, Louisiana, Michigan, Indiana, Illinois, Tennessee, West Virginia, and California generate 65 percent of all hazardous waste produced nationally, these States will probably be affected to a greater degree than others.

Related Regulations and Actions

Internal: Proposed hazardous waste rules linked with the three described in this calendar in creating the RCRA Subtitle C regulatory framework are:

(1) Proposed Consolidated Permit Regulations, 44 FR 34244–34344 and Draft Consolidated Permit Application Form, 44 FR 34346–34392, June 14, 1979 (proposed rule and draft application forms, respectively).

(2) Hazardous Waste Guidelines and Regulations, 44 FR 49402–49404, August 22, 1979 (supplemental proposed rule).

(3) Authorization of State Hazardous Waste Programs; Advance Notice of Final Regulation, 45 FR 6752–6756, January 29, 1980.

(4) Notification of Hazardous Waste Activity; Public Notice, 45 FR 12746–12754, February 26, 1980.

EPA issued rules regarding disposal of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act, § 6(e), (15 U.S.C. § 2605). Regulations issued under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 135 *et seq.*) address the disposal of pesticides and pesticide containers. Rules under the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 *et seq.*) control incineration or dumping of hazardous waste at sea.

External: The Department of Transportation (DOT) has developed hazardous materials transportation regulations (49 CFR Parts 171–173, 178–179) controlling containerization and labeling of waste by generators using transporters engaged in interstate or

foreign commerce. EPA published the final rule, Standards Applicable to Transporters of Hazardous Waste, in 45 FR 12737–12744, February 26, 1980.

This incorporated DOT's rules on labeling, marking, packaging, placarding, and discharge reporting. DOT, in its final rule, will incorporate EPA's manifest requirements and expand its list of hazardous materials to include hazardous wastes which require a manifest.

Active Government Collaboration

Department of Defense, Occupational Safety and Health Administration, Department of Energy, Food and Drug Administration, Soil Conservation Service, Water Resources Council, the Center for Disease Control of the Department of Health, Education and Welfare, Department of Transportation and Interstate Commerce Commission cooperated with EPA during development of the proposed regulations.

Timetable

Final Rules—Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001) and Interim Status Standards (RCRA § 3004) will be promulgated in May 1980; Technical Standards (RCRA § 3004) in October 1980.
Final Rules Effective—Regulations affecting hazardous waste generators become effective on August 26, 1980. Regulations for identification and listing of hazardous waste will be effective upon promulgation. Regulations affecting owners or operators of hazardous treatment, storage, or disposal facilities will be effective six months after promulgation.

Available Documents

NPRM—43 FR 8946–59208, December 18, 1978
Supplemental Proposed Rule—44 FR 49402–49404, August 22, 1979
Final Rule—Hazardous Waste Management: Overview and Definitions; Standards Applicable to Generators of Hazardous Waste (RCRA § 3002); 45 FR 12722–12744, February 26, 1980
The EPA Office of Solid Waste Docket (Room 2711, EPA, 401 M Street, S.W., Washington, D.C. 20460) maintains the following documents for public review:
Draft background documents
Draft Resource Requirements
Summary Draft Regulatory Analysis
Public comments
Summaries of ex parte contacts
Public hearing transcripts
Studies and reports on hazardous wastes and hazardous waste management

Copies of the following documents are also available from Edward Cox, Solid Waste Information Office, 26 West St. Clair, Cincinnati, Ohio 45260:
Draft Environmental Impact Analysis
Draft Integrated Impact Assessment of Hazardous Waste Management Regulations
Studies and reports on hazardous wastes and hazardous waste management

Agency Contact

(1) Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001)—
Gary Dietrich, Associate Deputy Assistant Administrator for Solid Waste
U.S. Environmental Protection Agency
Office of Solid Waste (WH–562)
401 M Street, S. W., Room 2710
Washington, D. C. 20460
(202) 755–9170
(2) Standards Applicable to Generators of Hazardous Waste (RCRA § 3002)—
Harry Trask, Program Manager
Systems Implementation Program
U.S. Environmental Protection Agency
Office of Solid Waste (WH–563)
401 M Street, S. W., Room 2624
Washington, D. C. 20460
(202) 755–9150
(3) Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA § 3004)—
John Lehman, Director
Hazardous and Industrial Waste Division
U.S. Environmental Protection Agency
Office of Solid Waste (WH–565)
401 M Street, S.W., Room 2111
Washington, D.C. 20460
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CONSUMER PRODUCT SAFETY COMMISSION

Consumer Products Containing Asbestos (44 FR 60057)

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*
Federal Hazardous Substances Act, 15 U.S.C. § 1261, *et seq.*

Reason for Including This Entry

This investigation is of considerable interest to consumers, manufacturers, and users of asbestos or products containing asbestos because of the serious potential health hazards that may be involved.

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned that the presence of asbestos in consumer products, under certain conditions, may present a risk of cancer and respiratory disease to consumers. On the basis of present information, it appears that consumer products containing asbestos fibers can pose a health hazard if the products release asbestos fibers into the air which consumers can inhale.

CPSC, therefore, issued an ANPRM on asbestos in October 1979. The primary purpose of CPSC issuing the ANPRM was to begin a formal investigation of the use of asbestos in consumer products by identifying consumer products containing asbestos, and to discuss ways CPSC could act to protect the public from exposure to asbestos fibers in consumer products. CPSC could impose a ban, require labeling of consumer products containing asbestos, encourage some form of voluntary action by industry, or take other action.

There is a large body of scientific evidence on hazards from asbestos, both from animal testing and from studies of health effects to people exposed to asbestos in occupational settings. Studies have demonstrated increased incidence of asbestos-related diseases, including lung cancer and mesothelioma (cancer of the pleura—the membranes surrounding the lung) among people who are exposed to asbestos occupationally, as well as in individuals with only brief or intermittent "bystander" exposures. In addition, autopsy studies of lung tissues of residents in urban areas in many parts of the world indicate that the population as a whole is being exposed to asbestos from the general environment and that, once inhaled, asbestos fibers may remain lodged in the lungs for life.

Asbestos released from consumer products poses several problems in the household. First, young children and infants are exposed. Second, asbestos fibers that consumer products release into the living space can remain there over long periods of time and may be subject to repeated cycles of settling and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace, where engineering control systems and protective clothing are available to minimize workers' exposure to asbestos, the home provides household members with little or no protection from exposure to asbestos fibers released from consumer products.

We do not know exactly how many asbestos-containing products are available to the consumer; however, we estimate that hundreds of different types of consumer products contain asbestos in some form. Asbestos paper has been used in many consumer products, such

as household appliances, as a thermal or electrical insulating barrier. Asbestos is also commonly used in household building products, such as roofing, shingles, and tile, to provide strength and stability.

One example of CPSC action on products containing asbestos is hairdryers. As a result of information indicating that certain hairdryers released asbestos fibers during use, CPSC asked the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare to conduct tests. The results showed that some hairdryers released asbestos fibers into the air stream and directly on the user's head during ordinary use; thus, any fibers the hairdryers emit could potentially be inhaled.

As a result of negotiations between the Commission's staff and firms which share approximately 90 percent of the consumer hairdryer market, the firms agreed to cease production and distribution of hairdryers containing asbestos and to offer consumers some form of repair, replacement, or refund for hairdryers they currently own.

By issuing the ANPRM we expect to gather additional information on consumer products containing asbestos which will assist the Commission in making regulatory decisions on asbestos. The ANPRM states that the Commission may also use general and special orders to gather further information on particular asbestos-containing products and notes that the Commission will apply the following criteria in selecting products for priority attention in this investigation:

- the number of units of the product which the Commission estimates that consumers are using;
- the form and location of the asbestos in the product;
- the frequency, manner, and location in the consumer's environment of product use, including such factors as the useful life of the product, presence of heat and/or moisture, and the likelihood of abrasion during use or foreseeable misuse;
- the likely availability and feasibility of substitutes for asbestos in the product;
- the relative ease of data collection and analysis by the Commission and the reporting burden on industry; and
- the degree of potential overlap of CPSC reporting requirements with the information-gathering efforts of other regulatory agencies, particularly the Environmental Protection Agency.

Alternatives Under Consideration

The ANPRM outlines the possible statutory tools available to CPSC for regulating asbestos in consumer products, including:

- consumer product safety standards—establish requirements for performance, composition, contents, design, construction, finish, or packaging of a product;
- information—require labeling of the product with warnings or instructions for use;
- ban—ban certain products as hazardous products or substances under the Consumer Product Safety Act or the Federal Hazardous Substances Act, both administered by CPSC; and
- notification/recall—if the product presents a substantial hazard we may require the manufacturer, distributor, or retailer to notify the public and either repair or replace the product or refund the purchase price.

If we discover a product containing asbestos which presents an "imminent hazard" to the public, as that term is used in the Consumer Product Safety Act, the Commission may file a civil action in a United States district court against the product or the manufacturer, distributor, or retailer of the product for seizure or injunctive relief. In addition to these tools, we may also elect to encourage voluntary action or to permit market forces to work by educating consumers about the dangers of exposure to asbestos fibers so they will demand products which do not emit asbestos fibers.

The Commission intends to work closely with the Environmental Protection Agency in developing any regulatory approaches to asbestos.

Summary of Benefits

Sectors Affected: The general public.

The benefits we expect ultimately from CPSC asbestos activities involve the reduction of consumer exposure to chronically toxic substances. In the "Statement of Problem," we mention the unique nature of the consumer risk—that the products may release asbestos fibers when the consumer is using them and the fibers may remain in the household air. Data show that these fibers, once inhaled, may remain in the lung and pleura of consumers throughout their lifetimes. The primary benefit of the information we wish to collect, therefore, would be to identify products that release asbestos fibers, so that we could take action to reduce or eliminate the consumer's exposure. The diseases that result from exposure to asbestos fibers—cancer, mesothelioma, and asbestosis (a lung condition caused by inhalation of asbestos dust)—are life-threatening, cause incalculable pain and suffering, and involve enormous medical expense. The information we obtain from responses to the ANPRM may help us to determine which products should receive priority attention in our investigation.

Summary of Costs

Sectors Affected: Asbestos mining industry; manufacturing, wholesale and retail trade, and users of products containing asbestos.

The ANPRM is intended to be responded to by industry groups as well as by the general public. Because of the broad range of products that contain asbestos, firms in major sectors such as mining, manufacturing, construction, wholesale trade, retail trade, and services are likely to respond.

The public would voluntarily supply the information requested by the ANPRM. The information we obtain as a result of this ANPRM on the number of consumer products, their use, and the value of the products may enable us to estimate the costs of any further action.

Related Regulations and Actions

Internal: In 1977, the Consumer Product Safety Commission banned consumer patching compounds containing asbestos and artificial gas-fired emberizing (giving the appearance of a live coal) materials for fireplaces that contained respirable asbestos (16 CFR 1304, 1305).

External: Several agencies regulate exposure to asbestos fibers. The Occupational Safety and Health Administration of the Department of Labor limits worker exposure to airborne asbestos fibers to two fibers, longer than five micrometers, per cubic centimeter of air (8-hour time weighted average) (29 CFR 1910).

The Environmental Protection Agency's (EPA) national emission standard for hazardous air pollutants regulates demolition and renovation operations involving friable asbestos materials and prohibits spray application of these materials if they contain more than 1 percent asbestos (40 CFR 61).

The Department of Transportation regulates the transportation of asbestos and the packaging of asbestos for transportation (49 CFR 172–177).

The Food and Drug Administration of the Department of Health, Education and Welfare, in 1972, banned asbestos-containing garments for general use (21 CFR 191).

Active Government Collaboration

We have worked closely with the Environmental Protection Agency to ensure that our efforts to investigate and possibly regulate the use of asbestos will be coordinated, compatible, and nonduplicative. EPA simultaneously published an ANPRM in October 1979 which describes that Agency's systematic effort to gather information on groups of asbestos products, and to evaluate risk from these products based on the "life cycle" concept. In the life cycle analysis, the Agency examines cumulative risk from human exposure to asbestos from primary processing through end use and disposal. The CPSC's ANPRM describes an approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives. The first is to reduce significantly, through complementary actions, unreasonable human health risk from exposure to asbestos. The second is to reduce potential reporting burdens on industry by coordinating information-gathering activities. Third, to avoid inconsistent or needlessly burdensome regulations, we will develop regulatory actions that may result from these investigations in close consultation with each other.

Timetable

General Order to Industry—mid-1980.
Regulatory Analysis—the Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

CPSC—Consumer Products Containing Asbestos; Advance Notice of Proposed Rulemaking—44 FR 60057, October 17, 1979.

Agency Contact

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CPSC

Omnidirectional Citizens Band Base Station Antenna Standard (44 FR 53676)

Legal Authority

Consumer Product Safety Act §§ 7 and 14, 15 U.S.C. §§ 2056 and 2063.

Reason for Including This Entry

This standard may impose a major increase in costs or prices for antenna manufacturers, distributors, retailers, and purchasers.

Statement of Problem

The Consumer Product Safety Commission (CPSC) staff estimates that approximately 220 persons in 1975, 275 persons in 1976, and 220 persons in 1977 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when people were putting up or taking down the antennas which in the process contacted electric power lines. Typically, these incidents occur when the antenna contacts the power line while people are transporting it to the erection site or when it falls into a power line because it gets out of the control of the people who are putting it up or taking it down. The Commission estimates that over 70 percent of the antennas involved in these accidents are Citizens Band (CB) base station (other than mobile) antennas.

The Commission on June 29, 1978 issued a rule under § 27(e) of the Consumer Product Safety Act which requires manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container, and at the beginning of the instructions, warning of this hazard and referring the reader to the instructions. We intend this rule to help prevent injuries and death from electric power lines when people put up or take down antennas or antenna-supporting structures. The Commission reasoned that if consumers know of the danger and how to avoid it, they will be able to take the necessary steps to protect themselves.

While the Commission believes that the present information and labeling rule will reduce the deaths that occur because of the contact of television and CB base station antennas with electric power lines, the Commission also believes that a standard which would ensure that the antenna would not transmit a harmful amount of electricity to the installer if the antenna did contact a power line may address the risk of electrocution more effectively, and thereby cause a greater reduction in deaths.

Alternatives Under Consideration

Possible alternatives to pursuing a mandatory standard at this time include delaying further action until we measure the § 27(e) information and labeling rule's ability to reduce deaths and injuries. The Commission estimates that it could take from one to two years to assess the rule's effectiveness because of the time it takes to influence the product mix (number of complying products) in the marketplace.

Another alternative is a voluntary approach through the Electronics Industries Association (EIA). The EIA has formed an ad hoc committee to develop a voluntary standard for CB and TV antennas. While the voluntary approach would require the least amount of CPSC resources to develop a standard, it is unclear what the level of effectiveness, or of industry conformance with the voluntary standard would be, and therefore we do not know what percent of the known antenna-related deaths could be prevented.

Under the Consumer Product Safety Act, CPSC may develop a proposed consumer product safety standard in the following ways: (1) People or organizations outside the Commission may be invited to develop a recommended standard (those who submit such offers are referred to as "offerors" and the development of recommended standards in this manner is called the "offeror process"); (2) the Commission may invite people or organizations outside the Commission to submit to the Commission an existing standard which it could propose as a consumer product safety standard; (3) the Commission may publish an existing standard as a proposed consumer product safety standard; or (4) the Commission may develop the standard itself.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware that any Federal department or agency or other qualified agency, organization, or institution has issued, adopted, or proposed any standard that would adequately reduce the risk and that the Commission could publish as a

proposed standard. The Commission has determined that it would be more expeditious to develop this standard itself than for interested parties outside the Commission to develop the standard. The Commission started the proceeding by publishing an ANPRM in the **Federal Register** in September 1979.

Summary of Benefits

Sectors Affected: Users or installers of communication antennas, especially CB base station omnidirectional antennas.

The benefits from this proceeding are related to the injury and death information we cited in "Statement of Problem." The staff estimates that the standard could prevent about 64 percent of the deaths associated with outdoor communications antennas (all outdoor antennas) by addressing omnidirectional (reception and transmission essentially uniform in all directions) CB antennas only.

In addition to the reduction in deaths associated with the standard, we anticipate that the § 27(e) rule will reduce other deaths: (a) some deaths that would otherwise be associated with antennas manufactured between October 1978, the effective date of the rule, and the date when the new standard will take effect; (b) some deaths otherwise associated with antennas that the standard does not cover, and (c) some deaths where contact would be between the power line and the mast, rather than the antenna itself.

Certain provisions of the standard may also benefit consumers in the form of improved performance and increased useful life of the product.

Summary of Costs

Sectors Affected: Manufacturing, wholesale and retail trade, and purchasers of CB base station omnidirectional antennas.

The CPSC staff estimates that the average price of CB antennas will probably increase as a result of the standard; however, we cannot supply estimated figures because the costs are dependent upon the requirements.

We anticipate that manufacturers may meet the standard by coating or covering the antenna with a nonconductive material, or by constructing antennas of a nonconductive material, depending on the required strength, electrical resistance, and performance life of the antenna. One type of nonconductive material that industry representatives have suggested is fiberglass.

Based on information available at this time, price increases ranging up to about 25 percent might occur, depending on the means manufacturers use to comply with the standard. Certain producers may leave the CB antenna market if they cannot develop the capability to produce insulation at a reasonable cost.

Related Regulations and Actions

Internal: CB Base Station Antennas, TV Antennas and Supporting Structures: Warning and Instructions Requirements (16 CFR 1402, 43 FR 28392).

External: Electronics Industry Association (EIA) development of a Voluntary Standard for CB Antennas.

Active Government Collaboration

We encourage Federal agencies and State governments to participate in developing the standard by soliciting their comments.

Timetable

NPRM—April 30, 1981
Final Rule—October 30, 1981
Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.
Public Meeting Dates—June 30, 1980 (Tentative), Washington, D.C. October 31, 1980 (Tentative), Washington, D.C.

Available Documents

"CPSC Staff Briefing Packages" dated January 23, 1979 and August 1, 1979 are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207

Omnidirectional Citizens Band Base Station Antennas—Proceeding to Develop a Consumer Product Safety Standard by the Commission, 44 FR 53676, September 14, 1979

Agency Contact

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CPSC

Upholstered Furniture Cigarette Flammability Standard

Legal Authority

Flammable Fabrics Act, § 4, 25 U.S.C. § 1193.

Reason for Including This Entry

One of the major causes of deaths, injuries, and property damage in the United States each year is from fires in upholstered furniture started by burning cigarettes. Appropriate action is needed to reduce this death and injury toll.

Also, an upholstered furniture cigarette flammability standard, if adopted as a mandatory rule, could result in a major increase in costs for upholstered furniture manufacturers, distributors, and retailers, and increase prices for purchasers.

Statement of Problem

The staff of the Consumer Product Safety Commission (CPSC) estimates that 45,000 upholstered furniture fires occur each year in residences in the United States, 33,000 of which are associated with cigarettes. Our current estimates indicate that 3,200 injuries and 800 deaths occur annually because of these fires. At a minimum, cigarette ignition of residential upholstered furniture causes 1,700 of the injuries and 500 of the deaths. Among other actions, the Commission is considering a cigarette-ignition resistant flammability standard for upholstered furniture to reduce the number of injuries and deaths.

The Commission staff estimates that property damage resulting from cigarette ignition of upholstered furniture runs $25 million annually. The human losses are difficult to express in economic terms, especially since the Commission does not endorse monetary estimates of the value of human life. The CPSC staff has used a figure of $1 million per life for illustrative purposes only. This figure is probably a conservative expression of value, but is within the range of estimates that are associated with studies of the "statistical value of life." The annual cost of lives lost, therefore, could be about $500 million. The staff has also estimated $16 million for annual injuries exclusive of pain and suffering. A rough estimate of the annual losses associated with cigarette ignition of upholstered furniture, thus, is $541 million.

Alternatives Under Consideration

The major alternative to a mandatory standard is the Upholstered Furniture Action Council's (UFAC) Voluntary Action Program. UFAC believes that manufacturers who agree to build furniture according to the provisions of the UFAC program, will produce furniture that can resist ignition by cigarettes. This program provides for the classification of upholstered fabrics into two categories based on their

performance in a cigarette-ignition test that UFAC developed. For furniture containing Class I fabrics, this voluntary program requires elimination of ignition-prone welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) and untreated cotton beneath the decking fabric (the material on which a loose seat cushion rests) and in immediate contact with the covering of inside vertical furniture walls. The requirements for furniture containing Class II fabrics are the same as for Class I with the addition that furniture using Class II fabrics must prevent contact between conventional polyurethane foam cushions and horizontal seating surfaces. The UFAC voluntary program provides test methods to determine acceptable filling materials (such as treated cotton batting, polyester batting, etc.) for use in furniture.

Tests carried out during 1979 indicated that the UFAC Voluntary Action Program has a strong potential for significantly increasing the safety (cigarette ignition resistance) of upholstered furniture. Late in 1979, the Commission voted to defer any regulatory action on the flammability of upholstered furniture for one year, in order to determine the effectiveness of UFAC's voluntary program in reducing the ignition of upholstered furniture by cigarettes.

If the industry's voluntary program is not effective, CPSC will consider adopting a mandatory performance standard which is now in draft form. Under this draft mandatory standard, firms would test upholstery fabrics and place them into one of four classes—A through D—on the basis of their resistance to ignition from cigarettes burned on the fabric. Fabric manufacturers would label fabrics according to these classes to show their flammability classification.

Furniture manufacturers would determine furniture constructions suitable for use with the fabric classes by testing mockups of the furniture to demonstrate their resistance to cigarette ignition. The standard would require annual testing, and permit manufacturers to use only the combinations of fabric and filling materials that did not ignite when the applicable mockup was tested.

Summary of Benefits

Sectors Affected: Users of upholstered furniture; manufacturing of fabrics made from thermoplastic fibers.

The benefits we expect from the proceeding are related to the injury and loss statistics we cite in "Statement of Problem." The staff estimates that the standard could prevent about 430 deaths, 1,462 injuries, and $22 million in property damage annually, which constitutes 86 percent of the losses. The Commission staff estimates that the annual benefits (calculated as discussed in "Statement of Problem") could be about $470 million when all upholstered furniture is manufactured in compliance with the standard.

Other benefits that may be related to the cigarette-ignition standard are a reduction in losses associated with pain and suffering from burn injuries, a possible reduction in losses due to ignition sources other than cigarettes, and a possible increase in the durability of upholstered furniture fabrics as thermoplastics replace cellulosic fibers.

Summary of Costs

Sectors Affected: Upholstered furniture manufacturing; upholstery shops; textile mill products manufacturing, particularly cotton and other cellulosic fibers; wholesale and retail trade, and users of upholstered furniture.

The CPSC staff estimates that the annual retail cost increase to the consuming public as a result of the mandatory standard which it is considering would range from $114 to $174 million.

The staff estimates that the average manufacturing cost increases would range from $1.75 to $2.65 per piece ($3.50 to $5.50 retail price increase) for chairs and from $3.30 to $5.00 per piece ($6.60 to $10.00 retail price increase) for sofas.

The CPSC staff estimates that the possible increases in manufacturing cost that result from the standard would range from $57 to $87 million in the first year that all provisions of the standard are in effect. Ths projected increase consists of anticipated costs of $8 million for use of filling material with greater resistance to cigarette ignition; $12 to $17 million for smolder-resistant backcoating of 50 percent of the Class D fabrics, which are the least smoldering-resistant fabrics that the fabric classification test reveals; $8 to $11 million for the use of foil barriers on 10 percent of the furniture pieces that are covered with Class D fabrics; and $3 to $5 million for required recordkeeping.

Consumers may find fewer types of upholstery fabrics available. We expect heavier fabrics, such as damasks, jacquards, and velvets that are made from cotton and rayon to require more extensive and costly treatment under the standard. CPSC staff expects the early response to be a shift by the furniture industry away from these fabrics to fabrics made from thermoplastic fibers, such as nylon, polyester, or olefin. If we adopt the standard, we estimate that the furniture industry may not use 10 to 14 percent of currently available fabrics.

The Commission staff expects that the standard would result in relatively greater cost increases for the smaller furniture fabric producers than for larger producers. We expect that smaller producers would face higher furniture mockup testing costs as a percentage of sales. These costs may represent about three percent of the total value of shipments for firms with less than $250,000 in annual sales. Firms with about $2 million in annual sales are expected to face costs for mockup testing totaling two percent of their value of shipments. Firms with annual sales of about $7 million can expect to have mockup testing costs of only one percent of their value of shipments. This disparate effect on smaller firms may be made worse to the extent that these firms produce furniture covered with fabric supplied by the customer, which is more likely to be Class D fabric. The requirement for Class D mockup tests would substantially increase the price of such special order items. The Commission believes that smaller furniture manufacturers are more likely than larger ones to produce furniture with a customer's own material.

Small fabric producers, like small furniture producers, can expect to face higher testing costs as a percentage of sales than larger fabric producers. In addition, these firms are more likely to produce cotton or other cellulosic fabrics that we expect to decline in demand as an early response to the standard. Conversion by these firms to greater use of thermoplastic fibers may be difficult. Capital expenditure to alter machinery may be necessary. Furthermore, these changes would place these firms in more direct competition with the larger firms that now produce thermoplastic fabrics.

Changes in filling materials used under the standard may affect suppliers of polyester fiberfill and urethane foam cushioning who are likely to find increased demand for their products. Others, such as producers of cotton batting, are likely to face a reduction in demand by the furniture industry. The extent of the reduction in demand for certain filling materials, as well as for cellulosic fabrics, will largely depend on the result of research now underway into smolder-retardant treatment methods for materials which are flammable.

Related Regulations and Actions

Internal: None.

External: The State of California has flammability regulations, parts of which the CPSC standard would preempt. Other states may have similar regulations.

Active Government Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

Timetable

We will make a Commission decision on the need for a mandatory standard after the completion of the one-year assessment of the effectiveness of the industry voluntary action program (2nd quarter FY 1981).
Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

"CPSC Staff Briefing Packages," November 15, 1978 and September 27, 1979, and other applicable material related to upholstered furniture flammability are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Agency Contact

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CPSC

Urea Formaldehyde Foam (UFF) Insulation

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*

Reason for Including This Entry

This investigation is of great public interest because of possible adverse health and safety effects of Urea Formaldehyde Foam (UFF) insulation. It is of special interest to consumers with homes containing the insulation, to consumers considering the purchase of it, and to those who manufacture, distribute, sell, and install it.

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned about adverse safety and health effects that may be associated with UFF insulation. This type of home insulation, which is also referred to as urea-based foam insulation or foamed in-place insulation, is manufactured at the job-site by drilling holes in existing wall cavities and pumping in the resin and a foaming agent through pressurized hoses. The Commission has received over 1,000 reports about adverse health effects that may be associated with the release of formaldehyde gas from UFF insulation. It has conducted approximately 218 in-depth injury investigations of the injury reports, approximately 40 percent of which resulted in either a temporary or permanent period of dislocation of consumers from their homes. The in-depth investigations indicate that in some cases consumers were hospitalized. The range of severity of reported reactions varies from short-term discomfort to permanent impairment, such as the loss of visual acuity, and reduction in lung function. Current information suggests that the most common reactions of consumers exposed to formaldehyde gas released from UFF insulation are: (1) eye, nose, and throat irritation; (2) coughing and shortness of breath; (3) skin irritation; (4) headaches and dizziness; and (5) nausea. Persons with respiratory problems or allergies, especially persons who are allergic to formaldehyde, can suffer more serious reactions.

In addition to the above effects, current information indicates that formaldehyde is a strong sensitizer, so that exposed individuals may experience increasingly severe reactions to formaldehyde at increasingly low levels of exposure. Sensitized individuals may find it increasingly difficult to stay in their homes. In some cases, the individual's sensitization to formaldehyde is so severe that after leaving the home, the consumer may be adversely affected by exposure to even very low levels of formaldehyde from other sources. Since there are many sources of formaldehyde exposure, complete avoidance of this exposure may be nearly impossible.

Although some consumers' reactions to formaldehyde may be so severe that they seek medical attention, many others may experience a less specific but persistent discomfort that may be mistaken for a cold, allergy, or general rundown feeling.

In addition to the potential adverse safety and health effects described above, based on the acute toxicity of formaldehyde, interested persons should be aware that on October 16, 1979 representatives of the Formaldehyde Institute, an industry trade association, informed the Commission that preliminary test results from the Chemical Industry Institute for Toxicology (CIIT), a scientific organization supported by 36 U.S. chemical corporations, indicate that formaldehyde has caused cancer in some laboratory animals. The CIIT study is still in progress and the human health implications of these findings have yet to be assessed.

Information currently available to the Commission indicates that the potential for UFF insulation to release formaldehyde may be dependent on the following factors: (a) quality of ingredients in the insulation; (b) age or shelf life of ingredients; (c) viscosities of ingredients; (d) ratios of ingredients; (e) temperatures at which foaming occurs; and (f) mixing of ingredients. Additional factors that may increase the likelihood of liberating formaldehyde are: (a) excess formaldehyde in the resin; (b) excess catalyst in the foaming agent; (c) excess foaming agent; (d) improper ratio of resin to foaming agent; (e) foaming at high humidities; (f) foaming with cold chemicals; (g) dry density of foam exceeding the manufacturer's specifications; (h) application against recommended practice; and (i) improper use or lack of vapor barriers.

After the UFF insulation is in place it may begin to release formaldehyde, either immediately or after a delay and may continue to release formaldehyde indefinitely. Available information indicates that heat and humidity may increase formaldehyde emissions. Because of these factors, the Commission believes that some consumers may insulate their homes in the winter months and not experience adverse health and safety effects until the summer months.

CPSC concerns about consumer exposure to formaldehyde are not limited to UFF insulation, because formaldehyde is an ingredient in many different consumer products, including textiles, paper, and wood products.

An estimated 6.5 billion pounds of formaldehyde are produced annually by American industry, with about half of the annual production going into wood products, such as plywood, fiber board, and particle board. In these products, formaldehyde is combined with urea of phenol to create an inexpensive, effective binding agent.

Alternatives Under Consideration

At the present time the Commission is continuing to gather and assess epidemiological, technical, and economic information concerning UFF insulation.

On October 20, 1976 the Metropolitan Denver District Attorneys' Consumer Office filed a petition under § 10 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2059, requesting the Commission to develop a safety standard under section 7 of the CPSA, 15 U.S.C. § 2065, for certain types of home insulation products, including UFF insulation. The petitioner claimed that there is an unreasonable risk of injury of irritation and poisoning associated with UFF insulation. After considering information compiled by the Commission staff, on March 5, 1979, the Commission decided to defer a decision on the parts of the petition that dealt with UFF insulation and instructed the Commission staff to evaluate additional information on possible means of addressing this alleged unreasonable risk of injury (44 FR 12080).

The Commission has held public hearings concerning safety of formaldehyde gas from UFF insulation in Portland, Oregon, on December 13, 1979; in Atlanta, Georgia, on January 10, 1980; in Minneapolis, Minnesota, on February 5, 1980; and in Hartford, Connecticut, on February 26, 1980. The primary purpose of the hearings was to obtain additional information concerning health and safety problems that may be associated with UFF insulation. The Commission is also considering information presented at the hearings about safety and health problems that may be associated with the release of formaldehyde from other consumer products.

The CPSC Commissioners in their decision on what regulatory actions, if any, should be taken for UFF insulation and other products containing urea formaldehyde will consider the evaluation of additional information, including that obtained at the public hearings. This additional evaluation will allow a more comprehensive and thorough evaluation of the hazard of these products and the costs involved in the various alternatives that can be taken by the Commission to address them.

The Commission staff has recommended that the Commission propose a regulation under § 27(e) of the CPSA (15 U.S.C. § 2076(e)) that would require manufacturers of UFF insulation to provide prospective purchasers with performance and technical data concerning the release of formaldehyde from the product. The staff plans to present a regulatory options paper to the Commissioners in September 1980, discussing the need for any additional regulatory action.

Summary of Benefits

Sectors Affected: Consumers exposed to UFF insulation, especially persons with respiratory problems and allergies.

The benefits we expect from this proceeding are improved public health and safety, resulting from the reduction of consumer exposure to formaldehyde released from UFF insulation.

The Commission staff estimates that as many as 150,000 homes may have been insulated with UFF insulation in 1979. UFF insulation is pumped into the walls of a home in a shaving-creamlike foam and hardens in place, once inside the wall. This insulation has been primarily used to retrofit existing homes because the insulation can be pumped through relatively small holes in the walls of standing structures. The Commission staff believes that there are substitutes for most, but not all, uses of UFF insulation. Although the Commission does not believe that consumers in all UFF insulated homes will experience adverse safety and health effects that may be associated with the release of formaldehyde gas from UFF insulation, each home is a potential source of formaldehyde exposure. The Commission is not aware of a practical solution that has been demonstrated to be effective in all instances to the problem of released formaldehyde gas from UFF insulation. Some of the remedial measures that have been suggested by industry representatives include ventilation by opening windows and doors and turning on air conditioners, the use of ammonia or other chemicals to neutralize formaldehyde gas, painting interior walls with an oil-base paint to keep formaldehyde gas out of the living areas of the home, and the use of chemically treated air filters to absorb formaldehyde gas. These remedies have not been successful in all cases. In some instances, persons have successfully eliminated problems by removing the UFF insulation after it has hardened. However, because this remedy requires removal of the interior walls of the home, it can be a very expensive solution. The Commission has also received reports that in some instances formaldehyde gas problems have continued even after the UF foam insulation has been removed.

A written notice to consumers providing performance and technical data describing possible effects of formaldehyde gas released from UFF insulation would give all prospective purchasers more information to decide whether they should buy the product. If consumers who are more likely to have adverse reactions to formaldehyde would refrain from purchasing UFF, this could improve the utility of the product by substantially reducing the total medical and nonmedical costs attributable to formaldehyde emissions from UF foam installations, without greatly reducing the demand for the product. Also, firms may realize a decrease in the number of complaints, costs of remedial measures to correct installations involving complaints, law suits involving adverse health effects, and unfavorable publicity.

Summary of Costs

Sectors Affected: Manufacturing, wholesale and retail trade, installers, and users of UFF insulation.

The major economic impact of a notification requirement on the UFF insulation industry would be a possible reduction in the number of installations. It is difficult to project the decrease in the number of installations that may result from a rule requiring notification of possible adverse health effects, because it would depend on factors such as: (1) previous State and local actions; and (2) previous public awareness of the possible effects of formaldehyde emissions.

Related Regulations and Actions

Internal: None.

External: The Commission is aware of the following actions taken by Federal and State agencies concerning UFF insulation:

(1) The State of Massachusetts has declared UFF insulation to be a banned hazardous substance and has required the removal of UFF insulation from commerce in that State (105 CMR: Department of Public Health 650.020). The Massachusetts ban became effective November 14, 1979. The Massachusetts regulations are currently in litigation, although the ban itself is in effect during this litigation.

(2) The Attorney General's office of the State of Connecticut has entered an agreement with nine members of the UFF insulation industry to resolve complaints concerning adverse physical effects associated with UFF insulation. The Connecticut agreement also requires manufacturers to provide prospective purchasers with a notice concerning possible adverse health effects associated with UFF insulation. On January 1, 1980, the Connecticut Department of Consumer Protection proposed a regulation to require a health warning in all UFF insulation contracts from all manufacturers.

(3) The Office of the Attorney General of the State of Colorado has issued a warning about potential health hazards

to consumers who have purchased UFF insulation. Denver County has adopted a prohibition against the use of UFF in new or existing construction.

(4) On December 18, 1979, the Virginia Department of Health issued a Health Hazard Alert on formaldehyde and UFF insulation.

(5) In several state legislatures, bills have been introduced to require a safety-related disclosure (New York, Minnesota) to ban or impose a moratorium on the sale of the product (New Jersey, California, Arizona, West Virginia, New Hampshire, Maryland) or to set performance requirements limiting formaldehyde emission (Minnesota, California).

(6) The Department of Housing and Urban Development (HUD) has issued a Use of Materials Bulletin #74 that explains the conditions under which HUD will accept UFF insulation and stipulates certain limitations for its use.

(7) On December 21, 1979, the Department of Energy (DOE) reproposed material and installation standards for UFF insulation under the Residential Conservation Service (RCS) Program established by Title II, Part 1 of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 96-619 (44 FR 75956).

Active Government Collaboration

The Commission requested the National Academy of Sciences (NAS) to evaluate available information on the toxicity of formaldehyde and recommend a "tolerable" level, if one exists, for formaldehyde in the home environment. The Commission has received the NAS report and is currently studying the report results.

The Commission is also conducting research with DOE to help determine why formaldehyde gas is released from UFF insulation and whether there are means of preventing such release. In addition, the Commission has recommended that formaldehyde be tested for carcinogenicity, teratogenicity, and mutagenicity under the National Toxicology Program. The Commission has also received a completed economic study, conducted by a contractor, concerning the major uses of formaldehyde in consumer products, including UFF insulation. The study also provides an overview of the production of and market for formaldehyde.

The Commission staff has had meetings with the National Association of Urea Foam Insulation Manufacturers and the Formaldehyde Institute (including the National Particleboard Association and the Hardwood Plywood Manufacturers Association). Complaints received by CPSC are being forwarded to the applicable association for follow-up.

Timetable

Consideration of Proposed Written Notification—May 1980
Regulatory Option Paper—September 1980
Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

CPSC staff briefing packages dated November 2, 1979 and April 23, 1980 and a draft proposed notification requirement dated May 2, 1980 are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207

"Public Hearings Concerning Safety and Health Problems that May Be Associated with Release of Formaldehyde Gas From Urea Formaldehyde (UF) Foam Insulation"—44 FR 69578, December 3, 1979

Agency Contact

Harry Cohen, Program Manager
Office of Program Management
U.S. Consumer Product Safety Commission
Washington, D.C. 20207
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NUCLEAR REGULATORY COMMISSION

Office of Standards Development

Decommissioning of Nuclear Facilities Regulation (10 CFR Parts 30*, 40*, 50*, and 70*)

Legal Authority

Atomic Energy Act of 1955, as amended, § 161, 42 U.S.C. § 2201.

Reason for Including This Entry

The Nuclear Regulatory Commission (NRC) thinks that this rule is important because the NRC expects it will eventually have an annual effect of $100 million or more on the economy.

Statement of Problem

Decommissioning is the removal or isolation of the radioactive contaminants from a nuclear facility so it can be released for unrestricted use. The purpose of this regulation is to specify requirements for planning and implementing decommissioning to reduce potential radiation hazards to both the public and workers at a facility after the end of its useful life. The regulation will clearly specify NRC requirements for the method, cleanup criteria, schedule, and financial assurance of decommissioning actions.

Alternatives Under Consideration

The present regulatory approach leaves the choice of decommissioning method, schedule, and financial procedures to the licensee within a loose framework of regulatory criteria. The proposed regulatory approach will carefully specify the decommissioning procedures licensees must follow.

NRC is considering two major alternatives for the method of decommissioning. One is the removal of radioactive constituents by the licensee, allowing unrestricted use of the facility and site, after decommissioning. By unrestricted use we mean the site is not limited by its previous nuclear use. The other is the permanent isolation of the radioactive components on the site, where small portions of the site will have temporary limited access for public use (depending on radioactive decay times). For facility components that have long-lived radioactive materials (i.e., significant radioactivity for 100 years or more), the latter method is unacceptable, because their isolation cannot be adequately guaranteed. The regulation may provide for delays of varying lengths before decommissioning to allow for reduction of radiation exposure and decommissioning costs.

The advantages and disadvantages of the above two options are detailed and complex, and they are being developed as part of the Generic Environmental Impact Statement which we plan to prepare by January 1981.

The regulation will also consider various methods of paying for decommissioning. While it is generally acknowledged that those who benefit (the users of the power) should pay, the manner and timing of such payment is unclear. Requiring funds before NRC issues a license, while a facility is in operation, at the end of its life, or a combination of these are all viable alternatives.

Summary of Benefits

Sectors Affected: Workers in firms and facilities licensed by the NRC or by States having agreements with NRC to assume certain regulatory responsibilities for nuclear materials and facilities, including approximately 70 nuclear power plants and over 20,000 material licensees, such as firms manufacturing nuclear fuel and radiopharmaceutical supplies, and industries using radioisotopes; and the general public.

At the present time, NRC can characterize the benefits of the regulations only in a qualitative way. The NRC's systematic and encompassing regulations identify licensing requirements that will ensure the licensee accomplishes decommissioning safely. This will reduce the potential radiation hazards to both the public and occupationally exposed workers.

The following are examples of regulatory particulars that are designed to provide the desired benefits: (1) Clearly specified decommissioning requirements simplify planning and conduct of decommissioning activities and reduce the need for remedial actions to clean up sites that are found to have been inadequately decommissioned. (2) NRC design requirements for new facilities that are directed toward facilitating eventual decommissioning can mitigate occupational radiation exposures associated with decommissioning, as well as reduce radiation exposures associated with routine facility operations.

Summary of Costs

Sectors Affected: Firms and facilities licensed by the NRC or by States having agreements with NRC to assume certain regulatory responsibilities for nuclear materials and facilities, including approximately 70 nuclear power plants and more than 20,000 material licensees, such as firms manufacturing nuclear fuels and pharmaceutical suppliers, and industries using radioisotopes; and users of electricity produced by nuclear power.

The estimated cost of decommissioning a single nuclear power reactor is approximately $40 million (in 1978 dollars). There are 70 such reactors now operating, and about 100 are under construction or being planned. None of the currently operating reactors is in need of decommissioning in the near future. Although this action would not change the existing responsibility of licensees to decommission, it could require immediate collections from electricity customers to accumulate decommissioning funds. These collections could amount to $2 million per year for each reactor, or a total amount of $140 million per year (in 1978 dollars). While the added cost to the consumer would depend on many factors, we estimate this cost to be relatively insignificant and on the order of a tenth of a mill (1/10 of a cent) per kilowatt-hour of electricity used. If NRC requires advanced collection or surety bonding, rather than collection over the anticipated operating life of the facility, the economic impact will be to increase further the cost of the electricity that nuclear reactors produce. It is not likely that the change in the cost of electricity will affect the existence of any reactor-owning company. It is possible that additional financial assurance costs could drive smaller nuclear fuel cycle licensees, such as fuel fabricators or uranium mill operators, out of the nuclear business.

The costs of decommissioning and financial assurance for the more than 20,000 material licensees (e.g., radiopharmaceutical suppliers, industrial radioisotope users) are not well established at this time.

Related Regulations and Actions

Internal: NRC action regarding radioactive waste disposal.

External: Environmental Protection Agency standard for low level radioactive residues in the environment.

Federal Energy Regulatory Commission requirements for accounting methods and treatment of decommissioning costs by electrical wholesalers.

Internal Revenue Service rulings on tax treatment of funds collected for future decommissioning actions.

State Public Utility Commission requirements for accumulation of funds for decommissioning.

State Legislatures' passage of laws requiring bonds or other surety for nuclear decommissioning.

Department of Energy development of programmatic decommissioning plans.

International Atomic Energy Agency decommissioning programs.

Active Government Collaboration

We are carrying on active liaison with the States, the Environmental Protection Agency, the Federal Energy Regulatory Commission, the Internal Revenue Service, the Department of Energy, and the International Atomic Energy Agency.

Timetable

Draft Environmental Impact Statement—January 1981
Publish Policy Statement—September 1981
NPRM—January 1982

Regulatory Analysis

Although no regulatory analysis is being prepared, the Draft Environmental Impact Statement will contain much of the same information.

Available Documents

NUREG—0436, Rev. 1, "Plan for Reevaluation of NRC Policy of Decommissioning of Nuclear Facilities," dated December 1978

NUREG—0278, "Technology, Safety and Cost of Decommissioning of Reference Nuclear Fuel Reprocessing Plant," dated October 1977

NUREG/CR—0130, "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated June 1978

NUREG/CR—0130 (Addendum), "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated August 1979

NUREG/CR—0131, "Decommissioning of Nuclear Facilities—An Annotated Bibliography," dated October 1978.

NUREG/CR—0129, "Technology, Safety and Costs of Decommissioning a Reference Small Mixed Oxide Fuel Fabrication Plant," February 1979

NUREG/CR—0671, "Decommissioning Nuclear Facilities: A Review and Analysis of Current Regulations," dated August 1979

NUREG/CR—0569, "Facilitation of Decommissioning of Light Water Reactors," dated December 1979

NUREG—0590, Rev. 1, "Thoughts on Regulation Changes for Decommissioning," Draft Report, dated October 1979

NUREG—0584, Rev. 1, "Assuring the Availability of Funds for Decommissioning Nuclear Facilities," Draft Report, December 1979

All of the above documents are available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C., for inspection and copying. A charge of 8 cents per page is made for documents copied in the PDR. The NUREG documents are also available by writing to the National Technical Information Service, Springfield, VA 22161.

Agency Contact

Keith Steyer, Chief Fuel Process Systems Standards Branch Office of Standards Development U.S. Nuclear Regulatory Commission Washington, D.C. 20555 (301) 443-5918

NRC-SD

Disposal of High Level Radioactive Waste in Geologic Repositories Regulation (10 CFR Parts 2*, 19*, 20*, 30*, 40*, 51*, 60, and 70*)

Legal Authority

Energy Reorganization Act of 1974, § 202 (3) and (4), 42 U.S.C. § 5842.

Reason for Including This Entry

The Nuclear Regulatory Commission (NRC) thinks that this rule should be

included in the Calendar because it deals with an important health and safety issue which has great public interest.

Statement of Problem

The Energy Reorganization Act of 1974 gives NRC licensing and regulatory authority over facilities to be built and operated by the Department of Energy (DOE) for the disposal of high level radioactive wastes (HLW) that have been generated under activities licensed by the Commission or by government programs.

The intent of this regulation is to provide information to DOE and other interested parties on how the NRC plans to exercise its authority over DOE facilities to be used for the disposal of HLW in prepared cavities deep in the earth. (This method of waste disposal is commonly termed "geologic disposal," and the facility itself is called a "geologic repository.") Specifically, the regulation spells out the procedures DOE should follow in applying for an NRC license for geologic disposal of HLW and the procedures NRC should follow in reviewing that application. It will state the technical criteria the NRC will use in evaluating a DOE application, approving or disapproving a license, and inspecting the placement of the waste within the geologic repository. Specific topics addressed include the suitability of a site and the design and closure of a repository. During the licensing process, the NRC staff will be made available to discuss with representatives of both State and local governments opportunities for participation.

Alternatives Under Consideration

This regulation addresses only geologic disposal of HLW. The NRC had considered promulgating a broad regulation to cover other methods which have been suggested for the disposal of HLW, such as placing the wastes on the ocean floor (seabed emplacement), or within a polar ice cap (icesheet disposal). However, neither of these methods appears to be within NRC's jurisdiction, and other potential methods (e.g., transmutation—alteration of the waste to decrease its radioactivity) do not appear to be technically developed yet to the point that rulemaking would be warranted.

The NRC had also considered whether to proceed with rulemaking at this time or to rely on its existing body of regulations in discharging its licensing responsibilities over the disposal of HLW. The NRC has decided to proceed with rulemaking because reliance on existing regulations would neither give proper perspective to the unique problem of geologic disposal of HLW, nor provide the guidance to both DOE and the public which NRC believes to be necessary to an efficient and publicly accessible licensing process.

Summary of Benefits

Sectors Affected: Industries producing high level radioactive waste, such as electric services using nuclear power; DOE (including HLW from its research and development, and military programs); State and local governments; and the general public.

Industry would be able to dispose of its high level radioactive waste permanently in a DOE repository licensed under this regulation. State and local governments would be able to participate in the licensing process under the provisions of this regulation. This regulation would require NRC to make a finding of reasonable assurance that the high level radioactive waste could be disposed of in a manner that would protect the public health and safety, and the environment.

There is great concern on behalf of the public, State governments, and the Congress that a "safe" method be found for the disposal of HLW. The sort of regulation we are proposing should contribute to public confidence by providing an opportunity for public review and comment during the construction, operation, and closure of the repository. Another benefit is that the regulation will serve as a base from which DOE can plan and develop such a facility, hence saving both time and expense in the licensing process.

Summary of Costs

Sectors Affected: Industries producing high level radioactive waste, such as electric services using nuclear power; DOE (including HLW from its research and development, and military programs); and users of electricity produced by nuclear power.

Estimated construction and operation costs for a geologic repository range from $1 to $5 billion (in 1978 dollars). Estimates of the impact on the cost of electricity production vary over a wide range, but we do not expect the cost to exceed one mill (1/10 of a cent) per kilowatt hour. As many as four repositories may be required to accommodate the HLW that the government and commercial interests generate by the end of the century.

The only costs to produce the regulation are the resources that NRC expends to develop, support, and issue it.

Related Regulations and Actions

Internal: This action is related to an NRC program to classify radioactive waste according to the degree of hazard it presents.

External: This action is related to the Environmental Protection Agency's criteria and standards for the disposal of HLW.

Active Government Collaboration

We have active liaison with the Environmental Protection Agency, the United States Geological Survey, and the Department of Energy.

Timetable

ANPRM (Technical Requirements)—May 1980 (60-day public comment period).
NPRM (Technical Requirements)—December 1980
Final Rule (Procedural Requirements)—December 1980
Final Rule (Technical Requirements)—December 1981
Regulatory Analysis—not required, but similar material available in NPRM

Available Documents

Commission Paper—SECY 79-366 (and agenda)

Policy Statement—"Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes," 43 FR 53869, November 17, 1978

NPRM (Procedural Requirement)—"Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Licensing Procedures," 44 FR 70408, December 6, 1979

NUREG—0279—"Determination of Performance Criteria for High-Level Solidified Nuclear Waste," July 1977

NUREG—0465—"A Classification System for Radioactive Waste Disposal—What Waste Goes Where?" June 1978

All of the above documents are available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C., for inspection and copying. A charge of 8 cents per page is made for documents copied in the PDR. The NUREG documents are also available for sale by writing the National Technical Information Service, Springfield, VA 22161.

Agency Contact

I. C. Roberts, Assistant Director for Siting Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 443-5966

CHAPTER 5—HUMAN RESOURCES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing

Minimum Property Standards for One- and Two-Family Dwellings (24 CFR Part 200, Subpart S)

Legal Authority

National Housing Act, § 211, 12 U.S.C. § 1715(b).

Reason for Including This Entry

This proposal is an initial effort by the department to reduce unessential regulations, incorporate model code standards and minimize the bulk of current Minimum Property Standards.

Statement of Problem

HUD now imposes Minimum Property Standards on the construction of one- and two-family dwellings. Over the years these standards have increased in length and complexity to a point where streamlining and updating is now appropriate. HUD's Housing Task Force identified several aspects of the minimum property standards which, if changed, should improve the affordability of housing without substantially lowering the construction quality of Federal Housing Administration units. For this reason, HUD is proposing a revision to delete redundant, obsolete, and unnecessary requirements. Appropriate parts of the model one- and two-family dwelling code have also been incorporated.

Alternatives Under Consideration

Alternative #1 would be to make no change in the present standards. This would save administrative effort but has no other advantage. On the other hand, if we do not revise the standards the burden on builders will only increase and the standards will progressively prove less responsive to the needs of the construction industry and the homebuying public.

Summary of Benefits

Sectors Affected: Residential building construction and construction workers; public and private developers of housing programs; occupants and owners of minimum standard housing, especially FHA insured housing; and the mortgage banking industry.

Although the standards govern all FHA Housing, FHA eligible dwellings are often built to standards higher than the Minimum Property Standards. In these cases lowering the standard would not have an effect. We expect, however, that the impact of these changes would be felt throughout the construction industry generally by promoting lower building costs and ultimately reducing the purchaser's outlay. Indirect benefits depend on the extent to which the changes to minimum property standards actually lower market costs. However, some indirect benefits would accrue to housing construction workers and to the mortgage banking industry: for workers, more employment; for the banking industry, increased building activity. Also, the standards are picked up in a number of local building codes and for this reason changes in the standards should have an impact that extends beyond FHA-insured housing alone. Thus, uninsured as well as insured properties should be brought to a new level of quality in localities where an improvement in the standards causes a corresponding improvement in the code.

Summary of Costs

Sectors Affected: Residential building construction.

Staff members have attempted to consider both the cost savings and cost increasing dimensions of the proposed regulations. If an average upper bound of the total net cost savings per new dwelling of these regulatory changes is estimated at $750.00 and 20% of the units constructed are affected (106,479 units (total 1979 starts) $\times$ 20% = 21,296) we arrive at the following conclusion. The aggregate expenditures on new dwellings affected by the proposed regulatory changes would be just under $16 million. These figures are assumptions and appear to be on the high side of probable actual experience when all of the economic impacts of the proposed changes are incorporated into the analysis.

Related Regulations and Actions

Internal: None.
External: Local building codes.

Active Government Collaboration

None

Timetable

NPRM—early June, 1980
Public Comment Period

60 days following NPRM—
Regulatory Analysis—to be issued concurrently with the NPRM
Final rule—to be published some time after the close of the comment period

Available Documents

None

Agency Contact

Mervin Dizenfeld, Mechanical Engineer, Department of Housing and Urban Development, 451 7th Street, S.W., Room 6170, Washington, D.C. 20410 (202) 755–6590.

DEPARTMENT OF JUSTICE

Civil Rights Division

Regulations Prohibiting Discrimination Solely on the Basis of Handicap in Federally Assisted Programs

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. E.O. 11914, 41 FR 17871, October 31, 1976. Department of Health, Education and Welfare (HEW) Guidelines on Rehabilitation, 45 CFR § 85.

Reason for Including This Entry

This proposed regulation is intended to eliminate discrimination against handicapped persons participating or attempting to participate in Department of Justice (DOJ) assisted programs.

Statement of Problem

A substantial number of people in the United States are denied full participation in major activities, such as employment, because of discrimination based on their handicaps. Recognizing this fact, the Congress passed § 504 of the Rehabilitation Act of 1973, which prohibits discrimination solely on the basis of handicap in all programs and activities that receive Federal financial assistance. Federal agencies that provide such assistance must develop and publish regulations in furtherance of the broad remedial purpose of § 504.

Alternatives Under Consideration

Executive Order 11914 requires all Federal departmental regulations that implement § 504 to be consistent with HEW § 504 regulations. Accordingly, there are no alternatives to the standards which HEW has published (43 FR 2132) in terms of scope, timing, or substantive requirements obligating recipients of Federal assistance from DOJ. However, within that context, the department has attempted to take the least burdensome approaches to achieving the objectives of § 504. For example, the department's proposed § 504 regulations require employers with 50 or more employees who receive department assistance of more than $25,000 to provide for recordkeeping and notice procedures and grievance mechanisms. This standard makes the proposed DOJ regulations consistent

with the Law Enforcement Assistance Administration's Equal Employment Opportunity Guidelines (28 CFR § 43.302(d)) for the development, by recipients of Federal assistance through the department, of an equal employment opportunity program with respect to race and sex. Accordingly, we rejected other, more inclusive criteria, e.g. 15 or more employees and no minimum amount of financial assistance through the Department of Justice.

Further, while recipients are encouraged to provide communications to their applicants, employees, and beneficiaries in the appropriate medium (e.g., braille, tapes), the regulations require only that recipients communicate effectively with those who have impaired vision and hearing (§ 42.503[e] of proposed regulations). Other options that the department is considering are included in the supplementary information section of the NPRM (44 FR 54957–60, September 21, 1979).

Summary of Benefits

Sectors Affected: Approximately 9,000 units of State and local governments that are involved in law enforcement and related activities, their employees, and other individuals eligible to take part in their programs; and approximately 1,000 private entities, such as juvenile homes, educational institutions, public interest groups, etc., that participate in activities related to the Nation's criminal justice system.

The regulations will establish standards to assure nondiscrimination based on handicap in programs and activities that receive Federal financial assistance from DOJ. They will define and prohibit acts of discrimination against qualified handicapped persons in employment and as beneficiaries of programs and activities that receive assistance from DOJ. Programs and activities that the regulation would cover would include those administered by State and local units of the criminal justice system that receive Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (e.g., police departments, prisons, courts), or training from the Federal Bureau of Investigation or other agencies within DOJ.

The elimination of discrimination against the handicapped in federally assisted programs and activities will further advance the national policy against such invidious discrimination, will assure that the benefits of federally assisted programs and activities will be extended to the qualified handicapped, and will preclude the discriminatory exclusion of the handicapped as employees in programs and activities that receive Federal financial assistance.

Summary of Costs

Sectors Affected: Approximately 9,000 units of State and local governments that are involved in law enforcement and related activities, their employees, and other individuals eligible to take part in their programs; and approximately 1,000 private entities, such as juvenile homes, educational institutions, public interest groups, etc., that participate in activities related to the Nation's criminal justice system.

It is difficult to project the cost of compliance. Two aspects of § 504 may increase the expenditures of recipients administering federally assisted programs. The first requires that recipients make a reasonable accommodation for the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. A reasonable accommodation might involve job restructuring, modified work schedules, or acquisition or modification of equipment or devices. The recipient must decide what constitutes a reasonable accommodation on a case-by-case basis.

The second aspect of the regulation requires that programs and activities that receive Federal assistance be prohibited from excluding qualified handicapped people from federally assisted programs because a recipient's facilities are inaccessible or unusable. Structural changes to existing facilities may be unnecessary where other less costly or burdensome methods are equally effective. Facilities constructed after final rulemaking must, however, be designed and constructed to make them accessible to and usable by the handicapped. We cannot provide precise estimates of compliance costs at this stage, although at present it appears that the compliance cost of the regulation will not result in major economic consequences within the meaning of E.O. 12044. We considered the appropriateness of a regulatory analysis and invited public comment on this issue.

Related Regulations and Actions

Internal: DOJ regulations under Title VI of the Civil Rights Act of 1964, 28 CFR § 42.401 *et seq.*

External: HEW § 504 Regulations, 42 FR 22676, May 4, 1977.

Active Government Collaboration

By virtue of E.O. 11914 the President delegated the coordination of governmentwide enforcement of § 504 to HEW and directed that Federal agency regulations under § 504 be consistent with the standards and procedures that the Secretary of HEW has established.

Timetable

Final Rule—May 1980
Regulatory Analysis—none

Available Documents

NPRM—44 FR 54950, September 21, 1979

Agency Contact

Robert N. Dempsey, Attorney, Federal Enforcement Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 633–2374

DOJ–CRD

Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance

Legal Authority

Education Amendments of 1972, as amended, Title IX, §§ 901, 902, 20 U.S.C. § 1681 *et seq.*

Reason for Including This Entry

Because of a recent Supreme Court decision, *City of Los Angeles Department of Water & Power* v. *Manhart*, 435 U.S. 702 (1978), the Department of Justice's (DOJ) proposed Title IX regulations, unlike the regulations already issued by the Department of Health, Education and Welfare (HEW) (45 CFR Part 86) and the United States Department of Agriculture (USDA) (45 FR 21608–21619, April 11, 1979), will prohibit the recipient's use of fringe benefit plans which discriminate in benefits or in employee contributions on the basis of sex.

Statement of Problem

Section 901 of the Education Amendment of 1972, as amended, mandates that Federal grant agencies issue a regulation to enforce the prohibition against sex discrimination, contained in § 901 of the statute, in education and training programs or activities receiving Federal financial assistance. We are issuing the regulations pursuant to that mandate.

On June 4, 1975, HEW issued final regulations, which have generally served as a model for other grant agencies, implementing Title IX for their programs. The DOJ regulations will, for

the most part, be consistent with HEW's. However, there will be one major exception. Section 86.56b(2) of the HEW regulations provides that "A recipient shall not: . . . Administer, operate, offer or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipients for members of each sex."

This section was consistent with the Department of Labor's interpretation of the Equal Pay Act (29 U.S.C. § 206[d]) in effect at the time the regulation was issued. However, it is inconsistent with the Equal Employment Opportunity Commission's interpretation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e), 29 CFR § 1604.9(f)). Further, in *Manhart* the Supreme Court ruled that requiring higher employee contributions to a pension plan from women than from similarly situated men was discrimination on the basis of sex, which violated Title VII and the Equal Pay Act. We believe that under the Court's reasoning in *Manhart* paying lower benefits under a pension or other fringe benefit plan to individual members of one sex than the other is sex discrimination, and that such sex discrimination violates Title IX. Our proposed regulation, therefore, will prohibit use of fringe benefit plans which discriminate in benefits or in employee contributions on the basis of sex.

Alternatives Under Consideration

DOJ had two possible alternatives to choose from in designing this congressionally mandated regulation: it could have followed the directions provided by the other Federal agencies, HEW and USDA, which have already issued their Title IX regulations; or it could have developed an entirely new approach to Title IX enforcement ignoring the work performed by other agencies. We have chosen to follow the leads of HEW and USDA in order to ensure consistency in the Federal government's approach to enforcing Title IX.

Summary of Benefits

Sectors Affected: State and local law enforcement and correction agencies, employees of these agencies, and other individuals eligible to take part in their education and training programs and activities; and private entities participating in activities related to the Nation's criminal justice system, such as juvenile homes, educational institutions, and public interest groups.

This regulation will prevent discrimination on the basis of sex in access to education and training programs and in fringe benefit plans sponsored by recipients receiving assistance from DOJ. Viewed from a larger perspective, implementation of the regulation will upgrade the quality of law enforcement and related activities by ensuring equal access to education and training programs regardless of sex. Specifically, it will improve the ability of women who have traditionally been discriminated against by the employment practices of law enforcement agencies to obtain equal access, once hired, to those activities needed for professional advancement.

Summary of Costs

Sectors Affected: State and local law enforcement and correction agencies; and private entities participating in activities related to the Nation's criminal justice system, such as juvenile homes, educational institutions, and public interest groups.

We cannot provide precise estimates of compliance costs at this stage; however, they appear to be minimal, with the possible exception of changes which may be required in the recipient's pension and other fringe benefit programs. We do not believe that the compliance costs associated with this regulation will have any major economic consequences within the meaning of E.O. 12044. Should the public raise the issue of costs during the comment period, we will consider conducting a regulatory analysis.

Related Regulations and Actions

Internal: DOJ regulation issued by the Law Enforcement Assistance Administration under the authority of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3701 *et seq.* This law, which contains a general prohibition against sex discrimination, has been reenacted in the Justice System Improvement Act of 1979, P.L. 96–157, and is implemented by 28 CFR §§ 42.201–.217. Recipients in compliance with that statute and regulation will be considered in compliance with the DOJ Title IX regulation.

External: HEW regulation 45 CFR Part 86, USDA Regulation, 44 FR 21608–21619, April 11, 1979.

Active Government Collaboration

No Federal agency has been delegated overall responsibility for coordinating enforcement of Title IX. However, DOJ has attempted to make its regulation consistent with those already published by the Department of Health, Education and Welfare and the United States Department of Agriculture.

Timetable

NPRM—May 1980
Final Rule—August 1980
Regulatory Analysis—we may consider preparing an analysis if public comment indicates costs as a significant issue

Available Documents

None

Agency Contact

Ms. Stewart B. Oneglia, Director, Office of Coordination and Review, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724–6757

DOJ–IMMIGRATION AND NATURALIZATION SERVICE

Admission of Refugees and Asylum Procedures (8 CFR 207 and 208)

Legal Authority

Refugee Act of 1980, Pub. L. 96–212, 94 Stat. 102.

Reason for Including This Entry

These proposed regulations will set a precedent for U.S. programs providing relief for the increasing numbers of refugees seeking haven in the United States. The refugee problem has generated worldwide attention and is of major concern to the United States and its citizens.

Statement of Problem

The Refugee Act of 1980 is a major departure from prior legislation which provided relief for refugees. It establishes a permanent and systematic procedure for meeting these humanitarian needs. Prior statutory provisions have proven to be inadequate because of the lack of uniformity in treating refugees from different parts of the world. The Immigration and Naturalization Service must adopt regulations to implement the provisions of the new act.

The proposed regulations provide that the Immigration and Naturalization Service accomplish the following specific responsibilities: determine who qualifies as a refugee; establish asylum procedures; adjust the status of refugees; establish procedures for inspection and examination of refugees; waive certain exclusionary grounds for admitting refugees; develop regulations for procedures to terminate the status of those who no longer qualify as refugees; and admit refugees into the United

States, subject to numerical limitations established by the President after appropriate consultation with Congress. In addition, the regulations also specify procedures for the Immigration and Naturalization Service to inform aliens, other governmental agencies, and the public as to who may qualify as a refugee, and the methods and procedures for refugees to apply for the benefits which the act provides.

Alternatives Under Consideration

Because of certain retroactive provisions in the Refugee Act of 1980, and the short time frame within which to develop regulations, the Service has decided to publish interim regulations to meet these exigent circumstances. The nature of the problem we are faced with—emergency relief for human suffering—argues against a prolonged deliberative process to weigh innumerable alternatives before deciding upon a course of regulatory action. We believe that by publishing interim regulations as quickly as we can, the intent of the law will be served best. Fine tuning of the regulations can be done at a later date in the form of final regulations after opportunity for public comment.

Summary of Benefits

Sectors Affected: Refugees; Federal agencies, such as Departments of State; Health, Education, and Welfare; and Labor; and the Public Health Service; international organizations; foreign governments; State governments; others involved in refugee relief and resettlement; and the general public.

Until the refugees are absorbed into the economy and contribute to the Nation's gross national product through their labor and services, they will place a burden upon public agencies.

Summary of Costs

Sectors Affected: Federal agencies, such as Departments of State; Health, Education, and Welfare; and Labor; and the Public Health Service; international organizations; foreign governments; State governments; and others involved in refugee relief and resettlement.

As the number of refugees admitted increases because of the new liberalized admission trend reflected in the act, the workload of the Federal agencies, public and private agencies, and charitable organizations will increase proportionately. The need for financial and medical assistance for the refugees will fall upon various Federal and State agencies responsible for public health and welfare. Private and voluntary organizations which provide services not available from public agencies will also have increased operating costs. While we are unable at this time to place a dollar value on the cost to all sectors affected by the act, our experience in FY 1979 indicates that about 108,000 refugees were admitted into the United States by the Immigration and Naturalization Service. We believe the total will be about 225,000 for FY 1980.

Related Regulations and Actions

Internal: Existing regulations, dealing with asylum, 8 CFR 108, adjustment of status, 8 CFR 245, and other references in various subsections in Title 8, Chapter I of the regulations will be affected by the new interim regulations, and we will amend them as necessary.

External: While other Federal agencies are also affected by the Act, it is not certain at this time what revisions they must make to their regulations when the Immigration and Naturalization Service publishes its interim regulations.

Active Government Collaboration

Operating units of the Immigration and Naturalization Service have been in contact with the Departments of State; Labor; and Health, Education and Welfare because of the mutual areas of responsibility each shares under the act.

Timetable

Interim Regulations—July 1980
Public Comment Period—July 1980–August 1980
Written comments to: Commissioner, Immigration and Naturalization Service, 425 I Street, N. W., Room 7100, Washington, D.C. 20536
Regulatory Analysis—not required

Available Documents

Refugee Act of 1980, Public Law 96–212 (94 Stat. 102)

Available from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at $1.50 per copy

Senate Conference Report 96–590, Refugee Act of 1980

Available from: Senate Document Room, U.S. Capitol Washington, D.C. 20510 (no cost)

Agency Contact

For questions on asylum procedures for refugees:
Harry Klajbor, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, (202) 633–3229

For questions on admission of refugees:
John Z. Rebsamen, Director, Office of Refugee and Parole, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, (202) 633–2391

For questions on adjustment of status of refugees:
Charles G. McCarthy, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, N. W., Washington, D.C. 20536, (202) 633–2399

DOJ–INS

Employment Authorization (8 CFR Part 109, 45 FR 19563, March 26, 1980)

Legal Authority

Immigration and Nationality Act, 8 U.S.C. §§ 1103 and 1255(c).

Reason for Including This Entry

The Immigration and Naturalization Service thinks this rule is important because the various subsections, Service policy, and standards relating to employment authorization for aliens will be codified under one new part. In the existing regulations employment authorization and revocation of employment authorization were discretionary with the district directors of the Immigration and Naturalization Service. The new regulations will clearly specify the classes of aliens eligible to work upon admission into the United States and those aliens who will require administrative authorization to work. The regulation also impacts upon the Social Security Act and related labor laws.

Statement of Problem

Immigration and Naturalization Service procedures for granting employment authorization to aliens are based on the Attorney General's authority under 8 U.S.C. 1103, which charges him with the administration and enforcement of the immigration and nationality laws. 28 CFR 0.105 delegates this authority and responsibility to the Commissioner of Immigration and Naturalization. A 1976 amendment to the Immigration and Nationality Act bars adjustment of status of any alien (other than an immediate relative of a U.S. citizen) who after January 1, 1977 engages in unauthorized employment prior to filing an application for adjustment of status.

Implementation of the amendment to the law resulted in numerous revisions to the Immigration and Naturalization Service's regulations and instructions,

determinations of work eligibility on a case-by-case basis, and discretionary grants of employment authorization based upon the financial necessity of the alien. To ensure a more uniform application of the Immigration and Naturalization Service's policies in this area, we need clearly defined criteria for granting employment authorization to specific classes of aliens. We should consolidate numerous policy guidelines into one ready reference.

On July 25, 1979 the Immigration and Naturalization Service published regulations in the **Federal Register** (44 FR 43480) to codify the body of procedures and criteria which it had already developed through experience with granting employment authorizations. The proposed regulations would require nonimmigrant aliens to continue complying with existing regulations relating to employment for their particular nonimmigrant status. Other aliens would apply to the district directors of the Immigration and Naturalization Service for discretionary grants of employment authorization based upon establishing financial necessity for employment or presumable qualification for some type of permanent status in the United States.

In view of the comments we received from interested persons, the Immigration and Naturalization Service has significantly modified its proposed rule by specifically setting out those classes of aliens who are authorized to be employed in the United States as a condition of their admission without specific authorization from the Service. The new proposed rule also clearly describes the classes of aliens who may apply for discretionary work authorization based upon their financial needs caused by subsequent changes in circumstances. Lastly, the proposed rule defines the criteria to be used by the Immigration and Naturalization Service district directors and the uniform procedures they must follow in revoking previously granted discretionary work authorizations. We published this new proposal in the **Federal Register** on March 26, 1980 (45 FR 19563) and the public had 60 days to submit their comments.

Alternatives Under Consideration

We originally conceived this as a consolidation of existing procedures; however, in view of the public comments received and the significant issues raised, we are considering making substantive changes. At this time, proposing alternative actions would be premature.

Summary of Benefits

Sectors Affected: Aliens; industries employing aliens, including the medical profession, nursing profession, and other skilled labor professions; the Service; Federal agencies such as the Departments of Labor and State, and the Social Security Administration; State and local governments; charitable organizations; and others requiring classification of an alien's employable status.

This rule will not only benefit aliens entering the United States but also will benefit the general public. Definable classes of aliens will be employable without delay and employers will know what classes of aliens can be legitimately employed without requiring proof of work authorization from the Immigration and Naturalization Service. The regulation will also clarify for employers what class of alien is covered under the Social Security Act and Federal labor laws, as social security coverage and labor law protection of workers are dependent upon the alien's classification and whether or not he/she is legitimately employable. The Immigration and Naturalization Service will benefit because this proposal will generate information which will forestall many individual inquiries from employers, other government agencies, and charitable organizations requesting classification of an alien's employable status. Agencies such as the Departments of Labor and State, and the Social Security Administration will benefit by the clearly defined employment status of aliens because their regulations also impact upon defining eligibility for visas and benefits.

Summary of Costs

Sectors Affected: None.

Related Regulations and Actions

Internal: This regulation codifies the numerous interpretations and policies of the Service relating to work authorization which were spread throughout Chapter I of the regulations and the Immigration and Naturalization Service's Operations Instructions.

External: Related regulations of the Departments of Labor and State, and the Social Security Administration will be affected by the proposed regulations.

Active Government Collaboration

The Immigration and Naturalization Service expects to receive comments from the Departments of Labor and State, and the Social Security Administration in formulating the final rule because of the interaction of responsibilities in the alien employment area. We anticipate that these agencies also will amend their regulations to clarify the status of employable aliens who are entitled to benefits under the various agencies.

Timetable

Final Rule—July 1980
Final Rule Effective—30 days after publication as Final Rule
Regulatory Analysis—not required

Available Documents

NPRM—45 FR 43480, July 25, 1979
NPRM—45 FR 19563, March 26, 1980
All documents available for review in the Public Reading Room, Room 5037, Immigration and Naturalization Service, 425 Eye Street, N. W., Washington, D.C. 20536.

Agency Contact

Harry Klajbor, Deputy Assistant Commissioner, Adjudications
Immigration and Naturalization Service
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DOJ—OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS' / LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Equal Service Evaluation Guidelines (28 CFR Part 42)

Legal Authority

Justice System Improvement Act of 1979, 42 U.S.C. § 3782(a), *et seq.*

Reason for Including This Entry

The Office of Justice Assistance, Research, and Statistics (OJARS) believes that these guidelines are important because they will help it assure that State and local criminal justice agencies do not discriminate in the delivery of services to the public, and will help the agencies spot and correct discriminatory practices without the need for Federal action.

Statement of the Problem

OJARS, the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS) award grants to support improvements in all parts of the criminal justice system—police, corrections, courts, probation, parole, prosecution, defense, and juvenile justice agencies.

The nondiscrimination provision of the Justice System Improvement Act of

1979, 42 U.S.C. § 3879d(c)(1), states that no person may be "excluded from participation in, . . . denied the benefits of, . . . subjected to discrimination under or denied employment in connection with" any program or activity supported by funds made available under the Act on the basis of race, color, religion, national origin, or sex. The Act requires OJARS to take rapid action to end assistance to recipients who practice such discrimination.

The OJARS Office of Civil Rights Compliance (OCRC) investigates complaints of discrimination and, even in the absence of a complaint, conducts "compliance reviews" of its recipients. OCRC has received an increasing number of complaints alleging discrimination in the services that criminal justice agencies provide to minority groups and women. Complaints may range from a police department's failure to respond to calls for assistance from a minority neighborhood to a department of corrections' failure to provide the same "halfway house" facilities for women that it does for men. OCRC has also sought to focus more compliance reviews on recipients' efforts to serve their communities equitably. In attempting to investigate these complaints and conduct these reviews, however, OCRC has found that recipients do not maintain the information necessary to permit OJARS to make a determination of compliance or noncompliance. As a result, OJARS cannot fully implement the nondiscrimination provision in the services area.

Alternatives Under Consideration

There are three alternative methods of addressing the problem. OJARS could:

(1) Establish a guideline broad enough to inform each category of criminal justice recipient (e.g., police agency, court, corrections department) of the type of information OJARS would need to review to determine compliance with 42 U.S.C. § 3789d(c)(1);

(2) implement an ad hoc method of collecting information tailored to each recipient that OJARS would establish after it initiated its complaint investigation, or compliance review, of the recipient; or

(3) decide not to investigate complaints of discrimination in services, or to close all such investigations for "insufficient data."

Options (2) and (3) would do little to assist OJARS in eliminating discrimination in services from the criminal justice system. Option (2) would also be too time-consuming and impractical to administer for the 20 persons who comprise OCRC's staff. We cannot obtain the information from another Federal agency because no other agency collects the type of data OJARS needs for review.

Option (1) is the only alternative that would effectively assist OJARS in implementing the nondiscrimination provision of the Justice System Improvement Act. Administered properly, it would assure OJARS that the information it needed to evaluate a complaint of discrimination would be available for review, and would enable the recipient criminal justice agency to quickly and effectively rebut a false charge. The guideline will also be a useful self-examination tool for criminal justice agencies seeking to voluntarily curb discrimination that they might not have previously recognized.

Summary of Benefits

Sectors Affected: State and local criminal justice agencies; members of the public served by those agencies, particularly inmates of correctional institutions, persons on probation, parolees, and juveniles found to be delinquent by a court; and OJARS.

The proposed guideline will:

1. greatly improve OJARS' ability to assure that recipients of its funds are not in violation of the nondiscrimination provision of the Justice System Improvement Act;

2. help protect individuals from being subjected to discrimination in violation of the Justice System Improvement Act;

3. reduce the time needed to conduct complaint investigations and compliance reviews;

4. help OJARS recipients defend themselves against baseless charges of discrimination; and

5. give recipient agencies the information they need to voluntarily end discrimination they might not have previously known they were practicing.

Summary of Costs

Sectors Affected: State and local criminal justice agencies.

OJARS recipients may incur some indirect personnel costs in developing a mechanism to collect the required data. Those costs should diminish considerably after they have established the mechanism. However, because most agencies already collect the data the guidelines would require, it should not be unduly burdensome to them.

Related Regulations and Actions

Internal: OJARS has previously published Nondiscrimination Regulations at 28 CFR 42.201, *et seq.*, and Equal Employment Opportunity Program (EEOP) Guidelines at 28 CFR 42.301, *et seq.* The proposed guideline would seek to collect services information in much the same way that the EEOP Guidelines collect employment information. OJARS will revise the EEOP Guidelines for comment at the same time it proposes the Equal Service Program Guidelines. The anticipated revisions in the EEOP Guidelines will reflect an attempt to streamline and clarify the scope of those requirements.

OJARS also revised the existing Nondiscrimination Regulations in April 1980, primarily to make them conform with technical amendments made in the civil rights provisions of the Justice System Improvement Act.

External: None.

Active Government Collaboration

OJARS will request the views of the Civil Rights Division of the Department of Justice, and give them serious consideration.

Timetable

NPRM—June 1980
Public Comment Period—June to August 1980
Final Rule—September 1980
Final Rule Effective—upon publication as final
Regulatory Analysis—not required

Available Documents

ANPRM—44 FR 53179, September 13, 1979

Agency Contact

William W. Kummings, Attorney-Advisor
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Office of Justice Assistance, Research, and Statistics
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DEPARTMENT OF LABOR

Employment Standards Administration

Sex Discrimination Guidelines—Employee Benefits (41 CFR 60-20.3c*)

Legal Authority

E.O. 11246 (September 28, 1965), as amended by E.O. 11375 (October 17, 1967).

Reason for Including This Entry

This proposal could cause substantial costs by prohibiting the sex-based provision of unequal fringe benefits, which is a matter of considerable public interest.

Statement of Problem

E.O. 11246, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin against any person employed by or seeking employment with Federal contractors or under federally assisted construction contracts. It also establishes obligations for Federal contractors and subcontractors to take affirmative action to ensure nondiscriminatory treatment of their employees and of applicants for employment. The sex discrimination guidelines for compliance by Federal contractors with the equal employment opportunity requirements of E.O. 11246 are in 41 CFR 60–20. They contain a section (41 CFR 60–20.2(c)) which says that with respect to employers' contributions for insurance, pensions, welfare programs, and similar fringe benefits, the guidelines are not violated where employer contributions for such programs are equal for men and women *or* where the resulting benefits are equal.

On August 25, 1978, the Department of Labor published in the **Federal Register** proposals to revise both this regulation and the same standard under the Department's Interpretative Bulletin concerning the Equal Pay Act. Under these proposals, sex-based differentials in employee benefits would not be lawful even if unequal employer contributions are necessary to ensure equal benefits. Also, these proposals would not permit covered employers to require sex-based differentials in employees' contributions to achieve equal benefits. On July 1, 1979, the Equal Employment Opportunities Commission (EEOC) assumed responsibility for administration and enforcement of the Equal Pay Act. The Department of Labor retained responsibility for administration and enforcement of E.O. 11246.

In light of an April 25, 1978 U.S. Supreme Court decision in the case of *Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702, it is not realistic to expect that "the equal contributions or equal benefits" rule, in its present form may continue. In the *Manhart* decision, the Supreme Court ruled that a city employer's requirement that female employees make larger contributions to its pension fund than male employees because of the longer life expectancy of women as a class discriminated against the individual female in violation of Title VII of the Civil Rights Act of 1964. The Court also ruled that retroactive monetary recovery was inappropriate because this was the first litigation challenging differences in pension fund contributions based on valid actuarial tables, which fund administrators might have assumed justified the differential; the resulting prohibition constituted a marked departure from past practice; and drastic changes in legal rules can have grave consequences on pension funds.

In order to achieve consistency among regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and E.O. 11246, as amended, modification of this regulation will be necessary.

Alternatives Under Consideration

The major issues under consideration in relation to the treatment of fringe benefits under Title VII, the Equal Pay Act, and E.O. 11246 include: (1) whether and how the provision in the Equal Pay Act which prohibits any reduction in the wage rate of any employee in order to comply with that law applies to resolution of the equal benefits issue; (2) the applicability of the proposal to each of the numerous types of fringe benefit plans (e.g., defined benefit pension plans, defined contribution pension plans, health insurance, life insurance, etc.); (3) its applicability to the various options under retirement benefit plans (e.g., straight-life, joint and survivor, early retirement, etc.); and (4) the effective date of the amendments, including the issue of retroactivity and its effect on accrued or vested benefits.

We will cooperate with the EEOC in developing alternative approaches on this matter.

Summary of Benefits

Sectors Affected: Employees of Federal contractors and federally assisted construction contractors.

Employers are precluded by the Equal Pay Act from achieving compliance with that law by means of rate reductions for employees of the higher paid sex where sex-based wage differentials exist. Applying the prohibition to the fringe benefits issue under the Equal Pay Act, elimination of the equal cost allowance would result in increased fringe benefits for employees whose employers do not already provide fringe benefits on an equal basis to male and female employees regardless of sex because, based on sex-segregated actuarial computations, the cost for any particular benefit results in higher costs, on average, for similarly situated employees of one sex or the other. Retirement benefits could be affected particularly, because women's longevity, on average, is significantly greater than men's. Thus, payment of equal retirement benefits where this has not been the practice will result in higher benefits for female employees. (Male employees' retirement benefits would also be affected in terms of increased periodic payments to their surviving spouses where such employees choose a joint-and-survivor pension benefit option that provides the surviving spouse with a continuing payment). Fewer employees are affected by coverage under E.O. 11246 than are affected under Title VII and the Equal Pay Act.

Summary of Costs

Sectors Affected: Federal contractors and federally assisted construction contractors.

Employee benefit costs of Federal contractors, along with those of employers not affected by E.O. 11246, can be expected to increase as Federal contractors and employers are required to implement the *Manhart* decision. Because virtually all Federal contractors are also covered by Title VII of the Civil Rights Act and the Equal Pay Act, which also apply to other employers, the costs for them to comply with the equal benefits requirement constitute part of the total costs of employers involved in complying with such a standard under Title VII and revised guidelines under the Equal Pay Act. Cost estimates will be developed in relation to the identification of legally feasible options. We will consult with EEOC to delineate the implications for Federal contractors.

Related Regulations or Actions

Internal: None.

External: Subsequent to its July 1, 1979 assumption of jurisdiction for administering and enforcing the Equal Pay Act, the EEOC has made an interim decision not to adopt the interpretations which the Department of Labor used in administering the Equal Pay Act (29 CFR 800). The EEOC is studying the question of how to interpret properly the Equal Pay Act in relation to Title VII of the Civil Rights Act, under which it has regulations that also address the subject of equal benefits.

Active Government Collaboration

In order to achieve consistency among the Federal regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act, the Equal Pay Act, and E.O. 11246, as amended, active consultation by the Department of Labor with the Equal Employment Opportunity Commission is necessary. Also, the Internal Revenue Service is being

consulted in order to avoid any potential conflicts with the Internal Revenue Code and the Employee Retirement Income Security Act.

Timetable

The timetable for finalizing this section of the Office of Federal Contract Compliance Programs' sex discrimination guidelines is contingent on EEOC's progress in addressing the issues involved in determining appropriate treatment of the equal benefits issue, particularly in relation to standards regarding prohibited wage discrimination under the Equal Pay Act and treatment of this issue under Title VII of the Civil Rights Act.

Available Documents

Office of Federal Contract Compliance Programs Sex Discrimination Guidelines—41 CFR 60–20.

NPRM—43 FR 38057, August 25, 1978.

Agency Contact

Kenneth G. Patton,
Division of Program Policy,
Office of Federal Contract Compliance Programs,
U.S. Department of Labor,
Washington, D.C. 20210
(202) 523–9426

DOL—EMPLOYMENT AND TRAINING ADMINISTRATION

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting From Federal Financial Assistance (29 CFR 32)

Legal Authority

The Rehabilitation Act of 1973, 29 U.S.C. 794, Part V. E.O. 11914, 41 CFR 17871, Oct. 31, 1976.

HEW—Federal Agency Coordination Guidelines (45 CFR 85)

Reason for Including This Entry

The Department of Labor (DOL) believes this rule is important because it will make employment and training services accessible to handicapped persons in federally funded programs. It will provide them protection against unfair treatment because of their handicap. This regulation may also have a major economic impact, as defined under E.O. 12044.

Statement of Problem

The proposed regulation requires that all recipients of Federal financial assistance from DOL ensure that their federally assisted programs and activities are operated without discrimination on the basis of physical or mental handicap. The recipient is to operate each program so that when viewed in its entirety, it is readily accessible to the handicapped. In FY 1978, Comprehensive Employment and Training Act (CETA) programs served 178,500 handicapped persons accounting for 4.3 percent of all CETA participants. United States Employment Service offices served 15.5 million persons during this same year; 5 percent of whom were handicapped. Presumably, most, if not all, of these persons either are not hindered by architectural barriers, or are working or training in facilities that are already accessible to them.

However, there are undoubtedly a number of persons with severe physical handicaps who currently are not using employment and training services because of architectural barriers, but who would use these services if they were offered in more accessible facilities. We estimate that an additional 105,000 handicapped individuals could potentially benefit from more accessible employment and training facilities.

The proposed regulation mandates capital expenditures by both the public and private sectors to make the necessary minor and structural modifications so that facilities are accessible to handicapped persons. Government agencies which must meet the added cost burden of regulations have few options open to them other than realigning their current capital spending plans to pay for architectural changes. Many small private industry employers may be reluctant to participate in employment training programs because of potential costs. This would result in the loss of new training opportunities.

Alternatives Under Consideration

Possible alternatives for providing accessibility to handicapped persons are:

(1) that recipients of federal funds make selected sites accessible for all programs

(2) that recipients of Federal funds make selected sites accessible but not for all programs

(3) that small recipients of Federal funds with fewer than 15 employees or participants need not either consult with handicapped persons seeking their services and/or refer them to "accessible" employers.

The first alternative would meet the requirements of "program accessibility" in the proposed regulations, since the primary recipient of Federal financial assistance has the obligation to comply with the legislative mandate.

For CETA programs, such as On-The-Job-Training, Job Corps, and Private Sector Initiative, the prime sponsor has the responsibility to ensure that these programs, when viewed in their entirety, are accessible. In all other CETA programs or activities, the subrecipient shares this responsibility.

In the case of Job Corps, it is inaccurate to consider each individual center as a separate program or recipient of Federal financial assistance. Congress, when it established the Job Corps in 1964, stated that it was a national program with program operating authority centralized at the Federal level. This being the case, Job Corps can comply with the requirements of § 504 by designating regional centers that will serve both handicapped individuals who need specialized services and nonhandicapped individuals.

The second alternative suggests that in Private Sector Initiative Programs and On-The-Job training programs, the phrase "when viewed in its entirety" be applied to specific occupations in these programs. Training need not necessarily be available at each site within each occupation. But, each prime sponsor has the responsibility to ensure that "viewed in its entirety" specific occupations are accessible.

The small recipients' alternative would address both the expensive duplication of specialized occupational training and the number of occupations that must be offered to make a program "accessible" when viewed in its entirety. Small employers participating in the Private Sector Initiative Program (PSIP) offering training in highly specialized occupation or occupations with limited demand, would not have to assume large capital expenditures in order to participate in On-The-Job Training Programs. The prime sponsor still would have the ultimate responsibility of ensuring accessibility to these programs.

This proposed rule will meet its regulatory objective of prohibiting discrimination against individuals with a variety of innovative regulatory techniques which fall in the category of performance standards. These standards are: Reasonable Accommodation: The proposed regulation provides a broad spectrum of actions a recipient can take to ensure that handicapped persons can avail themselves of the program services. They include job restructuring, modification of job or program schedules, acquisition of equipment or devices, and provision of readers and interpreters so that a handicapped person can communicate with others

around them. Program Accessibility: The proposed regulation states that every existing training and employment facility need not be made physically accessible whenever a handicapped person enrolls in a program. The prime sponsor has flexibility in choosing which sites to make accessible, so long as programs "when viewed in their entirety" are readily accessible. Programs: The provision "when viewed in their entirety" allows the recipients the flexibility of not making every part of a facility accessible to and usable by a handicapped person. Instead, the recipient can use other methods such as redesign of equipment, reassignment of classes or other service to accessible buildings, assignment of aides to handicapped persons, home visits, physical modification of facilities, and delivery of service at alternate accessible locations.

In relation to Public Service Employment (PSE), On-The-Job Training (OJT), and Private Sector Initiative, the requirement that programs "when viewed in their entirety be readily accessible" is a very significant component of this proposed rule. The cost of making all the estimated employment and training facilities accessible could approach $300 million.

Summary of Benefits

Sectors Affected: Handicapped persons eligible to participate in employment and training programs receiving DOL financial assistance; the Veterans Administration; and the Vocational Rehabilitation Agency.

The population this regulation will benefit includes CETA eligible persons who are handicapped as defined by the Rehabilitation Act of 1973. The term "handicapped individual" means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment. The regulation also will affect any and all people participating in or wishing to participate in programs funded by the Department of Labor. CETA is by far the largest affected program in the Department of Labor. Handicapped people are by and large concentrated in the larger industrial States.

There are more than 450 Prime Sponsors or recipients of Federal funds who administer the Comprehensive Employment and Training Programs. A Prime Sponsor may be a State, a unit of general local government which has a population of 100,000 or more, or a consortium of units of local government. We estimate the number of training sites provided by these Prime Sponsors to be 315,000.

Major benefits are:

(1) More accessible employment and training facilities will increase the number of handicapped persons served at these training sites. Such persons, by acquiring work skills and earning an income, will obtain greater independence.

(2) Reduced transfer payments will lower costs for the Veterans Administration and the Vocational Rehabilitation Agency.

(3) Finally, the major benefit of these regulations relates to improving the quality of life of handicapped persons.

Currently CETA programs service about 178,500 handicapped persons. Preliminary estimates show that an additional 105,000 handicapped individuals potentially could benefit from more accessible employment and training facilities. We base our estimate on an updated 1974 Survey of Disabled and Nondisabled Adults. Our estimate included the severely and partially disabled handicapped who use the following aids—wheelchairs, braces, crutches, and artificial limbs—and who are able to go out of doors without help. For this group, the survey shows that in addition to 40,000 handicapped, unemployed workers, about 115,000 severely disabled and 25,000 partially disabled people are not in the labor force. In addition to the unemployed handicapped, we estimate that 40,000 severely disabled and all of the partially disabled may be employable and thus benefit from CETA programs. Thus, there will be about 105,000 additional handicapped people who could benefit from more accessible employment and training facilities. We recognize that some people with severe physical handicaps may not be able to use employment and training facilities even when they are accessible.

Summary of Costs

Sectors Affected: Employment and training programs receiving DOL financial assistance.

Overall preliminary estimates are that the total capital costs of making employment and training programs accessible under the proposed regulation [alternatives [2] and [3]] would amount to $128 million of Federal monies. This estimate is based on making accessible existing facilities which are currently used in employment and training programs.

A thorough analysis of accessibility costs would require an architectural survey of all existing facilities. Instead, a maximum cost figure was developed by estimating the number of intake centers based on the type and size of Prime Sponsors and the number of work and training sites based on the number of participants.

The total number of intake centers and training sites was reduced by the percent of facilities estimated to be currently in compliance with the proposed regulations. All applicants must have access to CETA Intake Centers. We estimate that there are 1,036 such centers.

The following table presents a summary of total capital costs:

Capital Costs by Program Activity (Alternative 2)

	In 1979 dollars thousands
1 State Employment Security Agencies (SESA)	6,000
2 Comprehensive Employment and Training Act (CETA) Intake Centers	388
Minor Modifications	
Major Modifications	5,633
CETA Employment and Training Facilities	
3 Classroom Training	4,900
4 Public Service Employment and Work Experience	55,338
5 Youth Programs	28,531
6 On The Job Training	12,060
7 Private Sector Initiative Program	15,000
Total	127,850

Under a more restrictive interpretation of program accessibility in the Private Sector Initiative Program and the On-The-Job Training Program total capital costs could be as high as $280 million (alternative 1). In this context, this could mean that selected sites must provide "program accessibility" for PSIP, OJT, and Job Corps, possibly in every occupational grouping.

The cost of modification and employer participation depends greatly on whether or not every job site in PSG, OJT or PSIP must be made accessible.

Related Regulations and Actions

Internal: Department of Labor (DOL)—Comprehensive Employment and Training Act Regulations (20 CFR 675, 676, 677, 678, and 669). DOL—Affirmative Action Obligation of Contractors and Subcontractors for Handicapped Workers (41 CFR 60–741). DOL—E.O. 11758, which in part delegated authority to the Secretary of Labor for implementing § 503 (a) and (c) of the Rehabilitation Act of 1973. DOL—Regulation issued pursuant to § 503 of the Rehabilitation Act of 1973 (41 CFR 60–741).

External: Health, Education and Welfare (HEW)—Regulations (45 CFR 84) issued by HEW covering its own grant programs.

HEW—E.O. 11914, which requires DHS to coordinate the government-wide enforcement of § 504 of the Rehabilitation Act.

HEW—Federal Agency Coordination Guidelines (45 CFR 85).

Active Government Collaboration

None

Timetable

Final Rule—August 1980

Available Documents

45 FR 1392, January 4, 1980
Public comments
Regulatory Analysis—45 FR 1402, April 1980

Agency Contact

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Washington, D. C. 20213

DOL—LABOR MANAGEMENT SERVICES ADMINISTRATION

Definition of Plan Assets and Establishment of Trust (29 CFR Part 2550)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 401(b), 403(b) and 505, 29 U.S.C. §§ 1101(b), 1103(a), 1103(b) and 1135.

Reason for Including This Entry

These proposed regulations have generated considerable public interest. A number of the public comments submitted to the department on the proposals argued that employee benefit plan investments would be curtailed in certain types of companies which invest in small businesses, thereby affecting the amount of capital available to small business.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) covers virtually all private employee benefit plans. There are several statutory exceptions such as plans for government employees or plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, the requirements of ERISA will apply to it.

Part 4 of Title I of ERISA sets forth certain requirements that a fiduciary has to meet in handling plan assets. The term "fiduciary" is defined in § 3(21) of ERISA to include a person who exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets.

While ERISA contains a definition of fiduciary and that definition uses the concept of "plan assets", ERISA does not explicitly define plan assets. The proposed regulation would provide this key definition. This definition is important under ERISA because plan assets are the funds which will generate the benefit payments to participants and beneficiaries. Consequently, in order to protect plan assets, ERISA requires that they be held in trust, and provides that persons responsible for decisions regarding those assets be subject to ERISA's fiduciary responsibility requirements (i.e., they must meet certain standards of conduct such as making prudent investments).

These proposed regulations also relate to the requirement of ERISA that assets of an employee benefit plan must be held in trust by one or more trustees. The Secretary of Labor is authorized to exempt the assets of certain types of employee benefit plans from the trust requirement. One of the proposed regulations would exempt, pursuant to that authority, certain assets of employee welfare benefit plans.

On August 28, 1979, these proposed regulations appeared in the **Federal Register** (44 FR 50363). They substituted for and withdrew a proposal made in December 1974 and never finalized (29 CFR 2552.1).

The proposed regulations clarify the concept of "plan assets" by providing that any property in which a plan has a beneficial ownership interest (i.e., the plan owns) is a plan asset. It also provides that the assets of an entity in which a plan has an equity investment would be plan assets, except that the assets of operating companies (i.e., companies which are primarily in the business of providing goods or services, but not the investment of capital), companies whose shares are widely held and truly transferable, and companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940 would not be regarded as plan assets.

The department believes that the concept of "plan assets" should be clarified so that persons exercising discretionary authority or control respecting the management or disposition of these assets (and who, therefore, are fiduciaries with respect to the plan) are aware of their responsibilities under ERISA.

Alternatives Under Consideration

For the reasons set forth above, the department has concluded that the alternative of not publishing a regulation defining "plan assets" is inappropriate. The Department is considering the modifications to the proposed definition suggested by commentators in this matter.

Summary of Benefits

Sectors Affected: Fiduciaries (which include trustees and persons providing investment management services, such as banks and insurance companies), sponsors (e.g., employers, labor unions, and joint labor-management bodies that establish pension plans), participants, and beneficiaries of employee benefit plans.

The benefit of regulations in this area is that confusion as to what are plan assets would be avoided.

Summary of Costs

Sectors Affected: Fiduciaries, sponsors, participants, and beneficiaries of employee benefit plans.

There will be some administrative costs incident to holding in trust any plan assets that are not now being held in trust. The proposed regulation may also make some persons reluctant to invest in plan assets or to act as a fiduciary. This could change plan investment strategies (i.e., investments might be made in different vehicles). The amount of plan assets invested in certain types of companies could be affected. For example, venture capital companies have asserted that employee benefit plans would be unwilling to invest in venture capital companies, which are a source of small business capital, because, they argue, the venture capital company's assets might, under the proposed regulations, be plan assets subject to the fiduciary requirements of ERISA. They believe that such a result would be unduly burdensome in light of the structure and operations of those companies. Assuming that this argument is correct, the extent of the effect on small business will depend largely on the availability of alternative sources of investment capital. Similarly, the cost to employee benefit plans of seeking alternative investments will depend upon the return available from the alternative investments.

Related Regulations and Actions

Internal: None.
External: § 4975 of the Internal Revenue Code of 1954.

Active Government Collaboration

None

Timetable

Final Rule—undecided

Available Documents

NPRM: 39 FR 44456, December 24, 1974
NPRM: 44 FR 50463, August 28, 1979
Public Comments —
All documents are available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Agency Contact

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DOL—LMSA

Individual Benefit Reporting and Recordkeeping (29 CFR Parts 2520 and 2530)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 105, 209, and 505, 29 U.S.C. §§ 1025, 1059, and 1135.

Reason for Including This Entry

The proposed regulation has generated considerable public interest from those members of the public directly and indirectly involved with the administration of pension plans.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) imposes a comprehensive scheme of regulation on private sector employee benefit plans. There are several statutory exceptions such as plans for government employees and plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employee does have an employee benefit plan, it is subject to Title I of ERISA. In the case of pension plans, Title I of ERISA imposes reporting and disclosure requirements, fiduciary duties, and minimum standards. With respect to welfare plans, Title I of ERISA imposes only reporting and disclosure requirements and fiduciary duties. This proposed regulation only applies to pension plans.

ERISA requires each pension plan administrator to provide participants and beneficiaries with statements of their individual benefit entitlements (i.e., the benefits which they would be entitled to receive at retirement age by virtue of their service up to the date of the benefit statement) upon written request and upon certain other occasions, such as a one-year break or the termination of service. These statements must include information on the total benefits the individual has accrued, the percentage of those accrued benefits which are nonforfeitable (i.e., the benefits which they will be entitled to receive at retirement age regardless whether they leave employment before retirement age), and the earliest date the benefits would become nonforfeitable.

ERISA also requires employers to maintain records so that the information is available for the administrator of the plan to compile the benefit statements. ERISA leaves to the Secretary of Labor the specifics of these requirements. Thus, the proposed regulations specify content, format, and timing of benefit statements and the type, retention time, and content of records.

Many plans now provide benefit statements to their participants and beneficiaries; however, many others do not. Further, of those plans that do issue benefit statements, some of the plans' statements may not be adequate or may not be provided at the appropriate times. Likewise, some plans keep records; but many plans have inadequate or no records. Many plans are awaiting these regulations before they adopt a benefit reporting or recordkeeping system so as to avoid the burden and cost of changing procedures twice.

The recordkeeping requirements of the Act pose different problems for different kinds of pension plans. Single employer plans can often maintain the records necessary for providing benefit statements with a minimum of difficulty. On the other hand, administrators of multiple employer plans (i.e., plans sponsored by more than one employer) must rely on the individual employers to provide on a timely basis accurate information concerning the participants and their service. In the absence of regulations to provide guidance on the scope of records which employers must maintain and on the content of individual employer reports to multiple employer plans, some plans do not have adequate records to prepare benefit statements. Some plans currently do not have any system for collecting information from the employers. In the past, many multiple employer plans have relied on the Social Security Administration earning records for the necessary data.

On February 9, 1979, the Department published in the **Federal Register** (44 FR 8294) proposed regulations dealing with these topics.

Alternatives Under Consideration

In adopting final regulations in this area, the department is seeking to achieve a balance. We must ensure, on the one hand, that participants and beneficiaries are provided accurate, timely and useful information, and that there are available to them the records on which the benefit statements are based. On the other hand, we must avoid imposing undue administrative burdens and costs on employers and administrators.

In response to the proposed regulations, the department received a great number of comments. As a result, the proposed regulations may be substantially changed. In this connection the following are among the alternatives we are considering.

(1) Whether to extend the periods within which benefit statements must be provided. The proposed regulation contained a 60-day time frame for plan administrators to provide a benefit statement in response to a written request. The proposal also required plan administrators to provide a benefit statement within 60-days after the end of the plan year in which a break in service occurs or within 60 days after termination occurs. If this 60-day period were extended it would allow the plan administrator more flexibility in coordinating these statements with other administrative functions. The extra time would allow the administrator to avoid some duplication of effort or to schedule the workload more efficiently. This could reduce the administrative burden and cost of the regulations. This change, however, would result in less timely information for participants and beneficiaries.

(2) Whether to reduce the amount of information that the plan administrator is required to set forth in the benefit statement, particularly that information which is unique to each participant or beneficiary. This would minimize the burden and cost to the plan attendant to retrieving, compiling, and reporting the information in a benefit statement. This change, however, would make less information available to participants and beneficiaries.

(3) Whether to separate the proposed regulation into two regulations, one for single employer plans and one for multiple employer plans. While we anticipate that the regulations will require both single and multiple employer plans to provide benefit statements, the recordkeeping problems of multiple employer plans may merit special consideration. Separation of the regulations would permit the Secretary to establish standards that are appropriate to the different conditions of single employer and multiple employer plans.

(4) Whether to delay the date on which multiple employer plans have to

be in compliance with the recordkeeping rules. Multiple employer plans which are by definition maintained pursuant to collective bargaining agreements, may require changes in the collective bargaining agreement to implement the recordkeeping standard. Because of this the department is considering a delayed implementation schedule. Such a change would allow more orderly compliance with the regulations.

Summary of Benefits

Sectors Affected: Pension plan sponsors (employers, labor unions and joint labor-management bodies that establish pension plans), administrators (persons who are responsible for the administration of pension plans), participants, and beneficiaries.

There are approximately 23 million single employer plan participants and beneficiaries and 8 million multiple employer plan participants and beneficiaries.

The proposed regulations would provide plan administrators with the necessary guidance for compliance with the statutory provisions. This would enable pension plan participants and beneficiaries to receive accurate, timely, and useful information about their specific benefit entitlements under pension plans, and to have the information verified from records maintained by the plan under the standards established by the Secretary. With this information participants and beneficiaries will be better able to protect their rights to retirement benefits. Today, even if this information is available it may not be available in a useful manner.

Summary of Costs

Sectors Affected: Sponsors and administrators of pension plans.

According to data furnished in public comments submitted on the proposed regulation, implementation as proposed would cost plans a total of approximately $274 million in the first year. Single employer plans would be faced with approximately $82 million in start-up costs and $92 million in annual costs for a first year total of approximately $174 million. Costs to multiple employer plans would be approximately $49 million to start-up and $51 million annually. (We estimated all costs based on 1979 dollars.)

In response to extensive public comment, and consistent with the department's continuing efforts to reduce administrative burdens and costs associated with regulatory compliance if at all possible, we are considering alternatives which could reduce total implementation costs to a sum of less than $100 million. The costs to single employer plans would be substantially reduced to approximately $22 million annually, with no significant start-up costs. The cost reductions for multiple employer plans would be less substantial but nonetheless significant; start-up costs for them would be reduced to approximately $34 million with annual costs decreasing to approximately $43 million.

If the department adopts the alternative of extending the effective dates for multiple employers until the collective bargaining agreement expires, the cost of the regulation in either the first or any ensuing year would be substantially less than the estimated total cost.

Related Regulations and Actions

Internal: None.
External: 6057 of the Internal Revenue Code of 1954.

Active Government Collaboration

None

Timetable

NPRM—June 1980
Final Rule—undecided
Regulatory Analysis—undecided

Available Documents

NPRM (44 FR 8294, February 9, 1980)
All documents are available for review in the
Public Documents Room, Pension and Welfare Benefit Programs U.S. Department of Labor, Room N–4677 200 Constitution Ave., N.W. Washington, D.C. 20216 (202) 523–8671

Agency Contact

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Policy Implementation

Guidelines on Discrimination Because of Religion (29 CFR 1605*)

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 (e) *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) believes these Guidelines are important because they will aid in the elimination of discrimination on the basis of religion.

Statement of Problem

§ 701(j) of Title VII of the Civil Rights Act of 1964, as amended, creates an obligation to provide reasonable accommodation for the religious practices of an employee or prospective employee, unless to do so would create an undue hardship. In 1977, the Supreme Court rendered its decision in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). The Court's interpretation of an undue hardship led to much confusion in the employment sector. It left employers, employees, and labor organizations unclear about the extent of their statutory duty under Title VII to provide reasonable accommodation for the religious practices of an employee or prospective employee.

The Commission held public informational hearings on this issue in April and May of 1978 in New York City, Los Angeles, and Milwaukee. To allow interested persons an opportunity to participate in all stages of its rulemaking process, the Commission published its intent to review its Guidelines on Discrimination Because of Religion. The purpose of this review was to determine if any changes in the Guidelines were needed based on the information obtained from the Commission's informational hearings.

The Commission revised its Guidelines and published the transcript of the hearings because the hearings established that many people desired clarification of the Guidelines, and that many employers had developed alternative employment practices for accommodating the religious practices of employees and prospective employees which could be of use generally.

The Guidelines clarify the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (§§ 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees.

Alternatives Under Consideration

The Commission considered several alternatives. These included: 1) seeking new legislation, 2) publishing the transcripts and then allowing employers to develop solutions from the information obtained at the hearings, 3) relying on existing Guidelines, 4) reviewing its Guidelines or 5) revising the Guidelines and publishing the transcript of the hearings. As noted above, the Commission chose to revise its Guidelines and publish the transcript of the hearings. The Commission may

make further revisions to the Guidelines as a result of comments received.

Summary of Benefits

Sectors Affected: Employees and employers in all industries subject to Title VII of the Civil Rights Act of 1964.

The Guidelines will clear up confusion in the Employer community, inform employers and applicants for employment of their rights under Title VII of the Civil Rights Act of 1964, and aid the agency in fulfilling its mandate under Title VII of the Civil Rights Act of 1964 to eliminate employment discrimination on the basis of religion.

Summary of Costs

Sectors Affected: Employers in all industries subject to Title VII of the Civil Rights Act of 1964.

In the *Hardison* decision (432 U.S. at 84)m the Court indicated that it would be undue hardship on an employer if it is forced to bear "more than a de minimis cost" in order to accommodate an employee's need to be absent from his or her scheduled duty hours. Interpretation of "more than a de minimis cost" has to be made on a case-by-case basis with due regard given to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the *Hardison* decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in *Hardison*, would constitute undue hardship. However, the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which EEOC can require an employer to bear as a means of providing a reasonable accommodation. In most circumstances EEOC can also require an employer to pay administrative costs necessary for providing the accommodation, such as those costs involved in rearranging schedules and recording substitutions for payroll purposes.

Related Regulations and Actions

None

Active Government Collaboration

In compliance with E.O. 12067 (3 CFR, 1978, Comp., p. 206), the Commission consulted during the drafting stage with representatives of the Departments of Justice, Labor, and Treasury; and the Office of Personnel Management.

Timetable

Final Guidelines—late summer or early fall.
Regulatory Analysis—EEOC will not prepare

Available Documents

Guidelines, published—September 14, 1979.

The transcript of the Commission's Hearings on Religious Discrimination can be examined by the public at: The Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

Agency Contact

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EEOC–OPI

Interim Amendment to Guidelines on Discrimination Because of Sex (29 C.F.R. 1604.11)

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) believes this Amendment is important because it will set forth clearly the Commission's position on the issue of sexual harassment, and aid in the elimination of discrimination on the basis of sex.

Statement of Problem

Sexual harassment, like harassment on the basis of color, race, religion, or national origin, has long been recognized by EEOC as a violation of § 703 of Title VII of the Civil Rights Act of 1964, as amended. However, despite the position taken by the Commission, sexual harassment continues to be widespread. Because of the continued prevalence of this unlawful practice, the Commission has determined that there is a need for guidelines in this area of Title VII law. Therefore, EEOC proposes to amend its Guidelines on Discrimination Because of Sex (37 FR 6836, April 5, 1972, as amended) to add § 1604.11, Sexual Harassment.

Proposed § 1604.11(a) provides that harassment on the basis of sex is a violation of Title VII and states that such unwelcomed behavior may be either physical or verbal in nature. The proposed section also sets out three criteria for determining whether an action constitutes unlawful behavior. These criteria are (1) submission to the conduct is either an explicit or implicit term or condition of employment; (2) submission to or rejection of the conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting; or (3) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. It is the Commission's position that sexual harassment, like racial harassment, generates a harmful atmosphere. Under Title VII, employers should afford employees a working environment free of discriminatory intimidation whether based on sex, race, religion, or national origin. Therefore, the employer has an affirmative duty to maintain a workplace free of sexual harassment and intimidation.

Proposed § 1604.11(b) recognizes that the question of whether a particular action or incident established a purely personal, social relationship without a discriminatory employment effect requires a factual determination. In making such a determination, the Commission will look at the record as a whole and at the totality of the circumstances, emphasizing the nature of the sexual advances and the context in which the alleged incidents occurred. The Commission's determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

Proposed § 1604.11(c) applies general Title VII principles to the issue of sexual harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts. This subsection further states that the Commission will determine whether an individual acts in either an agency or a supervisory capacity on a case-by-case basis, examining the circumstances of the particular employment relationship and the job functions performed by the individual, rather than accepting an individual's title as being controlling.

Proposed § 1604.11(d) distinguishes the employer's responsibility for the acts of its agents or supervisors from the responsibility it has for the acts of other persons. This subsection states that liability for the acts of those persons not mentioned in subsection (c) exists only when the employer, or its agents or

supervisory employees, know or should have known of the conduct. The subsection further provides that the employer may rebut this apparent liability for the conduct by showing that it took immediate and appropriate corrective action.

Consistent with the policy of voluntary compliance under Title VII, § 1604.11(e) recognizes that the best way to achieve an environment free of sexual harassment is to prevent the occurrence of sexual harassment by using appropriate methods to alert the employees to the problem and to stress that sexual harassment, in any form, will not be tolerated. This subsection requires an employer to take all steps necessary for the prevention of sexual harassment and gives the following as examples of steps which might be deemed necessary: affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise the issue of sexual harassment under Title VII, and developing methods to sensitize all concerned.

Alternatives Under Consideration

EEOC is not considering any alternatives at this time. However, EEOC may make revisions to this proposal as a result of comments received.

Summary of Benefits

Sectors Affected: Employees in all industries subject to Title VII of the Civil Rights Act of 1964.

The Guidelines apply to employers as defined in § 701(j) of Title VII of the Civil Rights Act of 1964. The Guidelines will aid the agency in fulfilling its mandate under Title VII of the Civil Rights Act of 1964 to eliminate employment discrimination on the basis of sex.

Summary of Costs

Sectors Affected: None.

The Guidelines require employers subject to Title VII of the Civil Rights Act of 1964 to take all steps necessary for the prevention of sexual harassment. The Commission believes that the costs to be borne by employers in complying with the Guidelines will be minimal.

Related Regulations and Actions

EEOC has jurisdiction over the Federal agencies' Affirmative Action Plans and has directed agencies to prepare them and submit them to EEOC. The Commission has specifically directed that Federal agencies include, as a supplement to their phase II Affirmative Action Planning Process, a plan indicating the steps the agency will take to prevent sexual harassment.

Active Government Collaboration

In compliance with E.O. 12067 (3 C.F.R. 1978, Comp., p. 206), the Commission has consulted with representatives of the Office of Personnel Management, and the Departments of Justice; Labor, and Health, Education, and Welfare.

Timetable

Public Comment Period—ends June 10, 1980
Regulatory Analysis—EEOC will not prepare

Available Documents

Copies of the Guidelines, published April 11, 1980, are available through the Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

Agency Contact

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EEOC–OPI

Interpretive Guidelines on Employment Discrimination and Reproductive Hazards

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e) *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) believes these Guidelines are important because employment policies, practices, and plans relating to reproductive hazards can have the effect of denying employment opportunities to individuals. Thus, the Guidelines will aid in the elimination of discrimination on the basis of sex.

Statement of Problem

The Hazardous Substances Guidelines are the result of collective efforts and expertise of several Federal agencies. These efforts were necessitated by charges presented to the Equal Employment Opportunity Commission and to the Office of Federal Contract Compliance Programs (OFCCP), alleging employment discrimination in workplaces containing substances and conditions hazardous to reproductive health.

Also, EEOC and OFCCP became aware of the increasing number of employers and contractors who are initiating policies excluding all women of childbearing capacity from certain jobs because of exposure to hazardous substances or conditions. A number of employers and contractors have policies of not hiring women of childbearing capacity for jobs in which there is exposure to alleged reproductive hazards, and have terminated or transferred women to lower paying jobs based on such policies. Employers and contractors in establishing such practices often show a lack of concern for similar effects upon men. Some employers and contractors have attempted to justify these policies on the basis of potential harm occurring to an unborn child through exposure of the mother. These policies have been developed without apparent regard to whether exposure of the father can result in harm to the unborn child. Preliminary evidence indicates that as many as 20 million jobs may involve exposure in the workplace to alleged reproductive hazards.

In response to such exclusionary practices, the EEOC, on April 21, 1978, issued a policy statement indicating its concern about whether such practices conform with Federal antidiscrimination laws. In a May 31, 1978 letter from the Department of Labor's Assistant Secretary for Occupational Safety and Health, (OSHA) expressed its concern regarding employment practices which deny opportunities to any class of workers on the basis of safety and health. On February 1, 1980, the EEOC published Guidelines specifically addressing those situations involving allegations of sex discrimination.

Title VII and E.O. 11246 require that the enforcement agencies closely scrutinize the exclusion of a sex-based class from consideration for employment.

Exclusions which, by their terms, are based on membership in a sex-based class are per se violations of Title VII and E.O. 11246 because the exclusions are expressed or implemented in terms of membership in a class protected by Title VII and E.O. 11246. Also, an employer/contractor's conduct which treats disparately members of a sex-based class raises a presumption of a violation of Title VII and E.O. 11246. Finally, a neutral employment policy which is neutral on its face which has an adverse impact upon a specific sex-based class is an unlawful employment practice unless it is truly neutral and is justified by the employer/contractor.

It is important to note that, as a result of the Pregnancy Discrimination Act,

P.L. 95–555, 92 Stat. 2067 (1978), women affected by pregnancy, childbirth, or related medical conditions constitute a protected class under Title VII. All such women must be treated the same for employment-related purposes as other persons not so affected but similar in their ability or inability to work. For example, where an employer/contractor seeks to determine the hazardous reproductive effects on pregnant women from their exposure to a certain substance or condition, the employer/contractor must also determine the effects on males and nonpregnant females from the same exposure.

If the hazard is known to affect the fetus through either parent, an exclusionary policy directed only at women would be unlawful under Title VII and E.O. 11246. Further, if the hazard is shown by reputable scientific evidence to affect the fetus through women only, the class excluded must be limited to pregnant women and not all women of child-bearing capacity. Whether expressed in a policy or not, the employer/contractor's conduct will be examined by the enforcement agencies to determine whether the conduct is nondiscriminatory or justified.

Alternatives Under Consideration

There are no alternatives under consideration at this time. However, EEOC may make revisions to its proposal as a result of comments received.

Summary of Benefits

Sectors Affected: Employees of industries in which workers are exposed to reproductive hazards.

The Guidelines apply to employers as defined in § 701(j) of Title VII of the Civil Rights Act of 1964. The Guidelines will aid the agency in fulfilling its mandate under Title VII of the Civil Rights Act of 1964 to eliminate employment discrimination on the basis of sex.

Summary of Cost

Sectors Affected: Industries in which workers are exposed to reproductive hazards.

The Guidelines require employers to initiate research designed to produce evidence of the effect of the reproductive hazard as used in the employer/contractor's workplace. The Guidelines provide for the conducting of joint studies by employers. Also, if the employer/contractor does not have the capacity to conduct or sponsor the necessary research, the employer can request the occupational Safety and Health Administration (OSHA) to perform the research. The Commission believes that the cost of conducting such research will vary from employer to employer. The Commission is unable to place a dollar figure on the cost of such research. However, the Commission does believe that the benefits derived from carrying out its mandate to prohibit sex discrimination under Title VII of the Civil Rights Act of 1964 will outweigh any costs to be incurred by employers in conducting such research.

Related Regulations and Actions

None

Active Government Collaboration

In compliance with E.O. 12067 (3 CFR, 1978, Comp. p. 206), the Commission consulted with representatives of the Department of Labor, the Occupational Safety and Health Administration, and the Office of Federal Contract Compliance Programs.

Timetable

Public comment ends—Period June 1, 1980
Regulatory Analysis—EEOC will not prepare

Available Documents

Copies of the Guidelines, published February 1, 1980, are available through the Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W. Washington, D.C. 20506. Comments may be reviewed from 9:30 a.m.–4:30 p.m. at the Equal Employment Opportunity Commission Library.

Agency Contact

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GENERAL SERVICES ADMINISTRATION

Administration Operations Division

Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Assistance (41 CFR Part 101–6.3)

Legal Authority

Rehabilitation Act of 1973, 29 U.S.C. § 794 E.O. 11914, 3 CFR, 1976 Comp., p. 117 40 U.S.C. § 486(c)

Reason for Including This Entry

The General Services Administration (GSA) has included this item because of the high level of public interest in nondiscrimination against handicapped persons in federally assisted programs and activities.

Statement of Problem

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibits discrimination against handicapped persons in all programs and activities receiving Federal assistance. E.O. 11914 designated the Department of Health, Education and Welfare (HEW) as the lead agency to coordinate government wide enforcement of § 504. HEW issued regulations (45 CFR Part 85) in 1978 which set standards, procedures and guidelines for other agencies to follow in issuing their own regulations. GSA's proposed regulation is intended to be consistent with the HEW standards and guidelines. It establishes the procedures GSA will use to enforce nondiscrimination against handicapped persons in programs and activities which receive Federal assistance under laws which GSA administers in whole or in part.

GSA's assistance typically consists of donation or sale below market price of surplus Federal property—land, buildings, historical records, vehicles, or supplies—to State and local governments and other public or charitable bodies. These recipients in turn use the property for a wide range of purposes, such as airports, parks, education, public health, public safety, and economic development. GSA makes over 50,000 grants of assistance and conveys approximately $4 billion in surplus property to the States each year.

The proposed GSA regulation will require that applicants for assistance from GSA submit an assurance to GSA that the assisted program or activity will be offered on a nondiscriminatory basis, and will be accessible to the handicapped. Where the assistance is in the form of real property, the proposed regulation requires a covenant in the deed which would allow GSA to reclaim the property if the recipient's use is contrary to the nondiscrimination provisions. The proposed regulation requires recipients to evaluate the effectiveness of their nondiscrimination efforts and to set up a grievance procedure and encourages them to take remedial action on a voluntary basis. The requirement of nondiscrimination also applies to employment under federally assisted programs and activities.

Alternatives Under Consideration

There are no alternatives under consideration because HEW guidelines leave little room to vary these proposals. At an early stage in the development of

the proposed regulation, we decided simply to require an "assurance," the form of which may be different for different applicants, and to exempt small recipients (those with fewer than 15 employees) from some requirements of the regulation.

Summary of Benefits

Sectors Affected: Persons with physical handicaps; State and local governments receiving assistance from GSA; and programs and activities that benefit from this assistance.

The physically handicapped of our society will be assured of equal benefit from and access to programs and facilities which receive Federal support through GSA. A study of the number of handicapped persons who use these programs and activities is now underway.

Where employment is stimulated by the federally supported programs, we expect to see long term productivity improvements because of the high productivity levels of qualified handicapped workers. Some handicapped workers may achieve self-sufficiency or higher standards of living because of these employment opportunities.

Summary of Costs

Sectors Affected: State and local governments and other public and charitable bodies receiving Federal assistance through GSA; programs and activities that benefit from this assistance; and GSA.

We will require recipients to ensure that the assisted programs and services are available on a nondiscriminatory basis to handicapped persons. The costs of actual compliance imposed by statute may be quite high (as where buildings modifications are needed). The cost of giving assurances to GSA, as the GSA regulation would require, is quite small and we do not expect that cost to deter any applications for assistance from GSA.

All recipients and GSA would incur some cost of compliance monitoring. This monitoring is closely related to the monitoring for racial and other forms of prohibited discrimination and we expect the additional cost to recipients will be small. GSA will bear the costs of more on-site reviews.

Related Regulations and Actions

Internal: 41 CFR Part 101–6.2
External: 28 CFR Part 42.401–415

Active Government Collaboration

GSA has worked with the Architectural and Transportation Barriers Compliance Board (a government board created by the Rehabilitation Act of 1973) on developing standards for the design, construction or alteration of facilities. As required by the Department of Health, Education and Welfare (HEW) regulation, GSA's proposed final regulation has been submitted to HEW.

Timetable

Public Comment Period—ended December 31, 1979, but we will accept comments until approximately June 25, 1980, from visually impaired persons using the braille or recorded cassette NPRM which we recently made available.
Final Rule—July 31, 1980
Regulatory Analysis—not required

Available Documents

NPRM—44 FR 62298, October 30, 1979

Agency Contact

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GSA—NATIONAL ARCHIVES AND RECORDS SERVICE

Freedom of Information Act Requests for National Security Classified Information in the National Archives (41 CFR Part 105–61*)

Legal Authority

Freedom of Information Act, 5 U.S.C. § 552. E.O. 12065, 43 FR 28949, June 28, 1978.

Reason for Including This Entry

The General Services Administration (GSA) included this rule in the *Calendar* because access to classified information is an important resource for historical research.

Statement of Problem

The Freedom of Information Act (FOIA) sets out procedures for obtaining information and records from Federal government agencies. Researchers and other persons seeking access to records of Federal agencies under FOIA direct their requests to the agency which has custody of the records. The National Archives and Records Service (NARS) of the General Services Administration acts as custodian of noncurrent records of Federal agencies, including records classified for reasons of national security. A request for access to classified information also serves as a request for declassification of the information. NARS is authorized to declassify records more than 20 years old (or 30 years in the case of foreign government information provided to the United States). If a request is for newer classified records, NARS forwards a request for declassification to the agency with declassification authority (usually the originating agency), and that agency decides whether to declassify the requested information. FOIA requires NARS to notify the requestor of a denial of access, but under current NARS regulations agencies with declassification authority sometimes inform requestors directly of denials of declassification without informing NARS. As a result, NARS is sometimes unable to respond to requests on a timely basis, while at other times the requestor may receive duplicate notices from the other agency and from NARS.

Alternatives Under Consideration

The proposed regulation changes the current procedure so that agencies with declassification authority would notify NARS of decision about declassification and NARS would in turn provide a single notification to the requestor. Our alternative would be to keep the current procedure.

Summary of Benefits

Sectors Affected: Persons and organizations requesting access to national security classified information under the Freedom of Information Act; NARS; and other agencies with declassification authority.

If NARS changes the regulation, the 100 to 200 people a year who request access to national security classified information will maintain direct contact with NARS when it is the agency which has physical custody of the records, and will receive notices only from NARS. We expect that this "single point of contact" approach will be less confusing to persons requesting information. It should also slightly reduce costs of other government agencies by reducing duplication of notices.

Summary of Costs

Sectors Affected: None.

The proposed regulation has no direct or indirect costs.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

NPRM—July 1980
Public Comment—60 days following NPRM.
Final Rule—October 1980
Regulatory Analysis—not required

Available Documents

Public Use of Archives and FRC Records, 41 CFR 105–61

Agency Contact

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Planning and Analysis Division (NAA)
National Archives and Records Service
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Washington, D.C. 20408
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VETERANS ADMINISTRATION

Department of Memorial Affairs

State Cemetery Grants (38 CFR 39)

Legal Authority

Veterans Housing Benefits Act of 1978, § 202(b)(1), 38 U.S.C. § 1008.

Reason for Including This Entry

We believe that these regulations will be of interest to veterans, State officials, and the general public.

Statement of Problem

The Veterans Housing Benefits Act of 1978 authorized the Veterans Administration (VA) to make grants to States to assist in establishing and improving veterans cemeteries. The proposed regulations will define eligibility and requirements for participation in the program, and establish minimum standards for cemetery construction projects assisted through grant funds. The requirements will elaborate the provisions of Office of Management and Budget Circular No. A–95 (Revised), which provides for the evaluation, review, and coordination of Federal and federally assisted programs and projects, and OMB Circular No. A–102, which provides the uniform administrative requirements for grants-in-aid to State and local governments.

Alternatives Under Consideration

These regulations will implement the requirements of § 1008 of the Veterans Housing Benefits Act of 1978. The regulations establish cemetery construction standards which will be applied to this grant program.

Summary of Benefits

Sectors Affected: States, Territories, and Possessions of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, that apply for grant assistance for a cemeterial construction project; and veterans and their families.

These regulations will guide and assist State officials in applying for assistance for veterans' cemeterial projects from the State Cemetery Grants Program. The total of these grants to all applicants will not exceed $5 million per year.

The grant program and the regulations will help interested States develop and improve State veterans' cemeteries. This will indirectly benefit the veteran and other residents of the State.

Summary of Costs

Sectors Affected: None.

Congress authorized an appropriation of $5 million for FY 1980 and for each of the four succeeding fiscal years for the purpose of these VA grants. The cost of compliance with this regulation on the part of the States wishing to apply for a grant will not be significant.

Related Regulations or Actions

None

Active Government Collaboration

None

Timetable

Final Rule—June 1980
Regulatory Analysis—not required

Available Documents

OMB Circular No. A–95 (Revised)
OMB Circular No. A–102

Agency Contact

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State Cemetery Grants Program
Department of Memorial Affairs (40G),
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VA—Office of Human Goals

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the Veterans Administration (38 CFR Part 18e)

Legal Authority

The Age Discrimination Act of 1975, 45 U.S.C. § 6101 *et seq.*

Reason for Including This Entry

The Veterans Administration (VA) thinks this rule is important because it will allow qualified individuals regardless of age to participate in programs and activities, which are federally funded, that have been previously denied to them.

Statement of Problem

The Age Discrimination Act of 1975 requires each Federal agency which grants Federal financial assistance to any program or activity to implement regulations to carry out the provisions of the Act. The purpose of the Act is to prohibit discrimination on the basis of age. The Act applies to persons of all ages. These proposed regulations concern activities which receive Federal financial assistance from VA.

VA proposes to use procedural provisions contained in the regulations for Title VI of the Civil Rights Act of 1964 to enforce proposed VA regulations. These provisions are 38 CFR Part 18.9–18.11 and 38 CFR Part 18b.

Alternatives Under Consideration

This regulation will implement the requirements of the Age Discrimination Act of 1975 and the governmentwide regulations issued by HEW (45 CFR Part 90). These requirements provide no alternatives for consideration.

Summary of Benefits

Sectors Affected: All persons involved in programs and activities receiving VA financial assistance.

The regulations will establish standards to prohibit impermissible discrimination on the basis of age in programs and activities that receive Federal financial assistance from the Veterans Administration. The programs that are covered are generally the same as those covered by Title VI of the Civil Rights Act of 1964, but exclude those programs which involve employment.

These regulations will help assure that the benefits of federally assisted programs and activities will be extended to all eligible persons without prohibited age distinctions.

Summary of Cost

Sectors Affected: None.

We believe that the cost to the Veterans Administration and to the recipients will be minimal.

Related Regulations and Actions

Internal: None.

External: Department of Health, Education and Welfare. "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90.

Active Government Collaboration

The Veterans Administration's regulation will be similar to those issued by the Department of Health, Education and Welfare (HEW), except as necessary to meet specific Veterans Administration organizational, procedural, or program requirements. We anticipate entering into a delegated agreement with other Federal agencies to eliminate duplication of enforcement effort. This would parallel the delegations of responsibility with regard to Title VI of the Civil Rights Act of 1964, where HEW is responsible for institutions of higher learning, public school, hospitals and other health facilities, and the Veterans Administration is responsible for proprietary schools (privately owned schools).

Timetable

NPRM—May 1980
Final Rule—Target date May 1981
Regulatory Analysis—Not required

Available Documents

None

Agency Contact

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VA—OHG

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance (38 CFR Part 18d)

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. E.O. 11914, 3 CFR, 1976 Comp., p. 117. HEW Guidelines on Rehabilitation, 45 CFR Part 85.

Reason for Including This Entry

The Veterans Administration (VA) thinks this rule is important because it will allow qualified handicapped individuals to be employed in places previously closed to them because of discrimination on the basis of their handicap.

Statement of Problem

A substantial number of people in the United States are denied full participation in major activities such as employment, because of discrimination based on their handicaps. Recognizing this fact, Congress passed § 504 of the Rehabilitation Act of 1973, which prohibits discrimination solely on the basis of handicap in all programs and activities that receive Federal financial assistance. Federal agencies that provide such assistance must develop and publish regulations in furtherance of the broad remedial purpose of § 504.

Alternatives Under Consideration

This regulation will implement the requirements of the Rehabilitation Act, E.O. 11914, and Department of Health, Education, and Welfare (HEW) Guidelines on Rehabilitation. These requirements provide no alternative for consideration.

Summary of Benefits

Sectors Affected: All handicapped persons in programs or activities receiving VA financial assistance.

The regulations will define and prohibit acts of discrimination against qualified handicapped persons in employment and as beneficiaries of programs and activities that receive assistance from the VA. The elimination of discrimination against the handicapped in federally assisted programs and activities will further advance the national policy against such invidious discrimination, will ensure that benefits of federally assisted programs and activities will be extended to the qualified handicapped, and will preclude the discriminatory exclusion of the handicapped as employees in programs and activities that receive Federal financial assistance.

Summary of Costs

Sectors Affected: Programs and activities receiving VA financial assistance.

We believe that the cost to the Veterans Administration of complying with this regulation will be minimal. The greatest cost to recipients of Veterans Administration funds may be involved in making structural changes to buildings in order to allow access for handicapped individuals. In those cases, we expect to follow the guidelines established by the Department of Health, Education and Welfare.

Related Regulations or Actions

Internal: None.

External: Department of Health, Education and Welfare, "Nondiscrimination on the Basis of Handicap, Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 45 CFR Part 85.

Active Government Collaboration

The Veterans Administration's regulations will be similar to those issued by the Department of Health, Education and Welfare, except as necessary to meet specific Veterans Administration organizational, procedural, or program requirements. We expect to divide the enforcement responsibility between the Veterans Administration and HEW to eliminate duplication. This would parallel the delegations of responsibility with regard to Title VI of the Civil Rights Act of 1964, where HEW is responsible for institutions of higher learning, public schools, hospitals, and other health facilities, and the Veterans Administration is responsible for proprietary schools (privately owned schools).

Timetable

Final Rule—Target date May 1980
Regulatory Analysis—Not required

Available Documents

NPRM—43 FR 19166, May 3, 1978

Agency Contact

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FEDERAL DEPOSIT INSURANCE CORPORATION

Disclosure of Information (12 CFR Part 309*)

Legal Authority

Federal Deposit Insurance Act, § 9, (12 U.S.C. § 1819).

Reason for Including This Entry

The proposed rule is important because it will benefit the general public by ensuring that the Federal Deposit Insurance Corporation (FDIC) observes the privacy rights granted to bank customers by recent Federal law when the agency handles customer information.

Statement of Problem

FDIC has proposed amendments to Part 309 of its regulations which govern its disclosure of information to the public, other Federal financial supervisory agencies, State financial supervisory agencies, and other State and Federal agencies. The amendments

will add new provisions to Part 309 to conform it with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), which became effective in March 1979. This Act establishes certain procedures that FDIC must follow when it transfers customer information which it has obtained from a financial institution, to other Federal agencies. In general, the procedures permit FDIC to transfer the customer information to other Federal agencies only when FDIC certifies in writing that it has reason to believe the information is relevant to a legitimate law enforcement inquiry. When such a transfer is made, FDIC is generally required to, within 14 days after the transfer, send the customer (1) a copy of the written certification, and (2) a notice which states the nature of the legitimate law enforcement inquiry and the fact that the information has been transferred to an agency that is identified in the notice. The amendments to Part 309 will significantly reduce any possible transfer of bank customer records in violation of the Right to Financial Privacy Act.

Alternatives Under Consideration

No alternative requirements were considered. By its terms, the Right to Financial Privacy Act does not grant FDIC any latitude for discretion regarding the requirements imposed on the agency by the Act, except with respect to who may make the written certification and send the notice and a copy of the certification to the customer.

Summary of Benefits

Sectors Affected: Customers of the 9,306 insured State-chartered banks that are not members of the Federal Reserve System ("insured State nonmember banks").

The bank customers will benefit generally from the proposed amendment of Part 309 because the amendments will restrict FDIC's use of customer financial information, and will generally require the agency to advise a customer when financial information concerning the customer is transferred to another Federal agency.

Summary of Costs

Sectors Affected: FDIC.

The regulation FDIC proposes to amend is an internal regulation only. No reporting or recordkeeping or other requirements will be imposed on insured State nonmember banks as a result of the proposed changes. The FDIC will bear the costs of compliance with the amendments. The primary cost factor is expected to be administrative, *i.e.*, personnel time for determining what information may be transferred, and giving customer notice when appropriate. This cost has not been ascertained.

Related Regulations and Actions

Internal: FDIC has prepared and issued instructional materials to acquaint its field personnel with the Right to Financial Privacy Act requirements for handling bank customer information.

External: The Federal Reserve Board has adopted a regulation which states the procedures to be used by a Federal agency in reimbursing a financial institution for assembling and copying customer records when those records are requested under the Right to Financial Privacy Act.

Active Government Collaboration

FDIC has coordinated its efforts to comply with the Right to Financial Privacy Act with the other Federal financial supervisory agencies and the Justice Department. The financial supervisory agencies are currently following somewhat different procedures when making referrals of suspected crimes to the Justice Department. Efforts continue among the Federal financial supervisory agencies to establish a uniform interpretation of the requirements of the Right to Financial Privacy Act when making such referrals.

Timetable

Final Rule—pending final coordination with the other Federal financial supervisory agencies
Regulatory Analysis—None. The amendments will have no impact on insured State nonmember banks.

Available Documents

Federal Register Notice—44 FR 75652, December 21, 1979. Copies of notice are available at the Information Office, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

Agency Contact

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CHAPTER 6—TRADE PRACTICES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Amendments to Federal Seed Act Regulations (7 CFR Parts 201, 202*)

Legal Authority

Federal Seed Act of 1939, 7 U.S.C. § 1551 *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA), the State governments that cooperate in the enforcement of the Federal Seed Act (FSA), and the seed industry recognize several problem areas in the Federal seed regulatory program. The goal is to modify the regulations to serve the public interest more effectively.

Statement of Problem

The FSA is designed to protect farmers and other consumers who buy seed that is sold across State lines, or is imported. The FSA requires labeling of all such seed, prohibits false labeling and advertising, and prohibits importation of uncleaned seed, seed with low germinating levels, and seed containing noxious-weed seeds. USDA and State governments cooperate in enforcing the FSA. USDA is now reviewing and revising existing regulations used to administer the FSA. USDA will repromulgate these regulations, as amended, to provide up-to-date rules for testing seed, improve standards for certified seed, change rules for sampling new and different containers of seed, and clarify definitions and other provisions in light of current marketing practices.

Specific problem areas are:

(1) Handling complaints promptly. USDA investigates and takes action on complaints of alleged violations of the FSA, mostly from State seed regulatory agencies that cooperate with USDA. Slow action draws criticism from State agencies and the seed dealers regulated.

(2) Enforcing seed laws uniformly. Variability of State programs and unequal cooperation by State agencies results in unequal administration of the Federal law.

(3) Sampling of imported seeds. U.S. Customs agents sample the seed at the ports of entry and forward the samples to USDA seed laboratories. USDA tests the samples and admits or rejects the seed. Failure to sample, misidentification of seed samples, or delays in sampling affect the efficiency of the program.

(4) Regulating labeling of seed varieties. The FSA requires labeling and

prohibits false labeling. With some seeds, it is impossible to identify the variety by seed characteristics; it is necessary to subject them to special biochemical tests or grow them in field plots to differentiate varieties. Some seedsmen question the methods used and the interpretations of their results.

Alternatives Under Consideration

USDA held public meetings in September 1979 in Memphis and Denver, and invited all interested parties to express their views on the effect the FSA has on their business practices. We are considering the comments and letters we received in a study of the FSA now underway. When we have evaluated this new information, it should provide guidance for possible alternative strategies.

They are:

(1) *No change in the regulations.* The current regulations explain the requirements of the FSA, add definitions, specify kinds of seed that are subject to the FSA, prescribe rules for sampling and testing, and set forth standards for certain purposes. Possible advantages of this alternative are consistency (status quo), avoidance of controversy, and no cost to the government or the industry to change.

(2) Amend the regulations to make possible improvements in the current system. USDA expects many changes to have the support of all affected parties. Others will be controversial. Hearings will air controversial issues and will, hopefully, shed light on suitable solutions. The regulations need to be updated because of developments in technology and seed marketing. For example, seed of new plant populations is being sold, there are more seed products designed for the apartment dweller or mini-gardener, and additional methods of measuring seed quality exist. Technical bodies of the State agencies have recommended to USDA changes in the technical rules for testing, and standards for certified seed. Some other contemplated amendments would involve making additional seeds subject to the FSA, preinoculated and hermetically sealed seed, variety status and naming, recordkeeping, and the procedures for sampling seed. Most interested parties urge uniform State and Federal regulations.

(3) Amend authorizing legislation to change the mandate for regulations, such as: delete certain sections of the law completely, change the approach from "truth-in-labeling" to grades or permits, or require compulsory inspection before marketing. The current system is a truth-in-labeling and spot-check-inspection system. It is not perfect. Cost-benefit analysis may justify the current inspection system. The freedom to produce and distribute seeds without inspection or constraint simplifies the distribution system and minimizes the regulatory burden. On the other hand, the current system may not suffice to protect consumers from faulty seed which may cause crop losses. A farmer's crop may be lost before the fault in the seed is detected. Premarket inspection and a pedigree system might reduce errors.

Summary of Benefits

Sectors Affected: The seed industry, including growers, wholesale trade (including importing), and retail trade; seed testing laboratories; USDA; State seed regulatory and seed certifying agencies; farmers, gardeners and other seed users; and the U.S. Treasury Department's Bureau of Customs.

There are approximately 2,500 seed shippers, and the value of seed shipped interstate each year is estimated at $3 billion.

Revised regulations would improve compliance and enforcement because improving the wording of the regulations would minimize misunderstandings. USDA now receives approximately 1,000 violation complaints each year, and USDA expects it could handle the resultant fewer complaints more promptly and avoid the problems of currently drawn-out proceedings, thus improving relations with the State agencies and seed dealers at all marketing levels. The cooperative agreements with the States would be more effective under improved regulations, which could help overcome unequal enforcement in the States. Adoption of new rules for sampling and testing seed and changes in standards for certified seed would promote uniformity and effectiveness of seed regulations and the administration of seed laws. Furthermore, the accuracy of seed labeling would be enhanced to the benefit of seed users.

A possible facet of this proposal would be to change lists of noxious-weed seed in imported seed to agree with regulations under the Federal Noxious-Weed Act, administered by Animal and Plant Health Inspection Service (APHIS), which would facilitate cooperation between APHIS and the Agricultural Marketing Service (AMS) for the inspection of imported seeds and commodities infested with weed seed. (This action could be taken under all three of the alternatives previously listed). It may be possible and advantageous to relieve Customs officials of the burden of sampling imported seed. This change would place the enforcement of the import provisions of the FSA in one government department.

Summary of Costs

Sectors Affected: The seed industry; USDA; State seed regulatory and certifying agencies; and farmers, gardeners, and other seed users.

The FSA appropriation USDA requested for FY 1980 is about $1.4 million. USDA will incur only minor administrative costs in improving the wording of the regulations. However, the department may need additional Federal funds for seed inspection and testing, ranging from about $300,000 to $5 million annually, depending on the type of testing or inspection it uses to assure truthful labeling. If seed inspection is improved in States that are not cooperating, then Federal cost increase will be minimal, but if the Federal government totally assumed the inspection in the approximately 20 States that are inactive, the costs will be high. We do not know what States spend now or what increased costs the States would have if activity were changed.

The seed dealers are now required to label seed, and the changes that can be made in the regulations without basic statutory change should not create a significant change in costs to seed dealers. USDA presently contemplates no statutory changes that would create a cost burden to the industry. Passthrough costs to consumers for the amendments contemplated would be minimal, because there would be minimal additional burden or cost to seedmen.

Transferring responsibility for sampling imported seeds from Customs to USDA probably would not result in a shift of funds from Customs to USDA because sampling seed comprises only a small portion of Customs inspectors' time and cost. No significant increase in cost to USDA for sampling is anticipated.

Related Regulations and Actions

Internal: USDA has proposed amendments to the Federal Seed Act, but is withholding further action pending completion of two detailed studies of the program. The contemplated amendments to the regulations would not be contrary to the proposed amendments to the FSA that USDA is considering. They are intended to clarify wording, update certain provisions, and delete provisions that are obsolete or unnecessary.

The Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*) that this agency administers interacts with the FSA in

certain instances regarding determination of variety status and prohibition of selling certain protected varieties unless the seed is certified.

Seed imports that are subject to the FSA are inspected by AMS under that Act for noxious weeds. Imports of all other commodities must be inspected for certain weed species under the Federal Noxious Weed Act (7 U.S.C. § 2321 *et seq.*), which APHIS administers. AMS has held informal discussions with APHIS regarding cooperative inspection of imported seed and identification of weed seeds in other commodities.

External: State seed laws and regulations are similar to but not required to conform with the FSA.

Active Government Collaboration

AMS has already worked with State regulatory agencies in developing ideas for the proposed amendments and will continue to develop a set of proposed regulations. AMS will be in communication with Customs in connection with import sampling matters.

Timetable

USDA has a limited study underway regarding scientific aspects of the FSA and has another general study planned to more broadly evaluate the FSA. If the department decides to amend the regulations, the following estimated dates are applicable:

NPRM—spring 1981
Public Comment—minimum of 60 days following NPRM
Public Hearing—following NPRM
Final Rule for changing the regulations—fall 1981
Regulatory Analysis—will be prepared as part of the rulemaking process
Final Rule Effective—spring 1982

Available Documents

Available from the Agency Contact below.

Backgrounder: "Public meetings on the Federal Seed Act." August 1979
Federal Seed Act and regulations

Agency Contact

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USDA-AMS

Proposed Federal Milk Order for the Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho) (7 CFR 1135—Tentative)

Legal Authority

Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA) thinks this rule is important because adoption of the proposed order could have a significant impact on milk handlers, dairy farmers, and consumers in the proposed marketing area.

Statement of Problem

Under the Agricultural Marketing Agreement Act, USDA is vested with authority to issue milk marketing orders designed to stabilize marketing conditions in cases where disorderly marketing conditions exist.

As stated in the Agricultural Marketing Agreement Act (7 U.S.C. § 601 *et seq.*), the declared purpose of the Act is "to establish and maintain such orderly marketing conditions as will establish . . . (prices which) are reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions, (and which will) insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

In September 1978, three dairy cooperative associations in the Boise, Idaho, area proposed that USDA institute a milk marketing order for that area. Their proposal entailed a complete order to regulate the handling of milk in 18 southwestern Idaho and five eastern Oregon counties. The purpose of such an order would be to establish stable and orderly marketing conditions for producers and to assure consumers of an adequate supply of fluid milk at reasonable prices.

The USDA in turn invited alternative proposals to that suggested by the three dairy cooperative associations. Subsequently, we held a public hearing over the period December 5–8, 1978, in Boise to consider testimony on reasons for establishing an order and its specific provisions.

Our recommended decision, based on the hearing evidence, stated that dairy farmers supplying the marketing area under consideration were not experiencing disorderly marketing conditions (e.g., handlers cutting producer prices, certain producers losing their market, and a disproportionate sharing among producers of the market's surplus milk) to an extent warranting Federal intervention in the region. Thus, our recommended decision was to not issue an order—that is, not to regulate. The detailed findings and conclusions of the Department are stated in the recommended decision which was published in the **Federal Register**, (44 FR 48128, August 16, 1979).

USDA received significant objections to the recommended decision, and the time for filing exceptions to the decision was extended from September 17, 1979, to October 31, 1979.

After considering the objections to the recommended decision, the department decided to reopen the hearing, as requested by producer groups, for the purpose of receiving additional evidence concerning the need for an order. The reopened hearing, which was announced in November 1979, was held on February 5–8, 1980, in Boise, Idaho.

The department is now evaluating the additional evidence received at the February 1980 hearing. We will issue a revised recommended decision after we have completed our analysis.

Alternatives Under Consideration

(1) Issuing a milk marketing order for the Boise, Idaho, area to establish, by regulation, formula prices for milk by class of use.

(2) Relying on existing marketing arrangements (i.e., not issuing an order).

The department considers proposals initiated by milk producers, normally through their cooperative associations, and/or by other parties, rather than initiating proposals of its own.

Three cooperative associations representing producers proposed the Boise, Idaho, order. Their proposal represented a complete order to regulate the handling of milk in 18 southwestern Idaho and 5 eastern Oregon counties. It included definitions for determining which plants would be pool plants, (i.e., fully regulated plants). Their proposal defined a pool distributing plant as one that disposed of 50 percent or more of its total milk receipts on routes, with 10 percent or more of the distribution in the marketing area. A pool supply plant is one that transferred 50 percent or more of its Grade A milk receipts from dairy farmers to pool distributing plants. Plants that distributed less than the standards proposed would not be fully regulated, but they would be affected by provisions relating to partially regulated plants.

The cooperatives proposed a three-tiered pricing system similar to that used in most of the existing Federal milk orders. Handlers are required to pay these prices for the amounts of milk used in each of the three classes of use.

The proposal called for a Class I milk price (for milk used for fluid use) computed at the level of the Minnesota-Wisconsin price for the second preceding month plus $1.75 per hundredweight. The Class II price (for milk used in cottage cheese, ice cream, and other cream products) would be the Minnesota-Wisconsin price for the month plus 10 cents per hundredweight. The Class III price (for milk in butter and nonfat dry milk) would be the Minnesota-Wisconsin price for the month. The Minnesota-Wisconsin price is a price computed each month by the Economics, Statistics, and Cooperatives Service of the USDA. It represents an average of the prices paid for milk at unregulated manufacturing plants for Grade B milk in the two States.

The cooperatives proposing the order contend that an order is needed: (1) to stabilize marketing conditions in the area; (2) to equalize prices among competing handlers; (3) to ensure that all producers in the area share equally in the proceeds of the Class I market through the mechanism of the marketwide weighted average price to producers computed by the Federal milk market administrator; (4) to ensure, through the auditing procedure provided by the market administrator's office, that producers are paid accurately for their milk based on the use of the milk, the weight of the milk, and the butterfat test of the milk; and (5) to provide a source of accurate market information through the collection and disbursement of data by the market administrator's office.

Summary of Benefits

Sectors Affected: Dairy farmers; operators of fluid milk plants; and consumers in the southwest Idaho-eastern Oregon marketing area.

The benefits of an order, if it were found on the basis of a hearing record that an order should be adopted, would be stable and orderly marketing conditions for producers and handlers in some Oregon and Idaho counties, an equitable sharing of returns among producers in the market, and the assurance for consumers of an adequate supply of milk at reasonable prices.

Summary of Costs

Sectors Affected: Dairy farmers; operators of fluid milk plants; and consumers in the southwest Idaho-eastern Oregon marketing area.

The costs associated with a Federal milk order are administrative assessments (not more than 5 cents per hundredweight under the producers' proposal—perhaps $2500 per month for an average-size handler) against the regulated processors to cover USDA's expenses for administering and operating the marketing order. Consumers could be indirectly affected by slightly higher prices (not more than 5 cents per gallon) as a result of the pricing formula under the proposed order and the passthrough of administrative costs. Under the proposal, dairy farmers who are not receiving marketing services through a cooperative association could be required to pay a marketing service fee of 4 cents per hundredweight ($45 per month for an average-size producer).

Related Regulations and Actions

Internal: There are 47 Federal milk orders in operation. In 1978, in areas subject to milk orders, 119,398 producers delivered 78 billion pounds of milk to 1,187 milk handlers. Forty-one billion pounds, or 53 percent of the deliveries, were used in Class I—packaged for fluid milk consumption, on which marketing orders focus. The milk deliveries represented two-thirds of all milk marketed by the Nation's dairy farmers.

External: Agencies of State governments define, by sanitary handling conditions and product description, that milk which can qualify as Grade A or suitable for fluid consumption. (All Class I milk must be Grade A.)

Active Government Collaboration

None

Timetable

Revised recommended decision—October 1, 1980.

Regulatory Analysis—will be available

Available Documents

Notice of Hearing issued October 19, 1978 (43 FR 49704, October 24, 1978)

Corrections (procedural): 43 FR 50187, October 27, 1978 and 43 FR 52496, November 13, 1978

Recommended Decision "Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Marketing Agreement and Order" issued August 13, 1979 (44 FR 48128, August 16, 1979)

Extension of Time for Filing Written Exceptions to the Recommended Decision, issued September 14, 1979, published in 44 FR 54303, September 19, 1979. The public had until October 31, 1979, to submit written comments on the recommended decision

Notice of reopened hearing issued on November 27, 1979 (44 FR 68853, November 30, 1979)

Notice of rescheduling of reopened hearing issued on December 19, 1979 (44 FR 76551, December 27, 1979).

Draft Regulatory Analysis.

The records of the hearings held in Boise in December 1978 and February 1980, and the public comments received thus far in the proceeding are on file with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C., under Docket No. AO–380.

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USDA—FOOD SAFETY AND QUALITY SERVICE

Proposed Net Weight Regulations (9 CFR Parts 318 and 381*)

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 453(h)(5) *et seq.*

Poultry Products Inspection Act, 21 U.S.C. § 343(e) *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA) has received a number of consumer complaints about current Federal net weight regulations for meat and poultry products. Those regulations permit weight variations caused by moisture changes during the course of the distribution process. USDA is seeking to find a means of standardizing those weights to assure more accurate consumer and marketing information.

Statement of Problem

Present USDA regulations concerning net weight for meat and poultry products permit "reasonable variations" in weight caused by the loss or gain of moisture during distribution. In October 1977, the State of California filed a petition with USDA requesting new regulations which would permit States and municipalities to enforce strict standards at the time of consumer purchase. (State and local regulatory agencies enforce the Federal net weight regulations.) Officials of 47 other States, several farm organizations, and consumer groups cosigned the petition.

According to the petition, the Supreme Court decision in *Rath Packing*

Company v. *M. H. Becker, et al.* in March 1977 had left states without adequate authority to enforce their own net weight regulations. The Court had held that States and municipalities were preempted from enforcing standards that were stricter than Federal regulations, which are based on "reasonable variations." Because the term "reasonable variations" does not provide a quantifiable standard, the petition contended that States and municipalities were, in effect, precluded from enforcing net weights at retail.

In addition, consumers have complained that net weight statements on packages of meat and poultry do not provide accurate information on the amount of usable product in the package. Present USDA regulations now require that net weight statements be accurate only at the time they leave the plant and not at the time food is purchased by consumers. The present regulation also counts free liquid as part of the net weight. (Free liquid is liquid that has seeped out of a product into the package but has not been absorbed by the packaging material.) As a result of moisture loss and free liquid, consumers have frequently complained that they have no way of knowing how much usable product they are getting for their money.

In response to the California petition and consumer complaints, the Food Safety and Quality Service (FSQS) published proposed Federal net weight regulations on December 2, 1977. The principal features of the proposal were as follows:

- Free liquids, as well as liquids, fats and solids absorbed by packaging material, would be excluded from a product's net weight. Thus, net weight would be based on a drained weight system, as opposed to a wet tare or dry tare. (Tare is the quantity subtracted from gross weight to determine net weight.) Under a wet tare, net weight equals package and contents minus the weight of the packaging material and liquids absorbed by the packaging material. (Free liquid is included in the net weight.) Under a dry tare, net weight equals package and contents minus the weight of the dry packaging material (again, free liquid is included).
- The present allowance for moisture loss due to evaporation during distribution would be eliminated. The average weight for products from the same lot would be required to equal or exceed the labeled net weight. Single packages, however, would be permitted actual weights below the labeled weight by a specified amount.
- Federal net weight standards would be established for bulk shipments or wholesale-size packages.
- An FSQS approved quality control program for net weight would be required at federally inspected meat and poultry plants.

After the proposal appeared in the **Federal Register**, USDA received over 3,000 comments, indicating widespread disagreement concerning the need for the new regulations and their economic impact. Since the closing of the comment period, FSQS has commissioned two economic studies. The first, "Analysis of Proposed Regulations on Net Weight Labeling" (October 1978), was carried out by the Consumer Federation of America. The second of these, "Assessment of Proposed Net Weight Labeling Regulation," conducted by USDA's Economics, Statistics, and Cooperatives Service (ESCS), was made available for comment on August 31, 1979. The comment period closed on October 30, 1979.

Alternatives Under Consideration

The comments on the ESCS study had a significant bearing on the available alternatives. FSQS now appears to have four alternatives:

(1) Retain the present regulations. This appears to be the least likely course, because States have clearly spoken in favor of new regulations that will give them an enforceable standard at retail.

(2) Publish the December 2, 1977 proposal as a final regulation, with only nonsubstantive changes. This, too, does not appear to be a strong possibility. Over the past year, USDA officials have held a series of meetings with Food and Drug Administration (FDA) officials to develop a consistent Federal approach on net weight regulations for all food. (FDA has authority over all food except meat and poultry.) The agreements that have been reached in these meetings would involve substantive changes in USDA's December 1977 proposal, and, therefore, would make it necessary to repropose rather than go ahead with final regulations.

(3) Publish a new proposal that would incorporate the agreements reached with FDA, but that would leave most other portions of the December 1977 proposal unchanged.

(4) Publish a new proposal that incorporates the agreements reached with FDA, as well as other changes designed to reduce the costs to industry and keep enforcement costs to States and localities to a minimum. (For example, the drained weight system might be changed to a wet tare or dry tare system.) This appears now to be the most likely alternative. It would make use of the ESCS findings on the economic impact of the December 1977 proposal.

Summary of Benefits

Sectors Affected: Wholesale and retail trade of meat and poultry; consumers of these products; and State and local governments.

According to the ESCS study, there would be three benefits to establishing a more objective (or quantifiable) Federal net weight standard.

First, consumers—a large proportion of the general public—would benefit from more accurate net weights at retail. (The total value of meat and poultry products sold in 1979 exceeded $60 billion.) In buying a chicken, ground beef, or bacon, a consumer will almost always look at the price per pound. Without accurate information on the weight of the product, however, shoppers cannot make accurate price comparisons. With an objective standard, enforceable at retail, consumers would be in a better position to make price comparisons.

Second, there would be more accurate information on meat and poultry products at all points in the distribution and marketing chain. For example, the buyers of bulk-packed products would have a clearer standard for checking the weights of shipments they receive. Such a standard would be helpful, particularly to small volume buyers who may now be reluctant to adjust invoices to correct for underweight shipments.

Third, because States and municipalities would have a more enforceable standard at retail, the risk of deliberate fraud would be reduced. Although ESCS's study found no evidence of consistent or flagrant short-weighing of meat and poultry products now in the marketplace, State officials have stated that it could occur unless there is an enforceable Federal standard in place.

Summary of Costs

Sectors Affected: manufacturing, and wholesale and retail trade of meats and poultry; FSQS; and State and local government.

The ESCS study predicts that the labeled price per pound for some products would increase under the December 1977 proposal, but that there would be no real cost increase for consumers, because they would be receiving more usable product at the higher price. Similarly, producers would have to include more product in packages to compensate for the stricter standard, and thus would incur

additional costs per package. However, these costs would be offset by the increase in the labeled price per pound. Thus, a stricter standard, by itself, would result in no additional real costs to either industry or consumers.

However, the quality control requirements would result in additional annual personnel (operating) costs of $57 to $114 million to industry, according to the ESCS study. Capital costs to industry would be less than $2 million, according to the study. Under alternative (4), the quality control portion of the proposal would not be included.

The additional costs of the 1977 proposal (alternative (2)) to State and local governments would be about $500,000. Most of these costs would be in new equipment to enforce a drained weight system. If the proposal were changed to a wet tare or dry tare system under alternative (4), almost all of the additional costs to State and local governments could be avoided.

Most producers would be affected more than retailers, because they would have to take into account weight over a longer period of time (between packaging at the plant and consumer purchase, or between packaging at the plant and repackaging by a wholesaler or retailer). The producers of some products would be more affected than the producers of others. For example, some sausage products lose more moisture during distribution than, say, vacuum-packed bacon, and, therefore, the producer would have to do more "over packing" at the plant. The effect of the regulation would also depend on the type of packaging material used, and may result in a shift to different types of packing than now used. The size of these various impacts cannot be estimated with any confidence.

The regulation's effect on the industry will also vary with the type of tare that it requires. Under a drained weight system, alternatives (2) and (3), products that lose a significant amount of moisture through seepage into the package, such as corned beef briskets, will have a higher labeled price per pound than they do at present, simply because the free liquid will no longer be included in the net weight. This will not change the price a consumer pays for a given package, but the increase in the labeled price per pound might alter consumers' preference.

Related Regulations and Actions

Internal: Proposed Rule for Voluntary Meat and Poultry Plant Quality Control System (44 FR 53526, September 14, 1979).

External: Food and Drug Administration, 21 CFR 501.105q. Federal Trade Commission, 16 CFR 500.22

Active Government Collaboration

FSQS and the Food and Drug Administration (FDA) have held a series of meetings over the past year to develop, as far as possible, a common approach to net weight regulations. In late 1977 and early 1978, the two agencies held several public hearings on the issue of net weights.

In 1975, USDA, FDA, the Federal Trade Commission, and the National Bureau of Standards formed an interagency net weight committee. The committee has met intermittently since then.

In the past two years, FSQS officials have consulted regularly with State and local weights and measures officials and State Departments of Agriculture.

Timetable

Reproposal—June 1980
Public Comment Period—ends August 1980
Final Rule—October 1980
Regulatory Analysis—USDA will perform as part of the rulemaking process

Available Documents

Notice of availability of ESCS study—44 FR 51275, August 31, 1979. Comment period on ESCS study closed October 30, 1979.

Net Weight Regulations for Meat and Poultry Products, 9 CFR 317.2(h)(2), 9 CFR 381.121(e)(6)

Proposed Regulations for Meat and Poultry Products—42 FR 61279, December 2, 1977

Consumer Federation of America, "Analysis of Proposed Regulations on Net Weight Labeling," October 1978

General Accounting Office, "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data," CED–79–28, December 20, 1978

Economics, Statistics, and Cooperatives Service, USDA, "Assessment of Proposed Net Weight Labeling Regulation," August 1978. Public comments on this study are also available. Docket number 79–27236.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Requirements (23 CFR 635.410)

Legal Authority

Surface Transportation Assistance Act of 1978, § 401; P.L. 95–599, 92 Stat. 2689.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because it is both controversial and could possibly increase construction costs in the Federal-aid highway program by 2 percent, or approximately $150 million, annually.

Statement of Problem

In 1933, Congress enacted the first Buy America provisions, which required all Federal agencies to comply with domestic preference requirements in direct purchases. The Buy America provisions (§ 401) of the Surface Transportation Assistance Act (STAA) of 1978 require that all articles, materials, and supplies purchased with grant funds authorized under the Act must be of U.S. origin. The States, as recipients of the grant funds, are responsible for enforcing § 401.

Before Congress enacted STAA, suppliers of certain foreign products, including steel, were allowed to compete for contracts on Federal-aid highway projects. The pressure of foreign competition has been increasing and will continue. In fact, the General Accounting Office (GAO) found that, in 1976 and 1977, foreign-produced steel products valued at $97.8 million (in 1976 and 1977 dollars) were used in Federal-aid highway construction projects.

Under STAA, DOT must develop and enforce a policy on procurement of foreign materials for projects funded by Federal-aid highway assistance. However, the Secretary of Transportation has retained the authority to waive the Buy America provisions under certain conditions. These include situations where domestic supplies are unavailable or where using them would increase the cost of the project by more than 10 percent.

Alternatives Under Consideration

The Buy America provisions were effective immediately and required implementation. Therefore, the FHWA issued an emergency regulation on November 17, 1978 to implement them. That regulation applied only to foreign structural steel.

The FHWA is considering continuing the provisions of the emergency rule because its approach is consistent with the legislative history of the Buy America provisions. Competition between domestic and foreign sources for highway construction contracts generally has been limited to the structural steel market. Other products are abundant domestically or are not available in sufficient quantities from American sources to meet highway construction needs (e.g., petroleum and petroleum products).

The FHWA is considering whether to apply stringent Buy America restrictions on all materials used in Federal-aid construction projects over $500,000. While fairly large quantities of petroleum products, such as fuel, lubricants, and asphalts are used on all highway projects, domestic petroleum is not sufficiently and reasonably available to meet this need. Restrictions on the purchase of petroleum products undoubtedly would delay many construction projects and would be contrary to the legislative intent. Moreover, the statute clearly allows domestic preference only if the exclusion of foreign products would not increase project costs by more than 10 percent.

At this time, the FHWA cannot quantify the economic affect of requiring that all materials for contracts on Federal-aid highway projects be of U.S. origin. However, construction costs probably would rise since there would be fewer acceptable suppliers. Because the States are responsible for administering the regulations, State administrative costs may increase. Further, projects could be delayed until the Secretary approved any necessary waivers.

Summary of Benefits

Sectors Affected: Domestic steel industry, including blast furnaces and basic steel products manufacturing, steel foundries, and fabricated structural steel products manufacturing.

Reduction in the use of foreign products would give domestic suppliers more opportunities for contracts. The FHWA estimates that, from 1979 to 1982, the Bridge Replacement and Rehabilitation Program will use more than $500 million (in 1980 dollars) annually in structural steel. The GAO estimates that 9.5 percent of the steel used annually in the Federal-aid highway program is from foreign sources. For the years 1976–77, the GAO estimated that $97.8 million in foreign steel products were used in the highway program. Domestic suppliers could have provided this steel.

Summary of Costs

Sectors Affected: Highway construction industry, States, and steel importing.

The increase of up to 10 percent in the cost of highway construction projects may affect all industries participating in these projects. The regulatory provisions would force contractors to find domestic sources for some of their steel and steel products. States would be required to bear additional administrative costs in order to evaluate bids. A limited number of steel importers could lose some import business.

The FHWA has estimated that the provisions of Buy America, which apply to approximately 87 percent of the Federal-aid authorization of $35 billion over the years 1979–82, could increase construction costs by 2 percent, or $150 million (in 1980 dollars), annually.

Related Regulations and Actions

Internal: The Buy America regulation of the Urban Mass Transportation Administration (49 CFR Part 660).

External: None.

Active Government Collaboration

None

Timetable

NPRM—May/June 1980
Draft Regulatory Analysis—will accompany NPRM
Final Rule—October 1980

Available Documents

Emergency Rule—43 FR 53717, November 17, 1978

Federal Highway Administration Docket 78–35

GAO Report "Foreign Source Procurement Funded through Federal Programs by States and Organization," report number 1D–79–1, November 30, 1978

All documents are available for review in the Office of the Chief Counsel, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Advertising Regulations Under the Federal Alcohol Administration Act (27 CFR Parts 4, 5, and 7)

Legal Authority

Federal Alcohol Administration Act, 27 U.S.C. § 205(f).

Reason for Including This Entry

The Department of the Treasury believes this rule is important because it is the first major amendment of alcoholic beverage advertising regulations since the repeal of prohibition. The regulations proposed are intended to deregulate in some instances and update advertising standards in other instances.

Statement of Problem

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for ensuring that advertisements for alcoholic beverages contain certain information about the product, and that the advertisements are not false or misleading. While the current advertising regulations have remained basically unchanged since ATF adopted them in the mid-1930s, advertising techniques and practices, and consumer education and awareness have changed significantly in the past 40 years. Over the years, ATF has issued a number of rulings interpreting the regulations in light of the changing advertising practices and growing consumer awareness. In many cases, inappropriate regulations and varied interpretations of these regulations have caused confusion for both the advertiser and the consumer.

ATF reviews approximately 8,000 advertisements for alcoholic beverages each year, usually after the advertiser is ready to release the advertisement to the media. However, because review by ATF is not mandatory, some advertisements are released without ATF review.

Furthermore, because of the confusion over certain regulations, some advertisements violate these regulations, and ATF recalls or rejects them, costing the industry and ATF money and effort. ATF does not have a monetary estimate of the costs which it and industry incur because of recalled and rejected advertisements.

From the consumer's perspective, many advertisements which conform to ATF regulations seem to be false or misleading because of consumers' changing perceptions toward certain

products. For instance, the term "light" used with a malt beverage traditionally referred to the color of the product. Now the term "light" has a completely different meaning—reduced caloric content—to most consumers of malt beverages.

For these reasons, ATF is reviewing the advertising regulations for possible updating and revision. Among the areas under review are:

(a) the use of athletes and persons dressed to play in athletic events in alcoholic beverage advertisements;

(b) the use of subliminal advertising techniques;

(c) the use of the word "Natural" in advertisements to imply that the product is natural;

(d) the current interpretation of false or misleading advertisements;

(e) the use of curative or therapeutic references in advertisements;

(f) comparative advertisements;

(g) an interpretation of disparagement (for instance, whether statements about a competitor's product which are true but nonetheless disparaging be allowed in advertisements);

(h) the use of "taste tests" in alcoholic beverage advertisements; and

(i) the use of the term "light" on malt beverages.

If ATF fails to address these issues, the problem of false and misleading advertising will continue.

Alternatives Under Consideration

ATF has reviewed the comments received on the ANPRM (43 FR 51808, November 21, 1978). We are analyzing alternatives, and the draft NPRM in-process will reflect a consideration of the alternatives and comments received on the ANPRM. The Federal Alcohol Administration (FAA) Act requires the Treasury Department to regulate the advertisement of alcoholic beverages. But the Treasury Department may deregulate in certain areas within the framework of the FAA Act and may rely on self-regulation by the industry. On the other hand, ATF has received in response to the ANPRM approximately 8,900 comments from the public at large who wanted, in general, greater restrictions placed on alcoholic beverage advertising.

By clarifying and consolidating regulations, policies, interpretations, and rulings on advertising into a single comprehensive package, ATF hopes to liberalize the regulations in certain areas (for example, if ATF allows the use of truthful comparative advertising, the consumer might gain more information about various alcoholic beverage products and be able to make a more informed selection). ATF hopes also to restrict certain advertising practices which the public finds objectionable (for example, many respondents objected to the possible use of subliminal stimuli in alcoholic beverage advertising).

ATF will uniformly apply the adopted regulations to all alcoholic beverage advertising.

Summary of Benefits

Sectors Affected: Manufacturing, and wholesale and retail trade of advertised alcoholic beverages, including malt beverages, wines, brandies and distilled liquors; the advertising industry; consumers who view advertisements of these products; and Federal and State governments.

These regulations will benefit consumers and those listed above. Because these regulations will clarify ATF's position on advertising, they will help reduce the recall and rejection of advertisements, thus saving the industry money, while protecting the industry's right to advertise its products and reinforcing the consumer's right to expect clear and truthful advertisements. For example, the use of taste tests will encourage competition among industry members. The advertiser can project any message he desires with the use of subliminal advertising techniques. With regulations prohibiting this, the consumer would be protected against undue persuasive advertising.

Revising the regulations should not increase costs to government. The government may benefit, because it currently spends much effort in explaining confusing regulations and rulings.

Certain State governments may also benefit from a revision of the regulations, as many States adopt Federal advertising regulations to cover interstate commerce. The Federal Alcohol Administration Act only affects advertising that involves interstate commerce. In addition, Federal alcoholic beverage regulations, including the advertising regulations, apply to malt beverages in any State only to the extent that the law of the State imposes similar requirements.

Summary of Costs

Sectors Affected: Manufacturing, and wholesale and retail trade of advertised alcoholic beverages, including malt beverages, wines, brandies, and distilled liquors; and the advertising industry.

We have not been able to determine specific cost estimates for this project. In general, costs to producers of alcoholic beverages and the advertising media should not increase because these regulations affect only advertising content and not methods of advertising.

Related Regulations and Actions

Internal: ATF is in the process of preparing a final rule requiring ingredient labeling for alcoholic beverages. ATF contracted with Michigan State University to study the effects of alcoholic beverage advertising on the drinking habits of young people. The University has submitted a preliminary report, which we are reviewing. We held a meeting with the Federal Trade Commission and the National Institute of Alcohol Abuse and Alcoholism concerning the report.

External: The Federal Trade Commission (FTC) is responsible for regulating the advertisement of wine with less than 7 percent alcohol by volume and the advertisement of nonalcoholic beverages.

Active Government Collaboration

The Federal Trade Commission and ATF are collaborating on this project. ATF will also solicit comments on proposed regulations from other Federal agencies, and State and local governments.

Timetable

NPRM—August 10, 1980
Public hearings—we will hold them if warranted
Regulatory Analysis—ATF will not prepare

Available Documents

ANPRM—Notice No. 313, 43 FR 51808, November 21, 1978, entitled Advertising Regulations Under the Federal Alcohol Administration Act

A notice extending the comment period—Notice No. 313, 44 FR 2603, January 12, 1979

Copies of the documents and comments may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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TREAS-ATF

Implementation of the Distilled Spirits Tax Revision Act of 1979 (27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251, and 252)

Legal Authority

Distilled Spirits Tax Revision Act of 1979 (Title VIII, Trade Agreements Act of 1979), P.L. 96-39, 93 Stat. 273.

Reason for Including This Entry

The Department of the Treasury thinks this proposed rule is important because it establishes a new tax system for proprietors of distilled spirits plants. There will also be an annual revenue loss to the Treasury in excess of $100 million and a tax savings amounting to over $100 million a year to importers of bottled distilled spirits.

Statement of Problem

Under the Internal Revenue Code of 1954, the Secretary of the Treasury has strict control over liquors for beverage purposes and alcohol for industrial purposes, from the beginning of the production process to the point of removal from bonded premises (the portion of the distilled spirits plant where spirits on which the tax has not been paid or determined are stored). The Secretary has maintained control through a rigid system requiring permits, on-site supervision, and restriction of industry operations to separate premises or designated areas. However, in recent years, Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) has recognized the need for modernizing this system of control and has sought legislative amendments to make possible an all-in-bond system for taxing and controlling distilled spirits. Under the all-in-bond system, all distilled spirits operations are conducted on the bonded premises of a distilled spirits plant, and the tax is determined after processing and bottling is completed on the basis of the proof (alcoholic content) of the finished product when removed from bond.

The Distilled Spirits Tax Revision Act of 1979 changed the tax system to eliminate disparities in taxation between domestic and imported spirits. Under this Act, the tax is based solely on the alcoholic content of the domestic or foreign distilled spirits products. The Act also gave the Secretary of the Treasury authority to discontinue assignment of government officers at distilled spirits plants. Finally, in order to promote increased efficiency of government and industry operations, the Act permitted many other simplifications in the regulation of the distilled spirits industry.

On December 11, 1979, ATF issued interim regulations in Temporary Document (T.D.) ATF-62 (44 FR 71613). These regulations implemented the Distilled Spirits Tax Revision Act of 1979, effective January 1, 1980.

Alternatives Under Consideration

Because these regulations were required to implement a statute, there was no practical alternative to issuing them. However, because these regulations completely changed the ways the distilled spirits industry was operated and regulated, ATF issued them in the form of interim rules with provision for public comment. Based on the public comments received, ATF will issue a final rule. By the time we do this, the final rule will have benefited from the practical experience of both the industry and the government under the interim regulations.

Summary of Benefits

Sectors Affected: Manufacturing of distilled spirits, including brandy spirits; importing of distilled spirits; bonded manufacturers of wine; and the Federal government.

Direct benefits accruing to proprietors of distilled spirits plants include savings due to simplification of their operational methods and required recordkeeping. With respect to operations, greater flexibility on the use of premises and equipment is possible, because all operations are conducted on bonded premises. In addition, eliminating the requirement for government officers to supervise directly certain operations or to be present to allow proprietors access to bonded areas allows for more efficient scheduling of plant operations.

Under the new system, proprietors determine the amount of tax due to the government, after processing and bottling is completed, on the basis of the proof (alcoholic content) of the bottled product when removed from bond. Under previous regulations, ATF officers determined the tax when bulk spirits were withdrawn from bonded premises to nonbonded processing and bottling facilities. By postponing the tax determination until removal of the finished products, the new system simplifies the records systems necessary for proprietors to document their tax liability.

Distilled spirits taxes are paid on the basis of semimonthly returns. Under the previous system, qualified proprietors could defer actual payment of tax for up to 30 days. The new law provided for an additional deferral period of 15 days, and this benefits proprietors of distilled spirits plants because it saves them the cost of borrowing money for this additional length of time. This increased deferral period will be phased-in over three years.

Wineries are also directly affected by the elimination of "standard wine premises." Under previous law, winery proprietors could not manufacture and bottle wine products (for example, wine products made with artificial flavors) other than "standard" wines on winery premises. These other wine products were manufactured and bottled at distilled spirits plants only, using wines on which the tax was paid. Effective January 1, 1980, winery proprietors may manufacture and bottle these wine products.

These regulations directly affect importers of bottled distilled spirits because such products are no longer taxed on a wine gallon basis when below proof (i.e., on the actual volume of liquid in the product when below 100 degrees proof). Under the new law and regulations, imported bottled distilled spirits are taxed on a proof gallon basis (i.e., on the actual degree of proof in the product). As a result, importers will pay a reduced amount of tax amounting to over $100 million a year.

The government will realize manpower savings because of the elimination of on-site supervision of distilled spirits plants by ATF officers, and the more simplified methods of tax collection, records, and reporting requirements.

Summary of Costs

Sectors Affected: Manufacturing of distilled spirits, including brandy spirits; manufacturing of wines and alcoholic flavorings; and the Department of the Treasury.

Proprietors of distilled spirits plants should generally experience some increase in costs during the first year of the new system. Training employees, adopting security measures to replace those that were formerly provided by the government, and revising internal control and recordkeeping systems will entail a one-time cost.

The wine industry and manufacturers of alcoholic flavorings used in spirits will probably feel some effects of the new distilled spirits tax system. While the regulations will provide ways for wineries and flavoring manufacturers to continue their existing relationships with distilled spirits plants, the statutory changes in the tax system may lead to changes in product mix or in the formulation of existing products which would affect their sales to the distilled spirits industry.

The government also will bear administrative costs of implementing the new system. Specific costs include those for developing the new regulations and procedures and for providing assistance to the industry in converting to the new system. The taxation of certain distilled spirits on a proof gallon basis rather than on a wine gallon basis directly affects the government because there will be an annual revenue loss to the Treasury amounting to over $100 million a year.

Related Regulations and Actions

Internal: The principal regulations that this statutory change affects are the following: Gauging Manual (27 CFR Part 13); Distilled Spirits Plants (27 CFR Part 19); Distilled Spirits Plants (27 CFR Part 201); Wine (27 CFR Part 240); Taxpaid Wine Bottling Houses (27 CFR Part 231); Liquors and Articles from Puerto Rico and the Virgin Islands (27 CFR Part 250); Importation of Distilled Spirits, Wine and Beer (27 CFR Part 251); Exportation of Liquors (27 CFR Part 252); Gauging Manual (27 CFR Part 186); Miscellaneous Regulations Relating to Liquors (27 CFR Part 170); Distribution and Use of Denatured Alcohol and Rum (27 CFR Part 211); Distribution and Use of Tax-free Alcohol (27 CFR Part 213); Liquor Dealers (27 CFR Part 194); Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products (27 CFR Part 197); and Labeling and Advertising of Distilled Spirits (27 CFR Part 5).

We have incorporated the following regulation projects that were under development into this general revision:

Alternate Premises between Distilled Spirits Plants and Bonded Wine Cellars (27 CFR Parts 201 and 240)

Formulas for Rectified Products (27 CFR Parts 170, 201, 250, and 252)

Strip Stamps and Alternative Devices (NPRM published November 7, 1978, 43 FR 51808, 27 CFR Parts 194, 201, 250, 251, and 252)

Export Storage Facilities at Distilled Spirits Plants (27 CFR Part 201)

Samples of Distilled Spirits (27 CFR Part 201)

Distilled Spirits Meters (27 CFR Part 201).

External: The statutory changes affect the regulations that the U.S. Customs Service administers (Title 19, Code of Federal Regulations).

Active Government Collaboration

Certain aspects of the regulatory changes affect procedures of the U.S. Customs Service and the Internal Revenue Service (IRS). Some distilled spirits plants currently receive imported bulk spirits under an immediate delivery procedure whereby ATF officers act as Customs officers. Elimination of assignment of ATF officers would preclude the use of this procedure in the future. ATF is coordinating its plans for withdrawal of ATF officers with the U.S. Customs Service.

The repeal of the rectification tax (an additional tax applicable to certain mixed or processed products) eliminated the need for the collection of the rectifier's occupational tax by IRS.

Timetable

Public Comment Period—written comments on NPRM due on or before September 11, 1980
Final Rule—March 1981
Regulatory Analysis—ATF will not prepare

Available Documents

ANPRM—Notice No. 326, 44 FR 41833, July 18, 1979

Public comments in response to ANPRM

NPRM—Notice No. 329, 44 FR 71612, December 11, 1979

Temporary Rule—T.D. ATF-62, 44 FR 71613, December 11, 1979

Public Law 96-39, Trade Agreements Act of 1979

Committee Reports—U. S. Senate, Committee on Finances (S. 1376); U.S. House of Representatives, Ways and Means Committee (H.R. 4537).

These documents are available for public inspection at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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TREAS-ATF

Unlawful Trade Practices Under the Federal Alcohol Administration Act (27 CFR Parts 6, 8, 10, and 11)

Legal Authority

Federal Alcohol Administration Act, 27 U.S.C. § 205.

Reason for Including This Entry

The Department of the Treasury thinks this rule is important because it liberalizes the permitted marketing practices of all manufacturers and wholesalers of alcoholic beverages in respect to their sales to retail liquor dealers.

Statement of Problem

The Federal Alcohol Administration (FAA) Act prohibits certain unfair trade practices within the alcoholic beverage industry. Among these practices are unfair labeling and advertising of alcoholic beverages, bribery of wholesale or retail employees or officials by suppliers, creation of "tied-house" relationships between suppliers and retailers, and consignment and conditional sales or other sales which are not bona fide sales. The FAA Act also provides for some exceptions from these general prohibitions.

The FAA Act became law in 1935. Since then, Treasury has issued regulations relating to items or legal inducements that a wholesaler or supplier may furnish to a retailer. Treasury has not issued regulations concerning other trade practice provisions of this Act, although it has enforced these provisions. Since 1935, the Bureau of Alcohol, Tobacco and Firearms (ATF) has issued rulings and industry circulars in order to interpret the provisions of the FAA Act on unlawful trade practices. These interpretative documents have generally addressed one specific problem or a circumstance which required clarification.

ATF has reviewed past circulars, rulings, and its present interpretation of the unlawful trade practice provisions of the FAA Act. Some conclusions of this review are:

(1) ATF policy with respect to legal inducements such as free goods, things of value, and services is based largely on hearings and public comments during the late 1930s; for example, although inflation has increased costs many times since the 1930s, the maximum costs permitted for items supplied by suppliers to retailers such as clocks, signs, or calendars has remained almost unchanged in the regulations.

(2) ATF has never formally stated all possible reasons for the legitimate return of alcoholic beverages by a retailer to a supplier; confusion exists among suppliers and wholesalers whether some returns are permitted, such as returns from a retailer engaged in business only part of a year or returns from a retailer of products for which only a seasonal demand exists.

(3) Industry practices have changed greatly since the 1930s and certain practices, such as shelf stocking and rotation of beer and wine bottles by a supplier at a retailer's premises, have become commonplace. However, regulations have never recognized these practices as legitimate.

(4) Industry members are seeking guidelines on permissible activities, such as their participation in activities sponsored by retail liquor dealer associations. Because regulations do not address this issue, it is difficult to determine what activities are recognized as legitimate.

(5) Rules specifying unlawful trade practices have never been compiled in an easy-to-use reference; instead, many separate rulings and circulars exist covering the same subject. In order to research the position of ATF on a trade practice, it may be necessary to examine many rulings, letters, and circulars dating as far back as 1936. Moreover, many of these documents are difficult for the general public to find.

As a result of this review, ATF has decided to issue regulations clarifying and implementing all of the unlawful trade practice provisions.

By issuing these regulations, ATF wishes to modernize and update its interpretation of the FAA Act and liberalize requirements for the alcoholic beverage industry as much as is consistent with the intent of the FAA Act. ATF will also allow for full public participation in the development of new rules and will combine all outstanding rulings and circulars into a single codified source of rules relating to unlawful trade practices.

Alternatives Under Consideration

One alternative to issuing these regulations would be to issue no new regulations. However, by statute, the "tied-house" prohibitions cannot be liberalized without the issuance of exceptions through regulations. ATF could also issue rulings which would clarify, update, and consolidate outstanding rulings and circulars. ATF believes that new regulations present the best alternative because they will clarify all the trade practice issues which have caused confusion in the past, will present a single, unified source of rules relating to unlawful trade practices, and will liberalize existing requirements.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale trade (including bottling and importing), and retail trade of alcoholic beverages, including malt beverages, wines, brandies, and distilled liquors; States which engage in wholesale or retail trade of these products; Federal government; and the general public.

These regulations benefit industry, government, and the public. The new regulations, resulting from re-examination of rules, some of which are over 40 years old, will modernize and liberalize the requirements. As a result of this re-examination and of dropping some restrictions, there will be less Federal government regulation in some areas, such as stocking shelves and rotation of alcoholic beverage bottles by wholesalers at retailer's premises. ATF expects that these regulations will further promote competition among manufacturers and wholesalers of alcoholic beverages by increasing the types of services which they may offer to retailers, and by encouraging the development of new merchandising techniques for alcoholic beverages. We intend these regulations to protect the three-tier system of manufacturers, wholesalers, and retailers, and to prevent manufacturers and wholesalers from exercising monopolistic control over the retail sale of alcoholic beverages.

Consumers will benefit from increased competition through a greater selection of alcoholic beverages, and the insurance of fresher products on retailer shelves. Increased competition in the distribution of alcoholic beverages may possibly tend toward lower prices.

The codification and simplification of these regulations will benefit industry and the Federal and State governments by making compliance easier with requirements which can be understood easily.

Summary of Costs

Sectors Affected: None.

ATF does not believe costs to industry will increase by a noticeable amount because of the regulations, and therefore, there should not be an increase in retail prices of alcoholic beverages. Nor does ATF expect to bear increased administrative costs because of the new regulations.

Related Regulations and Actions

Internal: We will incorporate existing 27 CFR Parts 6 and 8 into these regulations.

External: Regulations on prohibited trade practices that were issued by ATF under the FAA Act, and which relate to beer apply *only* in States which have adopted similar laws or regulations regarding trade practices.

Active Government Collaboration

ATF has provided each State liquor control board with copies of this NPRM (44 FR 45298, August 1, 1979). ATF received State input during public hearings, and from written comments to the ANPRM and NPRM.

Timetable

Final Rule—June 1980

Regulatory Analysis—ATF will not prepare

Available Documents

ANPRM—Notice No. 315, 42 FR 27116, December 30, 1977

NPRM—Notice No. 327, 44 FR 45298, August 1, 1979

Transcripts of five public hearings—September and October 1979

These documents may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th & Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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TREAS-CUSTOMS SERVICE

Accelerated Duty Payment (19 CFR Parts 141,142 and 144)

Legal Authority

Customs Procedural Reform and Simplification Act of 1978, § 103, 19 U.S.C. 66, 1484, 1505, 1557, 1624.

Reason for Including This Entry

The Customs Service (Customs) thinks this project is important because it would alter existing policy governing the deposit of customs duties, and impose an increased economic burden on a substantial segment of the importing community.

Statement of Problem

The Department of the Treasury has overall responsibility to maintain adequate cash to meet the government's expenditure needs. One source of that revenue is the duty which Customs collects on imported merchandise. To expedite the flow of funds to the government, Customs must maintain effective cash management practices. In this regard, the Department has determined that Customs' current practice of allowing importers a 10-day deferral period to deposit estimated duties after "entry" of imported merchandise, or immediate release of the merchandise before entry papers are filed, causes the government unnecessary borrowing and associated interest costs. The government's cash flow could be improved if Customs collected duties earlier than it does now.

We based this determination on a Report to the Congress by the Comptroller General entitled "Import

Duties and Taxes: Improved Collection, Accounting, and Cash Management Needed," dated August 21, 1978.

According to the Report, Customs collected about $3.9 billion in duties on entries during FY 1976. Of these duties, importers deferred payment of about $3.3 billion in estimated duties because they used the immediate delivery procedure. The Report also stated that although the government is entitled to payment when merchandise is released to the importer, a study indicated that importers deferred payment an average of 12.4 calendar days, ranging as high as 33 days. Using the 12.4 day delay developed in the study and interest costs of 6.5 percent per year, the Report estimated that deferrals delayed collections which, had they been deposited when the merchandise was released, could have reduced governmental interest cost by about $7.3 million in FY 1976. It should be noted that the cost of the government's borrowing money today is significantly greater than 6.5 percent per year.

The Customs Procedural Reform and Simplification Act of 1978 (the "Act"), made significant changes in the Customs laws on the entry of imported merchandise. A document amending the Customs Regulations (19 CFR, Chapter I) to establish new procedures needed to reflect these changes was published as Treasury Decision (T.D.) 79–221 in the Federal Register on August 9, 1979 (44 FR 46794).

One of the more significant statutory changes involved amending § 505(a), Tariff Act of 1930, as amended (19 U.S.C. § 1505(a)), to permit the payment of estimated duties either at the time of making entry or at a later time, but not later than 30 days after making entry, as prescribed by regulations.

Although the amendments made by T.D. 79–221 continued the practice of requiring estimated duties to be deposited within ten working days after the date of entry, the NPRM that preceded those amendments (43 FR 55774, November 29, 1978) advised the public that Customs was considering the possibility of requiring the deposit of estimated duties earlier than ten working days after the date of entry.

After further review of the matter and of the current need to improve the flow of funds received as duty on imported merchandise, the Treasury Department and Customs are considering a project to reduce the ten-working-day period to a three-working-day period for the deposit of estimated duties. We would phase in the proposed reduction, if adopted, over a seven-year period, one day each year, beginning January 1, 1981. However, we would monitor each yearly reduction closely and assess the impact on Customs and the importing community to determine if we should implement the next reduction as scheduled. We would also consider a rollback of a scheduled reduction to a longer period where circumstances warrant.

It is essential to understand that Customs must maintain the most effective cash management practices possible to expedite the flow of funds to the government. Collecting duties earlier than is now the practice will improve the government's cash flow and maximize the use of Customs collections in reducing unnecessary borrowing and associated interest costs. Customs believes that any hardships imposed by the project can be mitigated substantially if that segment of the importing public most likely to be affected by the change, i.e., Customs brokers (persons licensed by Customs and authorized to act as agents of importers in customs transactions) adopt more responsible cash management practices.

Alternatives Under Consideration

As stated above, Customs is currently considering the reduction of the time for deposit of estimated duties from ten days to three days, spaced over a period of seven years. However, because we have not yet published an NPRM and received public comment, we are not committed to that specific time frame.

Possible alternatives might be to reduce immediately the time period to three days, or to some other period greater than three days but less than ten days after the time of entry, instead of spacing out the reduction. Other alternatives might be to phase in the reduction of the time period during which estimated duties must be deposited over some period less than seven years (e.g., three years, five years).

Summary of Benefits

Sectors Affected: The Federal government; the general public; and domestic manufacturing which competes with foreign imports.

If we adopt this proposal, there will be a savings to the government, which would collect duties earlier than at present, and place them in Treasury depositories. This would spare the government the interest expense of raising the equivalent amount of revenue by borrowing from the public. The government would save the following amount of interest during each of the 1981–87 calendar years:

	Projected duty collections (in current billions of dollars)	Estimated government bill and bond interest rate (percent)	Interest savings to the Government (in current millions of dollars)
Calendar year:			
1981	9.1	10.4	3.0
1982	10.1	10.7	7.0
1983	11.1	10.9	11.7
1984	12.0	10.3	15.9
1985	13.0	9.8	20.4
1986	14.1	9.8	26.5
1987	15.4	9.8	34.2

Customs predicts that a slight decrease in trade may occur if the time in which estimated duties may be deposited is reduced. This may aid U.S. balance of payments and help sustain those domestic manufacturers which compete with imported products.

Summary of Costs

Sectors Affected: The Federal government; customhouse brokerage services; and importers.

The government may incur increased processing costs and a decrease in tax revenue from the importing community. The proposal might result in errors in liquidation and other bottlenecks caused by the rush to pay estimated duties in less than ten working days. Those negative factors would necessitate increased processing costs to Customs and decreased tax revenue owing to increased tax writeoffs by the importing community, which would incur additional business expenses.

While it is likely that the proposal could lead to some additional costs to the government, the actual amount of those costs cannot be determined adequately at this time without further study and information. In any case, it is conceivable that any additional costs incurred by the government would lessen as experience with the new processing approach is developed.

The proposal will probably lead to increased interest-related costs of well over $8 million to the importing community in 1981. This figure is necessarily higher than the $3 million benefit to the government, because borrowing costs incurred by brokers will be higher than those of the government. The brunt of the over $8 million will be borne by brokers in the short run, and small brokers (perhaps 80 percent or more of all brokers) would be affected most of all. The increased costs ultimately would be passed on to the remainder of the importing community and then to consumers.

Brokers currently benefit from the "float" they enjoy in the duty-payment process. "Float" (in this case) refers to the procedure whereby brokers receive

early duty payments from some clients, and use those to cover late duty payments on duties owed by other clients. Brokers also benefit from the deposit in interest-bearing accounts of monies received from clients until the date when the estimated duty payment is due.

Implementation of the proposal would deprive many brokers of a certain amount of interest on their float. Moreover, some brokers could be forced to resort to additional borrowing in order to pay estimated duties (or interest due) sooner. Small brokers would be at a greater disadvantage than large brokers, because small brokers generally would have more difficulty obtaining credit, and likely would incur higher borrowing fees than large brokers. Because some brokers may tend to operate on narrow margins, the effects of the proposal on those brokers could be adverse, although (as discussed below) the costs involved per broker may not be extremely significant.

There are approximately 1,000 licensed brokers in the United States, employing a total of 10,000 to 12,000 people. Many of those brokers are also freight forwarders who transport merchandise for importers, and whose brokerage activities often account for 40 percent or less of a firm's business. If a form of accelerated duty payment is adopted by Customs, this latter group of large brokers stands to lose relatively less than small brokers whose entire livelihood is based on the brokerage business alone.

The over $8 million in interest and borrowing cost to brokers in 1981, which we estimate to occur if we adopt the proposal, translates into an $8,000 cost per broker if each of the 1,000 brokers shared equally in the cost. The actual cost would vary widely according to the broker's size and the duty rates on the type of merchandise handled. It could be difficult for brokers to pass on the increased costs to their clients in the short run because of contractual reasons as well as competitive reasons.

In addition to interest and borrowing losses to brokers, the proposal could increase the cost of processing for many brokers.

Importers generally will not be as adversely affected by the proposal as brokers would be (at least not in the short run). Importers, especially large importers, temporarily would be well insulated from any adverse effects, although in time much of the increased costs would be passed on to importers by brokers. However, some smaller importers who rely on brokers to finance their imports could be affected adversely in the short run.

The impact of the proposal on U.S. foreign trade probably will be negligible, despite the fact that the importing community (especially brokers) has indicated that the proposal would cause trade bottlenecks, distribution delays, and the disruption of normal trade patterns, ultimately resulting in a decrease in trade. While a decrease in trade may occur, Customs believes that the decrease would be very small, even if the importing community were to incur significant costs owing to the proposal. Even if the entire sum (proposal costs) were passed on to import costs, the total decrease in U.S. imports still would be only a negligible portion (0.06 percent) of the $295 billion in U.S. imports projected for 1981.

In addition, even if the increased costs of the proposal incurred by the importing community were completely passed on to consumers over a period of time, it is unlikely that the effect on either consumers or the general inflation rate would be significant.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Work Plan 80-3—spring 1980
Draft Regulatory Analysis—spring 1980
NPRM—summer 1980
Public Comment Period—60 days following publication of NPRM
Final Rule/Treasury Decision (T.D.)—fall 1980
Final Rule Effective—30 days following publication

Available Documents

NPRM—43 FR 55774, November 29, 1978

Treasury Decision (T.D.) 79-221, 44 FR 46794, August 9, 1979

Work Plan 80-3

Report to the Congress by the Comptroller General, "Import Duties and Taxes: Improved Collection, Accounting, and Cash Management Needed," dated August 21, 1978.

Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, Room 2426, during normal business hours.

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TREAS—CUSTOMS

Civil Aircraft Regulations (19 CFR Parts 6, 10)

Legal Authority

Trade Agreements Act of 1979, § 601, 19 U.S.C. §§ 66, 1624.

Reasons for Including This Entry

The Customs Service (Customs) believes this rule is important because, by eliminating duty on civil aircraft and parts for civil aircraft, it implements the Civil Aircraft Agreement of the Multilateral Trade Negotiations (MTN). The amended regulation will mitigate the effect of government support of the aircraft industry in the trade of civil aircraft and parts for civil aircraft.

Statement of Problem

Unless specifically exempted, all merchandise imported into the United States is subject to a customs duty. One of the major responsibilities of Customs is to assess and collect duties when due, and to process all imported merchandise.

In some instances, the President and the Congress determine that it would be in the national interest to reduce or eliminate duty on particular merchandise. In this regard, as part of the MTN conducted with many of the nations engaged in international trade, the United States signed the Agreement on Civil Aircraft. This Agreement, which was incorporated into U.S. law as Title VI of the Trade Agreements Act of 1979 (the "Act"), provides for the duty-free trade in civil aircraft and parts for civil aircraft.

To implement the statutory provisions of Title VI of the Act, Customs is proposing to amend its regulations as they relate to (1) the importation of civil aircraft and parts for civil aircraft, and (2) foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft. The regulations which we will develop will enable us to administer the provisions of the Agreement.

In the area of tariffs, the Agreement eliminates, as of January 1, 1980, duties on the following:

(a) all civil aircraft;

(b) all civil aircraft engines and their parts and components;

(c) all other parts, components, and subassemblies of civil aircraft; and

(d) all ground-flight simulators (machines used for training on the ground which duplicate flight conditions), and their parts and

components whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of civil aircraft.

"Civil aircraft" are defined in Title VI of the Act to mean all aircraft other than those purchased for use by the Department of Defense and the Coast Guard.

Under the Act, parts, components, and subassemblies of civil aircraft qualify for duty-free entry if they (1) are for use in civil aircraft, and (2) are classified for Customs purposes under one of the specific Tariff Schedules of the United States (19 U.S.C. 1202) headings listed in Title VI of the Act.

To be admitted free of duty, parts, components, and subassemblies must be "Certified for Use in Civil Aircraft" by the Federal Aviation Administration (FAA) or an FAA-recognized airworthiness authority in the country of exportation.

In addition, duties on foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft, previously assessed under § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and §§ 6.7 (d) and (e), Customs Regulations (19 CFR 6.7 (d) and (e)), are eliminated.

Alternatives Under Consideration

Customs cannot consider specific alternatives to the proposal because it must implement the provisions of the Agreement and the Act providing for the duty-free entry of civil aircraft and aircraft parts.

Summary of Benefits

Sectors Affected: Domestic and foreign manufacturing, repair services, wholesale trade (particularly importing), and retail trade of civil aircraft and parts for civil aircraft; the general public; and purchasers of civil aircraft and parts for civil aircraft.

This Agreement and implementing regulations will indirectly benefit all nations with a civil aircraft industry, whether it be a civil aircraft manufacturer, air carrier, or civil aircraft maintenance industry, by providing for the free flow between countries that are signatories to the Agreement on civil aircraft and parts for civil aircraft.

Foreign repairs to, and foreign purchase of repair parts and materials for U.S.-registered civil aircraft which were previously dutiable, are duty free under the Act and Customs' proposed implementing regulations. This will eliminate a trade barrier to foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft. Elimination of the duty will also benefit purchasers of foreign civil aircraft and purchasers of spare or replacement parts for those aircraft through a reduction in the purchase price because of elimination of duties.

Summary of Costs

Sectors Affected: Customs.

While we have not prepared an analysis of the costs, we believe that they would be negligible.

Related Regulations and Actions

Internal: Customs has appointed an MTN Coordinator to oversee implementation of the Act, including the proposed regulations relating to civil aircraft. We have held meetings at the Customs Service headquarters with representatives of the aircraft industry and others who were involved in the MTN negotiations on this Agreement.

External: None.

Active Government Collaboration

The proposal has been coordinated with representatives of the Office of the Special Trade Representative, the Departments of State, Commerce, Agriculture, and Treasury; the International Trade Commission; and the Federal Aviation Administration.

Timetable

Regulatory Analysis—none
Final Rule—Summer 1980
Final Rule Effective—30 days following publication of Final Rule

Available Documents

Work Plan 79–30
NPRM—45 FR 1633, January 8, 1980
Public Comments on NPRM

Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, Room 2426, during normal business hours.

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TREAS—CUSTOMS

Imports of Petroleum and Petroleum Products (19 CFR Parts 4, 144, 151, and 159)

Legal Authority

Trade Agreements Act of 1979, 19 U.S.C. §§ 66, 1202 (Gen. Hdnotes 11, 12, Tariff Schedules of the United States), 1624.

Reason for Including This Entry

The Customs Service ("Customs") believes the proposed amendments are important because they will ensure proper control of imported petroleum and petroleum products, and uniform, complete, and reliable statistics relating to the importation of these products. In view of the need to maintain a continued oversight function in this area, Customs believes these measures would be in the national interest.

Statement of Problem

In addition to its responsibility for assessing and collecting customs duties, processing passengers and cargo, intercepting and seizing contraband, and enforcing the laws and regulations of other government agencies relating to international trade, Customs collects import and export data which is compiled as international trade statistics by the Department of Commerce. In light of the present energy situation, the Commissioner of Customs established a Customs Petroleum Imports Task Force to survey operations at selected Customs field locations and formulate proposals to ensure that each Customs district (1) was collecting reliable data relating to the importation of petroleum and petroleum products, and (2) was observing proper controls in measuring these imports.

Survey teams conducted studies from July 2 to 20, 1979, in the ten locations through which most petroleum and petroleum products imported into the United States enter. The teams ". . . found that, in general, the Customs Service was providing proper controls and reporting reliable statistics." However, it was also discovered that ". . . there were isolated instances of insufficient controls and that the Customs Service was lacking in standardized national procedures and guidelines for various aspects of imported petroleum."

On the basis of the Task Force recommendations, Customs proposed to amend various parts of the existing Customs Regulations (19 CFR Chapter I) to establish standardized guidelines and procedures for monitoring imports of petroleum and petroleum products.

Significant changes would:

(1) establish standardized procedures to be followed by Customs districts throughout the country in collecting statistics regarding imports of petroleum and petroleum products;

(2) provide for increased supervision of procedures used in gauging imported petroleum, including additional controls

on the use of public gaugers (private concerns which measure, weigh, or gauge commodities); and

(3) tighten the reporting requirements imposed by Customs upon carriers and importers.

If Customs does not implement the proposed amendments in accordance with the Task Force recommendations, control procedures for measuring imports of petroleum and petroleum products throughout the United States may continue to lack uniformity. The lack of uniformity could prevent Customs from collecting accurate statistics regarding the quantity, quality, and origin of imported petroleum and petroleum products. Accurate statistics are necessary for the effective enforcement of recent Presidential directives pertaining to petroleum and petroleum product imports.

Alternatives Under Consideration

By an NPRM published in the **Federal Register**, Customs invited interested persons to submit comments regarding the proposed amendments by December 7, 1979. At the request of an industry trade association, the period of time for the submission of comments was extended until December 14, 1979.

Following requests from certain commentors for further discussion of the proposals before implementation of a final rule, Customs held an open conference on January 8, 1980, to discuss and clarify the issues raised in the comments. At the conference, specific proposals were discussed, the Customs position on each was explained, and areas of misunderstanding were clarified.

In response to suggestions made at the conference and contained in the written comments, Customs is considering modifications to the proposed amendments which include: (1) changing certain discrepancy reporting requirements; (2) revising the methods of control which will be employed in measuring imports of petroleum and petroleum products; and (3) clarifying how the measurement figures will be used in compiling statistics. Because numerous modifications are being considered and no decision has been made regarding which proposals will be changed, a detailed analysis of the changes cannot be included in this document, but will appear in the final rule.

Summary of Benefits

Sectors Affected: The Federal Government; and the general public.

Implementation of the proposed amendments will:

1. aid in the effective enforcement of Presidential directives pertaining to petroleum and petroleum product imports; and

2. provide standardized guidelines for Customs to check measurement information furnished by importers and carriers.

We anticipate that the application of these guidelines will ensure the continued collection of accurate statistics concerning the quantity of petroleum and petroleum products imported into the United States. Information derived from these statistics will enable energy planners to monitor present use and plan for future needs. Also, the application of these guidelines will provide additional quantity control for importers and carriers.

Summary of Costs

Sectors Affected: Importing of petroleum and petroleum products; and foreign production, refining, and wholesale trade of imported petroleum and petroleum products.

These changes will not have a disproportionate effect on any one geographical area, and will have a negligible impact on the general public, and all concerned sectors.

At the present time, there is no specific estimate of the cost of implementing the proposed amendments. However, Customs does not believe that the amendments will impose substantial additional requirements or costs on those affected.

Related Regulations and Actions

Internal: Report of Customs Petroleum Imports Task Force.
External: None.

Active Government Collaboration

The proposed amendments were prepared by personnel from Customs and the Treasury Department. The Customs Petroleum Imports Task Force consulted with the Departments of Commerce, Energy, and Transportation, and the National Bureau of Standards, in formulating its report.

Timetable

Final Rule—Summer 1980
Regulatory Analysis—none

Available Documents

NPRM—44 FR 64434, November 7, 1979

Extension of comment period—44 FR 66835, November 21, 1979

Notice of conference—44 FR 75685, December 21, 1979

Treasury Department press release announcing conference—December 21, 1979

Copies of these documents and comments are available for review at Customs Service Headquarters, 1301 Constitution Avenue, N.W., Room 2426, Washington, D.C., during normal business hours.

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TREAS—CUSTOMS

Valuation of Imported Merchandise for Customs Purposes (19 CFR Part 152)

Legal Authority

Trade Agreements Act of 1979, 19 U.S.C. §§ 66, 1624.

Reasons for Including This Entry

The Customs Service ("Customs") thinks this proposal is important because it changes the methods used for determining the customs value of all merchandise imported into the United States.

Statement of Problem

The purpose of customs valuation is to establish the value of imported merchandise in order for Customs and foreign customs services to assess duties levied on an ad valorem (percentage of value) basis. Such values are also used, with appropriate adjustment, for reporting the value of imports. The method of valuation which a country applies can be as important as the tariff rate itself, in determining the actual amount of duty charged. The customs valuation can be used to impede or promote importation of merchandise.

The Tokyo Round of the Multilateral Trade Negotiations (MTN) was the seventh round of negotiations held under the General Agreement on Tariffs and Trade (GATT) since 1948. The six previous rounds were concerned primarily with tariff reductions.

Many countries have criticized the U.S. customs valuation system, which has nine different methods of determining value, as being a major U.S. nontariff barrier to trade. Therefore, a principal objective of these countries in the Tokyo Round was to obtain changes in the U.S. customs valuation system.

The customs valuation systems of several of the countries engaged in trade with the United States also have controversial and protective features. A major objective of the United States in the negotiations was the elimination of the arbitrary and protective features from foreign customs valuation systems.

It was against this background that a new set of international rules was developed in the Tokyo Round to eliminate or reduce these features from customs valuation as nontariff barriers to trade.

The Trade Agreements Act of 1979, incorporates into U.S. law the trade agreements negotiated by the United States in the Tokyo Round and transmitted to the Congress by the President on June 19, 1979.

Title II of the Act, "Customs Valuation," implements the Agreement on Implementation of Article VII of the GATT relating to customs valuation. Title II makes significant changes in the laws administered by Customs relating to the valuation of all imported merchandise. Therefore, it is necessary to amend the Customs Regulations (19 CFR Chapter I), to implement and administer the provisions of Title II.

The Act repeals § 402a, Tariff Act of 1930, as amended (19 U.S.C. § 1402), and amends § 402 of the Tariff Act (19 U.S.C. § 1401a) to establish a new and different concept of valuation comprised of a primary and four secondary methods. These five methods are arranged in hierarchical fashion, in order of precedence for use: transaction value, transaction value of identical merchandise, transaction value of similar merchandise, deductive value, and computed value. If none of the five bases can be used, then Customs will determine a value derived from one of these bases, reasonably adjusted.

A general explanation of these terms follows. Transaction value is the price actually paid or payable for the imported merchandise when sold for exportation to the United States. Transaction value of identical merchandise is the previously accepted transaction value of imported merchandise identical to that being appraised, sold for export to the United States, and exported at or about the same time as the merchandise being appraised. Transaction value of similar merchandise is the previously accepted transaction value of imported merchandise similar to that being appraised, sold for export to the United States, and exported at or about the same time as the merchandise being appraised.

Deductive value is the resale price in the United States of the imported merchandise, with deductions for certain items. These items are commissions or profit and general expenses, transportation, and insurance costs, customs duties, and other Federal taxes, and, if appropriate, the value of further processing.

Computed value is the sum of (a) materials, fabrication, and other processing used in producing the imported merchandise; (b) profit and general expenses; (c) any assist, if not included in (a) and (b); and (d) packing costs.

Customs must amend Part 152, Customs Regulations (19 CFR Part 152), to reflect the new methods of value established by the Act. We will place the proposed regulations in a new subpart to existing Part 152.

Alternatives Under Consideration

Because Customs must propose regulations to implement those provisions of the Act which change the bases for determining the valuation of all merchandise imported into the United States, there are no alternatives.

Summary of Benefits

Sectors Affected: U.S. import and export trade; customhouse brokerage services; the general public; and Customs.

The proposed regulations provide guidelines, definitions, interpretations, and examples to enable all sectors of the importing community to understand and use the new valuation law. All importers and customhouse brokers will be affected by the proposed regulations to some degree regardless of whether they import for business or personal use. The degree to which they are affected will vary according to the merchandise imported.

The Statement of Administrative Action, approved as part of the legislative history to the Act, indicates that the Agreement on Implementation of Article VII of the GATT serves the interests of the United States commerce in the following ways:

1. Provides an agreed interpretation of current GATT rules on customs valuation. This should result in greater international uniformity in customs valuation practices and reduce the potential for dispute.

2. Bases customs values, to the greatest extent possible, on transaction values. This should lead to greater predictability and certainty in the determination of customs values both in the United States and abroad, thus benefiting both U.S. importers and exporters.

3. Eliminates the protective features of current foreign customs valuation systems, including arbitrariness in valuation methods, and fictitious values. This should serve to make the customs valuation process abroad trade neutral; that is, the level of protection in foreign markets facing U.S. exports will not be provided by the valuation process but will be confined to the tariff rate.

4. Places increased obligations on foreign customs services regarding the transparency and propriety of their actions in customs valuation matters, thereby safeguarding U.S. exporters from abuse.

5. Increases the opportunities for U.S. exporters to appeal improper customs valuation decisions both at the national and international levels.

6. Simplifies the current U.S. valuation system without reducing the protection of U.S. industries afforded by certain features of the current U.S. system.

7. Increases the ease of administration of U.S. valuation laws and clarifies certain controversial areas of those laws. This should result in streamlined customs valuation procedures, in reduced administrative costs, and in fewer disagreements between U.S. importers and Customs.

Summary of Costs

Sectors Affected: None.

The Statement of Administrative Action states that adoption of a transaction value-based system of customs valuation, as provided in the Agreement, will not have a significant overall impact on the amount of customs duties collected in the United States. Products for which there might have been significant impact, such as those currently subject to the American Selling Price method of customs valuation, will have new tariff rates apply to them to ensure that U.S. industries producing those products receive protection substantially equivalent to what they currently receive from present rates of duty applied on customs values determined under present U.S. law.

The legislative history of the Act also states that the paperwork and recordkeeping requirements the regulations may impose are not anticipated to be different in any significant or substantial way from those under existing law.

The legislative history further states that there would be no new budget authority or any new or increased tax expenditures or new budget authority providing financial assistance to State and local governments.

Related Regulations and Actions

Internal: Customs has appointed an MTN Coordinator to oversee implementation of the Act, including the proposed regulations relating to Customs valuation. Customs has held meetings with representatives of the importing community throughout the United States to explain the new

methods of determining value for customs purposes. In addition, we have prepared a pamphlet, "Customs Valuation," and distributed it throughout the importing community.

External: None.

Active Government Collaboration

The proposed regulations were coordinated with and reviewed by an interagency task force made up of representatives of the Office of the Special Trade Representative; the Departments of State, Commerce, and Treasury; and the International Trade Commission.

Timetable

Public Comment Period—Written comments on the NPRM may be submitted through May 30, 1980 Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2426, Washington, D.C. 20229.
Final Rule—summer or fall 1980—the effective date of the regulations will be the date of publication of the Treasury Decision in the **Federal Register**
Regulatory Analysis—none

Available Documents

Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 144.

Trade Agreements Act of 1979, Statement of Administrative Action House Document No. 96–153, Part II (96th Congress, 1st Session)

House Report on H.R. 4537, House Report No. 96–317 (96th Congress, 1st Session)

Senate Report on H.R. 4537, Senate Report No. 96–249 (96th Congress, 1st Session).

NPRM—45 FR 20912, March 31, 1980
Customs Valuation, March 1980

Copies of these documents and comments received may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, Room 2426, during normal business hours.

Agency Contact

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GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

National Defense Stockpile Acquisition Regulations (41 CFR Part 5C)

Legal Authority

Strategic and Critical Materials Stockpiling Act, 50 U.S.C. § 98 *et seq.*

Reason for Including This Entry

This regulation will be of interest to industries concerned with commodities maintained in the national defense stockpile because the government is a significant buyer of these commodities.

Statement of Problem

Under the Strategic and Critical Materials Stockpiling Act, the Federal Property Resources Service (FPRS) is responsible for the acquisition and disposal of materials for the National Defense Stockpile. The Stockpile contains a supply of 93 commodities such as tungsten, tin, and industrial diamonds, which would have strategic or critical importance in the event of war or other national emergency. The stockpile has a current market value of $14 billion, and more than a hundred acquisition transactions are planned each year with a total value of as much as $500 million.

Section 6(b) of the Act provides that "acquisition of strategic and critical materials under this Act shall be in accordance with established Federal procurement practices." At this time there is no regulation which describes the practices and procedures which FPRS uses in making acquisitions for the stockpile. The proposed regulation is intended to describe FPRS practices in a publicly available form. These practices often reflect both commercial procedures which are unique to certain commodities, and the consideration FPRS gives to avoiding market disruption and preventing avoidable loss to the government.

Alternatives Under Consideration

We have considered issuing no regulation, amending other procurement regulations to cover stockpile acquisitions, and issuing a separate regulation. If we do not issue a regulation, the public will be left without a formal description of our practices and procedures for stockpile acquisitions. Amendment of other procurement regulations would introduce into them a large body of information which pertains only to stockpile transactions. For this reason, we believe that a separate regulation is preferable, and can better describe FPRS practices in acquiring stockpile commodities.

Summary of Benefits

Sectors Affected: Domestic and foreign industries which supply, trade, and use the basic industrial raw materials of the economy of the United States; and users of these raw materials.

The proposed regulation will increase public knowledge of FPRS's stockpile acquisition practices. This knowledge should help other buyers, traders, and users of affected commodities to deal with FPRS and to plan their transactions.

Summary of Costs

Sectors Affected: None.

The proposed regulation does not impose direct or indirect costs on the government or any sector of the economy because it will not require changes in existing practices.

Related Regulations and Actions

None

Active Government Collaboration

The Federal Emergency Management Agency coordinates National Defense Stockpile program activity, developing stockpile goals and setting overall annual disposal and acquisition plans in coordination with the Departments of Defense, Interior, State, Commerce, and Treasury; the Central Intelligence Agency; GSA; and the Office of Management and Budget. GSA has sole control over actual stockpile transactions.

Timetable

Final Rule—late 1980
Regulatory Analysis—not required

Available Documents

None

Agency Contact

R. A. Cornell, Assistant Commissioner for Stockpile Transactions
Federal Property Resources Service
Crystal Square—Building 5
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GSA-FPRS

National Defense Stockpile Disposal Regulations (41 CFR Part 101–14*)

Legal Authority

Strategic and Critical Materials Stockpiling Act, 50 U.S.C. § 98 *et seq.*

Reason for Including This Entry

This regulation will be of interest to industries concerned with commodities

maintained in the national defense stockpile because the government is a significant buyer of these commodities.

Statement of Problem

Under the Strategic and Critical Materials Stockpiling Act, the Federal Property Resources Service (FPRS) is responsible for the acquisition and disposal of materials for the National Defense Stockpile. The stockpile contains a supply of 93 commodities such as tungsten, tin, and industrial diamonds, which would have strategic or critical importance in the event of war or other national emergency. The stockpile has a current market value of $14 billion, and more than a hundred disposal transactions are planned each year with a total value of as much as $500 million.

Section 6(b) of the Act provides that "disposal of materials from the stockpile shall be made by formal advertising or competitive negotiation procedures." The purpose of advertising a sale, when appropriate, and of competitive negotiations, is to involve the largest practical number of bidders, and thereby to obtain the most favorable offer. At this time there is no regulation which describes the practices and procedures which FPRS uses in disposing of materials from the stockpile. The proposed regulation is intended to describe FPRS's practices in a publicly available form. These practices often reflect both commercial procedures which are unique to certain commodities and the consideration FPRS gives to avoiding market disruption and preventing avoidable loss to the government.

Alternatives Under Consideration

We have considered issuing no regulation, amending other disposal regulations to cover stockpile disposals, and issuing a separate regulation. If we do not issue a regulation, the public will be left without a formal description of our practices and procedures for disposal of stockpile materials. Amendment of other disposal regulations would introduce into them a large body of information which pertains only to stockpile transactions. For this reason, we believe that a separate regulation is preferable, and can better describe FPRS practices in disposing of stockpile commodities.

Summary of Benefits

Sectors Affected: Domestic and foreign industries which supply, trade, and use the basic industrial raw materials of the economy of the United States; and users of these raw materials.

The proposed regulation will increase public knowledge of FPRS stockpile-disposal practices. This knowledge should help other buyers, traders, and users of affected commodities to deal with FPRS and to plan their transactions.

Summary of Costs

Sectors Affected: None.

The proposed regulation does not impose direct or indirect costs on the government or any sector of the economy because it will not require changes in existing practices.

Related Regulations and Actions

None

Active Government Collaboration

The Federal Emergency Management Agency coordinates National Defense Stockpile programs activity, developing stockpile goals and setting overall annual disposal and acquisition plans in coordination with the Departments of Defense, Interior, State, Commerce, and Treasury; the Central Intelligence Agency; GSA; and the Office of Management and Budget. GSA has sole control over actual stockpile transactions.

Timetable

Final Rule—late 1980
Regulatory Analysis—not required

Available Documents

None

Agency Contact

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SMALL BUSINESS ADMINISTRATION

Revision to Method of Establishing Size Standards and Definitions of Small Business (13 CFR Part 121)

Legal Authority

The Small Business Act, 15 U.S.C. §§ 632, 634

Reason for Including This Entry

The Small Business Administration (SBA) thinks that this rule is important because it will define the term "small business" and thus clarify what businesses are eligible for SBA programs.

Statement of Problem

SBA is charged by the Small Business Act of 1953 and the Small Business Investment Act of 1958 to administer a wide variety of programs designed to benefit the small business community of the United States. These programs include financial business assistance, such as direct loans, loan guarantees, and surety bond guarantees; management and technical assistance, such as direct consultation; and provision of opportunities to contract with the Federal government to provide it goods and services. Eligibility for these programs is based on, among other things, the size of the applicant. SBA must define the term "small business" in a manner which is equitable to all concerns seeking the agency's assistance. Hence, size standards are necessary, and we have set them to cover each of the industries specified in the Standard Industrial Code. We urge other Federal agencies to use these standards as well, and many do, in their contracting and financial assistance programs.

The promulgation of size standards is a difficult chore because the concept of size is by nature a relative one. The Small Business Act precludes SBA from rendering assistance to firms which are dominant in their industries. However, one's conception of the size of a firm can be based on a number of other factors including number of employees, sales per particular time period, and competitive position within an industry or geographic area. It may also be appropriate to define "small" differently, depending on the SBA program involved.

In the past, size standards have varied from SBA program to program and were often set to suit the preferences of SBA's program offices or other procuring agencies within the Federal government. However, many of these standards attracted considerable criticism from the public because they were factually unsubstantiated, inconsistent, and confusing, and not tied sufficiently to expressed SBA policy. Both the House and Senate Small Business Committees have made frequent inquiries concerning SBA's size-standard setting procedures, and the General Accounting Office prepared two reports in 1978 and 1979 which were somewhat critical of the process as it concerned SBA's procurement and timber set-aside programs.

All of this led SBA Administrator A. Vernon Weaver to pledge in congressional testimony that SBA would develop new size standards where justified.

SBA thinks that this revision of these size standards rules is important because it will update and improve the logic, methodology, and mode of presentation related to the size standards. It will simplify understanding of SBA programs for the small business community, reduce complexity in the administration of SBA's programs, and improve the targeting of SBA's resources.

Alternatives Under Consideration

The possible alternatives under consideration are:

SBA can use a combination of factors to determine a firm's size for the purposes of these proposed rules, such as sales, number of employees, and gross assets. The advantage of this system is that it allows for review of a firm from a number of different viewpoints. The disadvantage is that it can confuse the small business community and the public at large because it will require comparisons of the operative factors within various industries which cannot be easily made and which will make uniformity, to the extent that it is desirable, an impossibility. Furthermore, SBA has found that size standards measured in dollars, such as in sales or gross assets, are not a true measure since inflation can affect different products or assets differently, and distort any attempt to compare their prices.

SBA can use a single factor, such as number of employees, to determine a firm's size. Such a standard will be easier for SBA to administer, but might be inequitable. However, SBA feels that using employment as opposed to sales or assets will provide greater stability for SBA and its clients, because it will remove distortions generated by inflation and will reduce the need for frequent future adjustments merely to reflect inflation.

SBA can use the same size standard in administering each of its programs. This will promote uniformity in SBA decisionmaking and ease of administration for SBA and applicants, but it also inevitably will lead to strident, unyielding decisions.

SBA can use individual size standards for each of its programs, which may mean several different standards would apply to one company. This will lead to a more flexible decisionmaking process, but will also promote confusion and difficulty in administration, because a given company might be eligible for one SBA program and not another based on this system.

Currently, SBA bases its size standards on a combination of factors and uses different standards for each of its programs. We are proposing to use the firm's number of employees as the exclusive measure of size, and to develop a single standard to cover all of our programs by this proposed revision.

Summary of Benefits

Sectors Affected: All Businesses, and SBA.

These regulations will affect all U.S. businesses because we will use them to determine which businesses are eligible for SBA assistance and which are not. Our program will classify all sectors covered by the Standard Industrial Classifications.

As a result of this proposal, SBA expects that 95 percent of all American firms will be considered small for the purpose of eligibility for SBA assistance. Of course, the other eligibility requirements of each of SBA's programs would still apply to an applicant in a given situation.

Summary of Costs

Sectors Affected: None.

SBA expects no costs as this rule by itself would impose no burdens.

Related Regulations and Actions

Internal: In order to be eligible for any SBA business assistance, SBA must determine the firm is "small." Therefore, these regulations will, of necessity, affect the application of all of the agency's business assistance regulations, including 13 CFR §§ 106, 107, 115, 118, 119, 120, 122, 124, 125, 128, 129, 130, and 131.

External: These regulations will affect any Federal regulations which contemplate governmental assistance to, or contracting with, small business, if those regulations incorporate by reference SBA's definitions of small business. Use of SBA's size standards is left to the discretion of each governmental agency.

Active Government Collaboration

In establishing its size standards, SBA has relied upon information developed by the Department of Commerce and Internal Revenue Service. SBA contemplates the receipt of comments and suggestions from other Federal and State agencies on its proposed rules during the comment period thereon.

Timetable

Public Comment Period—March 10–June 6, 1980
Public Hearings—May 8–June 5, 1980, as indicated at 45 FR 23704
NPRM—August 5, 1980
Final Rule—October 5, 1980
Regulatory Analysis—in preparation

Available Documents

ANPRM—45 FR 15442–15453, March 10, 1980; amended ANPRM—45 FR 23704, April 8, 1980

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FEDERAL TRADE COMMISSION

The entries for credit practices and mobile homes describe rulemaking proceedings that are currently in progress. The views expressed in these entries are those of the rulemaking staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will address the issues presented after it reviews the entries record.

The entries for Blue Shield, real estate and eyeglasses describe investigations that might lead to rulemaking proceedings. The views expressed here are those of the investigative staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will consider whether a rulemaking proceeding should be undertaken after it reviews the results of the investigation and comments in response to advanced notices of proposed rulemakings.

The entries for the standards and certification and the children's advertising rulemaking proceedings which were included in the **Calendar of Federal Regulations** published in November 1979 are not included in this edition. Descriptions of those two proceedings may be found in Volume 44 of the **Federal Register** at pages 68331–36, published on November 28, 1979. Although these proceedings are currently pending, they would be affected by authorization legislation which may become law in the near future.

As of May 1, 1980, provisions of legislation agreed to by the House and Senate conferees, if enacted into law, would affect the proceedings as follows: The Federal Trade Commission's authority to issue the standards and certification rule with respect to "unfair or deceptive active acts or practices" under Section 18 of the FTC Act would be removed. The bill would leave unaffected whatever authority the FTC

might have under any other provision of the ACt to issue a rule with respect to "unfair methods of competition." The pending legislation would suspend the children's advertising proceeding until the FTC voted to publish the text of a proposed rule. Additionally, any further action in the proceeding could be based only upon acts or practices which are "deceptive."

Amendment to Eyeglasses Rule and Eyeglasses II (16 C.F.R. Part 456)

Legal Authority

Federal Trade Commission Act, §§ 5 & 18, 15 U.S.C. §§ 45 & 57(a).

Reason for Including This Entry

The staff of the Federal Trade Commission (FTC) believes this investigation is important because it is exploring ways to reduce the prices of eye care services and products, and increase consumer access to vision care. We will design any Commission rulemaking in this area to ensure that the quality of vision care is maintained to protect public health and safety.

Statement of Problem

The staff of the FTC's Bureau of Consumer Protection has identified a number of categories of State laws which may have the effect of decreasing consumer access to vision care services, increasing the cost of those services, and impeding the growth of alternative "nontraditional" delivery systems. The Commission's interest in assessing the effect of these restrictions stems from its earlier eyeglasses investigation, which culminated in a new Federal regulation requiring the release of eyeglasses prescriptions following an eye examination. In that investigation the Commission's staff found that there are a number of additional business practice restrictions which may significantly harm consumers by maintaining higher prices and limiting the availability and accessibility of vision care products and services. Little evidence, other than anecdotal experiences, supported the assertions by proponents of these restrictions that they are necessary to protect the public health and safety.

One category of restriction prohibits the commercial or high-volume practice of optometry and opticianry. For example, many States prevent optometrists from working for opticians. In addition, many States prohibit opticians and optometrists from working for nonprofessional corporations of department stores, or from locating in high-traffic commercial locations, such as shopping centers. Many States also ban the use of trade names by practitioners, or place restrictions on the number of branch offices they may operate.

The effect of these laws may be to prevent individual practitioners from locating in areas, such as shopping centers, where the potential for developing high-volume operations exists. They may also limit the ability of opticians, optical chains, and department stores to compete with optometrists. Furthermore, they may hinder the growth of optical chains and other high-volume businesses which, because of economies of scale, may be able to charge lower prices than smaller entities.

Preliminary evidence indicates that these restrictions may tend to raise consumer prices. Branching and location restrictions may also restrict consumer accessibility to vision care, especially affecting the elderly and other less mobile members of society. Both higher prices and decreased accessibility may mean that some consumers receive no care at all or obtain vision care less frequently than they otherwise would.

The second category of State laws which the FTC staff has examined tends to have the effect of limiting the consumer's ability to comparison shop for eyeglasses or contact lenses. This limitation results from State laws which prohibit opticians from (1) duplicating a new eyeglass lens from an existing lens, and (2) fitting contact lenses. These restrictions, operating in conjunction with industry practice whereby consumers are rarely given a copy of their prescriptions following the initial sale of eyeglasses or a contact lens fitting, may lessen competition and cause inflated prices.

Approximately twelve States prohibit opticians from duplicating a new eyeglass lens from an existing lens. One of the justifications advanced in support of such prohibitions is that opticians may not be able to duplicate accurately eyeglasses from an existing pair. However, even in States where duplication is prohibited, an optician is permitted to make new eyeglass lenses from a valid prescription. Thus, if the consumer had been provided with a copy of his or her prescription following the initial sale of eyeglasses (i.e., a "re-release" procedure), he or she could use that prescription to purchase new eyeglass lenses from any optician and all problems in the duplication process would be avoided.

A possible concern with such a "re-release" procedure is that the consumer will thereby be able to bypass regular eye examinations. However, staff is unaware of any State which presently requires an additional eye examination before the purchase of new eyeglasses, if the seller already possesses a valid prescription for the consumer. Thus, even in States where duplication is proscribed, a consumer can purchase additional eyeglasses from his or her initial seller and avoid the cost of further eye examinations.

Certain States also prohibit opticians from fitting contact lenses. The justification offered for these restrictions is that opticians may not be adequately trained to perform this function. The staff is currently exploring alternatives, described below, which may increase consumers' options for purchasing contact lenses without in any way expanding the classes of providers who currently are permitted to fit lenses. Preliminary data suggest that such alternatives should lower the cost of the lenses.

The staff believes that if no action is taken in these areas, restrictions which may not be necessary to protect the public health and safety and which harm consumers by being anticompetitive may continue to exist.

Alternatives Under Consideration

Various options are available to the Commission including an amendment to its Eyeglasses Rule, the promulgation of another trade regulation rule, a formal complaint against parties alleged to have engaged in unfair acts or practices, legislative recommendations to Congress or to the States (including development of model State laws), a public report setting forth the findings of the staff, or no action.

The FTC staff intends to recommend an ANPRM be issued bythe Commission proposing an amendment to the Eyeglasses Rule (on "re-release" issues) and new trade regulation provisions concerning commercial practice. The purpose will be to examine the issues raised by the staff's investigation, further evaluate the facts which have been developed, and explore all possible remedies for any consumer injury which is found to exist.

An amendment to the Eyeglasses Rule could take a variety of forms. For example, such an amendment could impose a "re-release" procedure which would require a seller of lenses to return the eyeglasses prescription (or a duplicate) to the consumer after the prescription has been filled or refilled. This would enable the consumer to purchase duplicate or replacement eyeglasses from the provider of his or her choice, and it would not require an additional eye examination. Such an approach would also eliminate concern over the accuracy of the duplication

process, since new lenses would be produced from the prescription.

A proposed amendment could also require the release of complete contact lens specifications after the initial fitting so that consumers could purchase additional lenses from other qualified providers. This alternative would permit consumers to purchase additional contact lenses from other than their original seller without in any way expanding the class of providers who currently are permitted to fit lenses.

A proposed trade regulation rule could address limitations on commercial practice by eliminating certain legal restraints. For example, the Commission could remove restrictions on branch offices, employment, and trade names.

Other alternatives available to the Commission include a proposal for model State legislation in lieu of any proposal for a trade regulation rule, or promulgation of a trade regulation rule together with proposed model State laws designed to implement such a rule. For example, the Commission could promulgate a rule removing certain State restrictions on the commercial practice of optometry and, at the same time, recommend model State legislation designed to control any abuses which could accompany such a change.

Summary of Benefits

Sectors Affected: The retail ophthalmic industry, and primarily three groups within that industry: ophthalmologists, optometrists, and opticians; and consumers of eyeglasses and contact lenses.

The Commission's staff estimates that the removal of commercial practice restraints should benefit consumers by reducing vision care costs and making vision care more accessible. In this regard, the Commission's Bureau of Economics (BE) has conducted a study which compared prices charged for eye examinations and eyeglasses in cities where commercial optometry exists and in cities where it is restricted. The data suggest that (1) prices are significantly lower in cities where commercial practice and advertising are not restricted; (2) commercial optometrists charged lower prices than noncommercial optometrists; and (3) noncommercial providers who operated in markets where commercial practice was permitted charged less than those noncommercial providers working in markets where commercial practice was proscribed.

The BE study also found that the average optometrist charged $72 for an eye examination and eyeglasses in markets where commercial practice was permitted as opposed to $94 in restrictive cities. Given the substantial size of this industry i.e., consumers annually spend approximately $2.7 billion for ophthalmic goods and an additional $1 billion for eye examinations—there may be considerable savings to consumers if commercial practice restrictions are eliminated or reduced.

The lifting of commercial practice restraints is also likely to facilitate the growth of commercial chains or volume practices because practitioners would be able to locate in high-traffic commercial areas, have branch offices, and be employed by lay individuals and firms. Such firms could compete with other traditional dispensers of optical goods, and the effect of the competition should lower consumer prices. In addition, the changes are likely to provide consumers with a wider choice of providers and greater accessibility to vision care.

If the Commission adopts a requirement that the person who fills an eyeglasses prescription must return the prescription (or a duplicate), consumers will be able to have their prescriptions refilled by sellers of their choice, without necessarily obtaining another eye examination. Such a "release" requirement would enable consumers to engage in comparison shopping for replacement lenses (thereby increasing competition which should lead to lower prices) and it could also save them the added expense of obtaining an additional eye examination. Recent data place the average cost of an examination at approximately $25; thus, the savings which may result from foregoing this added (and not always necessary) expense could be considerable.

If the Commission adopts a provision which requires original contact lens fitters to release complete contact lens specifications after the initial fitting, consumers would be able to engage in comparison shopping for replacement lenses. The market for replacement lenses appears to be substantial: preliminary data indicate that contact lens wearers purchase, on the average, one new lens per year. Furthermore, the data suggest that there may be wide price dispersion for replacement lenses.

Summary of Costs

Sectors Affected: The retail opthalmic industry, and primarily three groups within that industry: opthalmologists, optometrists, and opticians.

One cost associated with removal of present commercial restrictions may involve the issue of quality of care. While removal of these restrictions may lower consumer prices, it is necessary to determine whether their removal would involve any decrease in the quality of care received by the public. Before any final action is taken, the Commission must determine what, if any, effect there will be if such restrictions are removed.

Results from the Bureau of Economics study indicate that commercial optometrists derived the correct prescription and produced accurate eyeglasses no less frequently than noncommercial optometrists. Moreover, the incidence of prescribing of unnecessary eyeglasses was not found to be more prevalent among commercial optometrists than among noncommercial optometrists. On the other hand, the data also indicate that examinations given by commercial optometrists were less thorough than the examinations given by noncommercial providers insofar as the number of procedures or tests performed during the examinations. (The study did not measure whether the practitioners performed the procedures correctly.) Based on the evidence to date, however, the Commission's staff does not believe that elimination of the restrictions on commercial practices under investigation will have a detrimental effect on the quality of care.

It is not yet known exactly what costs would be associated with a requirement that a seller must return an eyeglass prescription (or a duplicate) to the purchaser, or a requirement that the original contact lens fitters must release complete contact lens specifications (or a duplicate) to their customers following the fitting process.

In assessing the costs of this proposed action, it should be clearly understood that this proposal is essentially deregulatory, not regulatory. That is, the investigation seeks to eliminate regulation which may not be in the public interest, with a return to the free market as the alternative. As a consequence, the income of some providers of eye services may be reduced. However, this revenue loss may be partially offset by the increased volume of sales resulting from the reduction in consumer prices.

Compliance costs would depend on what action, if any, the Commission takes. For example, if the Commission promulgates a rule which imposes a requirement that when an eyeglass prescription is filled the seller return it (or a duplicate) to the patient, the compliance cost is minimal. If the rule requires ophthalmologists and optometrists to release complete contact lens specifications following the initial contact lens fitting so that consumers can obtain replacement contact lenses

from a fitter of their choice, the compliance cost is, again, minimal.

If the Commission removes commercial practice restraints and recommends model State legislation to control any abuses in the marketing of vision care which might accompany such a change, States might impose certain examination requirements. If so, the States would have to monitor compliance with those requirements. Furthermore, such examination requirements could result in some amount of price increases by commercial providers.

Active Government Collaboration

None reported.

Related Regulations and Actions

Internal: The Advertising of Ophthalmic Goods and Services Trade Regulation Rule (16 CFR Part 456).

External: Various State laws which restrict commercial vision care practices and the ability of opticians to fit contact lenses and duplicate lenses without a prescription.

Timetable

The Commission staff will recommend the issuance of an amendment to the Eyeglasses Rule and a proposed trade regulation rule. The following estimated date is applicable:

Advanced Notice of Proposed trade regulation rule and Amendment—summer/fall 1980

Available Documents

"Staff Report on the Advertising of Ophthalmic Goods and Services and Proposed Trade Regulation Rule (16 CFR Part 456)," dated May 1977; "A Comparison of a Random Sample of Eyeglasses," prepared by Resource Planning Corporation for the Federal Trade Commission, dated July 2, 1979; "Advertising and Commercialism in the Profession: The Case of Optometry," prepared by the FTC's Bureau of Economics, dated

All are available from Room 281, Federal Trade Commission, Washington, D.C. 20580.

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FTC

Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans (16 CFR Ch. 1)

Legal Authority

Federal Trade Commission Act, §§ 5 & 6, 15 U.S.C. §§ 45 & 46.

Reason for Including This Entry

Two Federal Trade Commission (FTC) staff reports which analyze medical participation in control of Blue Shield and other open-panel medical prepayment plans suggest that control of these plans by physician organizations may reduce competition in the provision of health care services and may raise the prices of these services. The issues raised are important because of the continuing rise of medical care costs and the public interest in identifying appropriate ways to contain these cost increases.

Statement of Problem

Blue Shield and other open-panel medical prepayment plans pay for or deliver care to patients principally through physicians who compete with each other to provide covered services. In general, patients subscribing to "open-panel plans" may use virtually any physician practicing in the area served by the plan. This characteristic distinguishes open-panel plans from other plans where care is delivered through physicians who are employed by the plans or who comprise a relatively small percentage of the physicians in the area.

Blue Shield plans make up the largest system of open-panel medical prepayment plans in the Nation. The 70 Blue Shield plans operating in the United States today cover about 40 percent of the population of the Nation, and control or administer payment of about a quarter of all funds paid for the services of physicians. Other open-panel plans—variously called medical service bureaus, foundations for medical care, and/or individual practice association-type health maintenance organizations (IPA-type HMOs)—cover a small but rapidly growing portion of the population of the Nation. The Commission's current inquiry deals with issues relating to the control of such open-panel plans by medical societies and other groups of physicians.

In April 1979, the Bureau of Competition's (BC) staff of the FTC submitted to the Commission a report entitled "Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans," which notes that many members of such boards frequently have been selected by medical societies and other groups of physicians whose services were paid for by the plan. The report points out that as of 1978, for example, medical societies and other physician groups formally participated in the selection of some members of the boards of directors of 47 of the 70 Blue Shield plans and selected a majority of the boards of directors of 32 plans. Thirty-one plans had physician majorities on their boards, and virtually all plans had physician-dominated committees that made decisions about payments and coverages.

The staff report expresses the concern that groups of competing physicians, such as State and local medical societies, may control or participate in the control of many Blue Shield and other open-panel plans. When such physician groups elect members on the boards of directors, or otherwise participate in control of plans, they may be able to control or influence plan decisions about how much to pay physicians, which physicians or other health professionals to pay for covered services, what cost-containment mechanisms to employ, and other matters that may affect competition and costs in the professional health services sector of the Nation's economy.

The staff report concludes that there is reason to believe that control or participation in the control of open-panel medical prepayment plans by physician organizations impairs competition among physicians and between physician and nonphysician providers of health care services, and thus may be an unfair method of competition in violation of § 5 of the Federal Trade Commission Act.

In November 1979, the Bureau of Economics (BE) of the FTC published a staff study titled "Physician Control of Blue Shield Plans." The study examines the correlation between medical participation in control of Blue Shield plans, the prices of selected medical procedures, and plan administrative efficiency. The strongest results of the study relate to medical society participation in plan governance. Other factors being equal, Blue Shield reimbursement rates in 1977 were 16 percent higher where a local medical society or other organized group of physicians selected plan board members. The study also reports that five other measures of participation by physicians in plan governance were correlated with higher reimbursement rates. The study suggests that medical control of plans has little relation to plan administrative costs.

Alternatives Under Consideration

The Commission has not decided whether or not to take action on the basis of the recommendations set forth in these two reports. However, the Commission believes that the reports raise a number of important issues, especially in light of the rapid escalation of the cost of health care. Is there a relationship between medical participation in control of Blue Shield and other open-panel medical prepayment plans, and the increase in fees charged by physicians? Does a plan controlled by a physician organization have less incentive than one which is not controlled to attempt to keep down physicians' fees and to pay the fees of nonphysician providers of health care? What are the benefits of medical participation in these plans, and can these benefits be obtained if physician groups do not control the plan? In public policy terms, is such control or participation in control in the public interest? And in terms of § 5 of the Federal Trade Commission Act, is such control or participation in control an unlawful restraint of trade?

Before considering these issues, however, the Commission decided to solicit comments on its staff's analyses, on the facts supporting the reports written by BC and BE staff, and on certain specific areas of concern. The Commission believes that such public comment may enhance its understanding of the issues which should be considered in determining what action, if any, to take.

The first specific area about which the Commission has solicited comment in the Request for Comment and ANPRM, published March 17, 1980, concerns the degree and types of medical participation in control of open-panel medical prepayment plans which may lead to anticompetitive effects. More specifically, when physician organizations participate in the selection of plan board members, do they represent the interests of the medical profession as a whole, thus posing antitrust concerns? Do these concerns depend on the nature of the physician organization? For example, does participation in control by groups of "participating physicians"—that is, physicians who have agreed to abide by the plan's payment terms and cost-containment programs—present less of a problem than participation by medical societies or other more highly organized groups? Similarly, do these concerns depend on the extent of this participation? For example, does participation on plan boards by a minority consisting of representatives of a physician organization pose a sufficient danger of anticompetitive effects that, on balance, it should be forbidden? The Commission also asked whether any action it might take should be focused on plan boards, or whether it should also consider ways by which physician organizations might participate in plan decisions through control of plan committees, or by reason of plan delegation of decisions to those organizations.

A second area of specific questions raised by the Commission concerns the role of governing bodies whose members choose their own successors. The BC staff report indicates the possibility that plans, currently controlled by boards selected by physician organizations, will make decisions which will perpetuate the influence of the physician organization. Staff raises a similar concern about plans which have recently changed from boards with physician organization control to self-perpetuating boards. The Commission has asked if this is a serious problem, and if so, how to deal with it.

Another significant area of Commission interest concerns the types of plans to which the analysis of the staff should apply. As discussed above, the open-panel plans, which make up the Blue Shield system, comprise the largest system of medical prepayment plans in the nation, and medical control of these plans would appear to have the most immediate and substantial impact on the professional health care sector. However, there apparently also exists a growing number of other open-panel medical prepayment plans which the staff report indicates may operate like Blue Shield member plans and may raise the same issues as medical participation in control of Blue Shield. Others have asserted that these plans in general, and Individual Practice Association-type (IPA-type) plans in particular, have enhanced competition, and that medical participation in the governance of such plans either has been beneficial or, at worst, has had little effect on competition. In addition, the Office of HMOs of the Department of Health, Education and Welfare has asserted that its regulations are sufficient to alleviate any problem which may exist insofar as it relates to federally qualified IPA-type HMOs. The Commission has also invited comments on each of these positions, and on the staff's suggestion that its analysis should apply only to plans that will pay more than 50 percent of the physicians practicing in their areas for nonemergency services they provide to subscribers. The basis for this suggestion is that plans which will reimburse relatively few physicians may encourage competition in the medical service market, even if physician groups control them. The Commission is also questioning various alternatives, including the possibility of applying the staff's analysis only to Blue Shield plans, or only to plans that cover more than a specified percentage of the population of their service areas.

The Commission is also seeking specific comment on procedures it should use to further explore these issues if the Commission determines that this is appropriate. While the staff points out that the choice among procedural options is not clearcut, it has stated its belief that rulemaking may be the fairest and most efficient way to address the problem, because it allows the Commission to consider, and the public to present, all of the facts, policy considerations, and possible remedies in one forum, and does not single out any one plan. The staff points out that one alternative approach would be for the Commission to issue one or several complaints against physician organizations and/or plans which present the problems discussed in its report. In addition, the Commission has noted that at least three other alternatives are open to it. First, the Commission might consider issuing an industry guide to provide a basis for voluntary abandonment of inappropriate and illegal relationships. Second, the Commission might prepare a report to the Congress or to the States respecting these issues. Finally, the Commission might issue a complaint against Blue Shield Association (BSA) and/or conclude that BSA's assurance that it will move toward the goals of minimizing medical society involvement on plan boards and committees is sufficient to resolve the problems presented by the staff report.

Summary of Benefits

Sectors Affected: Subscribers to hospital and medical service plans, particularly open-panel medical prepayment plans; alternate health care delivery systems, including closed-panel HMOs and independent open-panel hospital and medical service plans; nonphysician providers of health care services; medical groups; and the general public.

In recommending alternative methods by which the Commission might challenge the structural ties between physician organizations and open-panel medical prepayment plans, the staff is proposing termination of what may be an antitrust violation. Such action also may promote competition in the health

service sector by permitting open-panel plans to make their payment, benefit, and coverage decisions in an independent manner. Increased competition may help to hold down health care costs by (1) increasing the incentives of open-panel plans to hold down the level of physicians' fees and to provide appropriate coverage for the services of nonphysicians; (2) encouraging commercial insurers to seek to hold down the costs of health care services; and (3) providing an environment in which alternative health care delivery systems, including closed-panel health maintenance organizations and independent, open-panel plans, have a full opportunity to compete.

Specific cost savings that would result cannot be calculated at this time as they would depend on the specific course of action taken. However, the staff believes they would be substantial. The BE study indicates that medical participation in the control of Blue Shield plans leads to significantly higher reimbursement levels.

Summary of Costs

Sectors Affected: Open-panel medical prepayment plans; physician organizations which control or participate in the control of these plans; and subscribers to these plans.

One type of direct cost which might occur because of Commission action would be the administrative costs involved in changing the way affected plans would be governed. The staff has not yet attempted to estimate the amount of these costs. It is possible that some indirect costs might occur if medical societies react to any Commission action in ways which may interrupt the ability of some plans to offer paid-in-full coverage to subscribers, or to implement certain kinds of cost-control programs. It is also possible that any Commission action, which has the general effect of dissuading medical societies from establishing and operating prepayment plans open to all physicians in the community, may reduce the number of such plans that are formed. The actual costs will depend on the final form of any action taken by the Commission.

Related Regulations and Actions

Internal: The Commission has an ongoing program of investigation of competitive restraints in the health care sector.

External: A number of States have laws governing the composition of health plans' boards of directors. These laws would not be affected by any staff proposal now under consideration. In some States, such as Pennsylvania, these laws have recently been amended to reduce medical participation in the control of Blue Shield plans. In other States, including Ohio and Indiana, court suits or administrative actions have been undertaken for the same purpose. Other States, including New York and Virginia, have recently studied the relationship between plans and medical societies.

The Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce held hearings in 1978 on Blue Shield's impact on rising health care costs. One of its recommendations was that the FTC consider promulgating a rule "prohibiting physicians and physician organizations from dominating Blue Shield plans." The Department of Health, Education and Welfare has published a notice of intent to issue a regulation prohibiting doctors, hospital administrators, and others with financial interests in the health care industry from dominating the governing body of any carrier or intermediary that participates in the Medicare program or any fiscal agent that participates in the Medicaid program. The National Health Plan legislation recently proposed by the Executive Branch would also impose restrictions on the proportion of the boards of plans administering that program which may be physicians or selected physicians. The General Accounting Office is conducting an econometric study relating to these concerns.

Active Government Collaboration

The BC and BE staff have consulted with numerous other Federal and State agencies in the course of preparing their reports. The staff expects to continue to solicit the views of both Federal agencies and the States in the course of the comment period, and to consider these views in preparing its recommendations to the Commission.

Timetable

Comment Period terminated—May 16, 1980
Commission consideration of Staff Recommendations—summer/fall 1980

Available Documents

ANPRM 45 FR 17019 (March 17, 1980)
Bureau of Competition, Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans, Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule, April 1979

Bureau of Economics, Staff Report on Physician Control of Blue Shield Plans, November 1979

Copies of these documents may be obtained from: Public Reference Room (Room 130), Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20580 (202) 523–3598.

In addition, the public may review and obtain at the above address during normal business hours comments and materials submitted by Blue Shield Association, The American Association of Foundation for Medical Care, and other parties.

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FTC

Proposed Trade Regulation Rule on Mobile Home Sales and Service (16 CFR Part 441)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Reason for Including This Entry

Mobile homes are an important segment of the housing industry, with annual sales of approximately 275,000 units. The proposed rule, if promulgated, is designed to improve warranty service in the mobile home industry and, therefore, may have a substantial impact on the housing market.

Statement of Problem

Most mobile home manufacturers offer a one-year written warranty to cover defects in the materials and workmanship of the home.

Although the warranty obligates them to repair defects, evidence indicates that some manufacturers and dealers in a significant number of instances have failed to provide adequate warranty service to the homeowner. The evidence also suggests that many mobile homeowners discover defects in their new mobile homes, including water leaks, malfunctioning plumbing, buckled frames, and inoperative windows and doors. Improper transportation or installation of a mobile home may also cause damage. Severe problems, for example, lack of electricity and heat, where they occur, may threaten the safety of the homeowner and render the

mobile home uninhabitable. Nonetheless, indications are that when consumers seek warranty repairs, manufacturers and dealers may refuse service or delay repairs beyond a reasonable time. In other instances, when manufacturers and dealers attempt repairs, they do not adequately remedy the problem.

This evidence indicates that mobile home manufacturers and dealers may not have adequate warranty performance systems. The current warranty systems appear to be deficient in several ways. First, although dealers perform much of the warranty work, some manufacturers do not consider service capabilities in selecting their dealers. Second, manufacturers may fail to clearly allocate service responsibilities between themselves and their dealers. As a result, disputes between manufacturers and dealers can delay warranty service. Third, some manufacturers and dealers fail to have sufficient parts, service personnel, and equipment to fulfill consumer requests for repairs. Finally, some manufacturers do not properly monitor their dealers to determine if they have completed repairs. Without an adequate warranty performance system, manufacturers and dealers are not able to provide prompt and competent warranty repairs for mobile homeowners.

The Federal Trade Commission's investigation into warranty service problems initially led to consent orders against four major manufacturers. Under the orders, the companies agreed to take specific steps to improve their warranty service programs. (A consent order is an agreement between the Commission and a company in which the company agrees to change certain of its business practices. The agreement is not an admission of wrongdoing by the company.) Shortly thereafter, the Commission began this rulemaking proceeding because it had reason to believe that substantial numbers of mobile home purchasers receive inadequate warranty service, and that an industrywide approach might be required to address the problem. The proposed rule would seek to improve warranty service by setting time standards for warranty repairs, and requiring manufacturers or dealers to perform preoccupancy and followup inspections of the home. It would also require that those who offer warranties on mobile homes have available the necessary equipment, personnel, parts, and recordkeeping systems to adequately fulfill their warranty obligations. It also would require manufacturers to evaluate the service capability of, and enter into written service agreements with, dealers and others who perform warranty repairs, and to disseminate a consumer questionnaire to monitor the adequacy of dealer repairs.

Alternatives Under Consideration

The Commission staff is evaluating the need for each of the provisions of the proposed rule, based upon a review of the written comments received and testimony presented at hearings on the rule. For example, staff is assessing whether it should recommend retaining the requirement for a second on-site inspection of the mobile home. Elimination of this provision would reduce manufacturer compliance costs by approximately $100 per home, but might also allow installation problems to go undetected. (This figure is based on 1977 estimates.) The Commission staff is also considering alternative rule provisions that would rely more directly upon market forces to improve industry warranty performance. One such provision would establish deadlines for repair and require inspections before mobile homes are delivered to consumers, but leave most other aspects of the warranty performance system to the discretion of manufacturers and dealers. Staff is also exploring ways to provide consumers with increased information about industry warranty performance to enhance competition among sellers.

Summary of Benefits

Sectors Affected: Purchasers of mobile homes; and the general public.

The proposed rule seeks to ensure that owners of new mobile homes receive prompt and competent warranty service.

Survey data on the rulemaking record indicate that, in certain sections of the country, as many as 40 percent of mobile homeowners have been unsuccessful in having repairs promptly completed under the warranty. Thus, significant numbers of owners either had to pay for repairs themselves or suffer the inconvenience of defective homes. Improved warranty service would reduce these problems. Moreover, consumers may benefit from inspections that provide early detection and repair of problems. Because many defects can lead to more serious structural damage if not promptly repaired, the proposed rule might also prolong the useful life of mobile homes and increase their resale value. This, in turn, might lead to more favorable financing terms for purchasers of mobile homes, making mobile homes a more attractive investment and providing consumers with a less costly but reliable alternative to site-built homes.

The proposed rule may also induce warrantors to reduce customer claims by correcting the underlying causes of defects. For example, manufacturers may find it less costly to comply with the rule if they build better homes that require less warranty service. This would benefit consumers as well.

By ensuring that warranty obligations are met, the proposed rule may heighten industry competition by removing the unfair advantage enjoyed by companies that breach their warranties. It would allow manufacturers to communicate the effectiveness of their warranty repair program through written warranties, and enable consumers to rely on competing warranty claims when making their decision to select a particular brand.

Summary of Costs

Sectors Affected: Mobile home manufacturing and dealers, particularly firms not currently providing adequate warranty service.

The proposed rule would affect the business practices of some 220 mobile home manufacturers (Standard Industrial Classification 2451) and approximately 12,000 mobile home dealers.

The rule is designed to impose greater compliance costs on firms that do not currently provide adequate warranty service. For such companies, we estimate that the costs to comply with the proposed rule would be a maximum of $200 per home. Our cost projections are based in part upon an analysis of records submitted in 1977 by the four mobile home manufacturers operating under consent orders similar in terms to those of the proposed rule, and are expressed in 1977 dollars. These estimates of compliance costs are based on the terms of the proposed rule and may be reduced significantly if the rule is modified.

Industry compliance costs can generally be assigned to one of two categories: (1) administrative and other overhead costs, and (2) additional repairs to mobile homes. We estimate that, depending upon company size, from one to four professional work-years at the corporate headquarters level will be required to administer the warranty performance system and resolve disputes among consumers, dealers, and the manufacturer. This represents a maximum per home cost increase of about $5.00 to $15.00 for large manufacturers and $15.00 to $25.00 for smaller producers, assuming that no corporate officials now work on warranty matters. Since most companies

currently assign at least some corporate personnel to their warranty programs, the net cost increase should be substantially below these estimates.

The cost to manufacturers of evaluating dealer-service capabilities and entering into written agreements should be concentrated in the first year of compliance and, therefore, should have minimal effect on prices in the long run. For the most part, the long-run impact would depend on the frequency with which manufactuers affiliate with new dealers. The cost of evaluating dealers should vary from roughly $2.00 to $15.00 per home. Responses from the companies currently under Commission order indicate that legal costs for drafting the written service contracts should not exceed about $2.00 per home for the average-size manufacturer.

Based upon the experiences of the consent order companies, the required consumer questionnaires should cost no more than $8.00 per home to print, distribute, and tabulate. Adding this figure to the other costs brings the total administrative compliance costs of the proposed rule to a maximum of $50.00 per home.

Analysis of data from the companies under the consent orders indicates that each of the required pre-occupancy inspections of mobile homes costs these manufacturers about $50.00. Each of the reinspections costs them approximately $100. The higher cost for the reinspection reflects the fact that it occurs after the home is occupied and would require a separate trip to the homesite. These estimates include reimbursements to dealers for travel and all inspection expenses, including repairs. This figure does not cover major repairs or general increases in warranty expenditures resulting from more diligent attention to customer complaints. It is difficult to estimate the magnitude of these increases in warranty costs, as the rule presumably could motivate producers to lower the incidence of defective homes. Specifically, manufacturers can be expected to introduce quality control improvements whenever the cost is justified by expected future savings in warranty expenditures. In addition, these two inspections should permit dealers to spot and correct installation problems before costly structural problems result and would therefore reduce overall warranty service expenditures.

The proposed rule eases overhead costs for smaller companies by exempting firms that produce fewer than 5,000 units annually from some of the administrative requirements of the rule (approximately 200 firms). Furthermore, because the total number of inspections would depend directly upon the number of homes sold, large and small manufacturers would spend approximately the same amount per home to meet the inspection requirements of the proposed rule.

The proposed rule should not alter the competitive structure of the industry significantly. The Commission staff has investigated whether the proposed rule would encourage manufacturers to integrate vertically into retailing or enter into exclusive franchising agreements with dealers. The rulemaking record indicates that even the largest manufacturers would find the capital costs of developing a national dealer network prohibitive. The record also documents that dealers would not find exclusive franchises as profitable as their present practice of representing four to five manufacturers. Since consumers generally do not select mobile homes on the basis of brand reputation, dealers currently compete for sales by offering the widest possible selection of homes in varying price ranges, sizes, and floorplans. Exclusive dealing would necessarily limit the variety of homes that could be offered without giving dealers any compensating benefits.

Related Regulations and Actions

Internal: Four mobile home companies are currently required under Commission consent orders to establish effective warranty performance systems. Other cases have been brought against mobile home companies allegedly in violation of the warranty disclosure and labeling requirements of the Magnuson-Moss Act, § 101 *et seq.*, 15 U.S.C. § 2301 *et seq.*

External: The Department of Housing and Urban Development regulates the production of mobile homes at the factory under the National Mobile Home Construction and Safety Standards Act of 1974 (Title VI), 42 U.S.C. § 5401 *et seq.*

Seventeen States require warranties in the sale of new mobile homes. A number of States license and bond mobile home dealers and manufacturers.

Active Government Collaboration

The Department of Housing and Urban Development, Small Business Administration, and representatives from eleven State attorneys general offices participated in the rulemaking hearings. Other Federal and State officials submitted written comments on the proposed rule.

Timetable

Publication of staff report (including a cost-benefit analysis) and proposed Final Rule—summer 1980
Public comment period—fall 1980
Commission consideration—1981

Available Documents

NPRM—40 FR 23334, May 29, 1975
Final NPRM—42 FR 26398, May 23, 1977

The record of this proceeding is publicly available at the Office of Legal and Public Records Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N. W., Washington, D.C. 20580.

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FTC

Residential Real Estate Brokerage Industry Practices

Legal Authority

Federal Trade Commission Act, § 5, 15 U.S.C. § 45.

Reasons for Including This Entry

The Federal Trade Commission (FTC) believes the issues raised by this investigation present possible remedial options that could involve an annual effect of over $100 million on the economy, and affect consumers, brokers, and agents in real estate transactions.

Statement of Problem

The FTC staff estimates that in 1979 approximately 3.8 million existing homes were sold through real estate brokers. Total revenues from those 1979 sales exceeded $215 billion, generating an estimated $13 billion in commissions paid to the over 2 million licensed brokers and agents in the country.

Complaints from many sources within the real estate brokerage industry have been received by the FTC. Brokers and sales agents throughout the country have contended that their competitive efforts have been frustrated in ways they consider unfair.

In addition, complaint letters, petitions, and public statements from individuals and consumer groups have called attention to alleged consumer problems in the brokerage services market. For example, inadequate representation of the buyer's or the seller's interests has been alleged.

Further, articles and studies in legal and economics publications have suggested that problems may exist in the

competitive process of the industry. Economists and other observers have questioned, in particular, whether the seemingly high degree of price and service uniformity, characterized by the commonplace 6 or 7 percent commission rate, is the product of problems with the competitive process.

The FTC staff has identified five issues for particular emphasis in its study of the residential brokerage industry: (1) the nature and role of private trade associations of brokers; (2) the structure and operations of multiple listing services (systems for sharing house listings among brokers); (3) problems facing brokers who offer innovative packages of prices and services; (4) the role of the broker in the residential brokerage transactions, including issues of potentially conflicting duties and interests which may make difficult the adequate representation of consumers; and (5) the nature and role of State law and State agencies which regulate the industry.

The Commission staff is now completing its investigative fieldwork, and is preparing a summary report for the Commission. The staff currently expects to complete this report in the second quarter of 1980. It will summarize staff findings and recommend any appropriate FTC action.

If no action is taken, the staff anticipates that the prevailing modes of competition, including the uniform commission rates, and the current broker/consumer relationships, will persist.

Alternatives Under Consideration

As the FTC staff is only now completing investigative work, no conclusions on any appropriate FTC action have been reached, either by the staff or by the Commission. However, the following will introduce the numerous alternatives under scrutiny.

The FTC staff is considering at least five major types of alternative recommendations: (1) public reports containing legislative proposals to Congress or the State legislatures, seeking to alter the legal standards of practice for the industry; (2) a trade regulation rule or rules, which would declare certain brokerage acts or practices "unfair," and thus unlawful under § 5 of the FTC Act; (3) FTC efforts to educate the home buying and selling public, including attempts to increase consumer understanding of the brokerage transaction and to facilitate consumer shopping efforts; and (4) formal administrative complaints, alleging anticompetitive or unfair practices, against groups or individuals in the industry; and (5) no FTC action.

One or more of these alternatives might encourage a number of substantive changes. Among the many possible provisions the staff is considering are: (1) prohibitions upon those practices which may discourage brokers from offering differing prices and differing packages of services; (2) alteration of certain requirements or conditions on the use of multiple listing services, and other important services, with the intent of easing private regulations on brokerage practice; (3) clarification of existing legal duties between brokers, and between brokers and consumers; and (4) requirements that brokers make simple and brief disclosures to consumers of information to help them make informed choices about brokerage services. These provisions could be incorporated in any of the above alternative approaches.

The FTC staff, in considering various policy alternatives, is seeking to ensure that the marketplace will be allowed to provide the choices consumers want. The staff is giving primary consideration to actions which free the market of anticompetitive private restraints and which improve the flow of accurate information to consumers.

Summary of Benefits

Sectors Affected: Licensed real estate brokers and agents, and brokerage firms; and consumers of brokerage services, both buyers and sellers.

The costs and benefits of FTC action will depend upon the final choices the Commission makes among the numerous policy alternatives currently under consideration. Overall estimates will remain highly conjectural until the Commission determines which specific actions, if any, it will take. However, much of the current work of the staff is aimed at producing careful analyses of each alternative.

Direct and quantifiable benefits which might accrue from some of the above alternatives can only be roughly estimated prior to the above Commission determinations. However, if one accepts the view of some experts that the widespread 6 percent standard commission rate is not the product of healthy competition, then reductions in prevailing rates resulting from improved competition could produce significant reductions in consumer settlement costs.

General benefits said to flow from some of the above alternatives include: more vigorous competition between different systems of brokerage, in addition to competition between different firms offering essentially the same approach; increased consumer choice among different packages of prices and services; greater consumer understanding of the brokerage process, and thus more effective consumer shopping and bargaining skills; and greater efficiency in brokerage operations. Brokers and brokerage firms would benefit from reduced uncertainty over broker liability, and from increased freedom in the competitive environment.

Summary of Costs

Sectors Affected: Licensed real estate brokers and agents, and brokerage firms; trade associations; and related services, such as multiple listing services.

FTC action in the brokerage industry, if any, will be carefully designed to minimize regulatory burdens and costs. For example, many of the alternatives under consideration involve the removal of private regulation of brokers' activities, rather than additional government regulation. Other alternatives, such as affirmative disclosures, would in most cases involve no more paperwork than brokers currently use, and would require disclosures currently recommended by real estate attorneys to protect brokers from liability. The costs of these efforts would be the one-time costs involved in redrafting forms.

Any change in standards of brokerage practice would entail costs, such as redrafting forms and changing training programs. However, most such transitional costs would be nonrecurring. It is possible that lower rates flowing from greater competition might reduce total revenues to the industry as a whole if there is little change in business volume. However, any such reduction might be offset by increases in business volume resulting from the reduced rates.

The staff is analyzing all the proposals under consideration against the criterion that the positive impact on the millions of households using brokers each year must outweigh the burdens imposed. The staff is taking particular care to identify alternatives which avoid placing small businesses at a competitive disadvantage.

Related Regulations and Actions

Internal: None.

External: Other Federal agencies have a role in the brokerage industry. The Justice Department's Antitrust Division has conducted a series of investigations of brokerage practices, primarily involving alleged local brokerage conspiracies in restraint of trade. The Department of Housing and Urban Development (HUD) maintains a Real Estate Brokerage Practices Division. HUD is currently conducting a two-year study of settlement services, including

brokerage services, in light of the 1975 Real Estate Settlement Procedures Act, which requires certain information be provided to the consumer at different stages of the home purchase/sale process.

State departments of real estate or real estate commissions have primary regulatory responsibility in this arena. The FTC staff believes this will continue to be the case. A number of the State agencies are actively engaged in reviewing and revising licensing and related regulations.

State antitrust enforcement officials are also active in the brokerage industry. State and local prosecutors in California, New Jersey, New York, Washington, and many other States have conducted investigations and brought lawsuits involving many of the practices identified for study in this investigation.

Active Government Collaboration

The FTC staff is in contact with the Justice Department and the Department of Housing and Urban Development regarding the studies and investigations underway in those agencies.

The staff has sent a "Notice of Intent to Make Recommendations and Invitation to Comment" to State and local government officials, including all the State departments of real estate, governors, attorneys general, and legislatures, and to selected local prosecutors and State consumer agencies. State and local agencies will be encouraged to participate in every phase of any FTC effort in the industry.

Timetable

The timetable for any FTC action will depend upon the nature of the action selected. If the Commission decides upon rulemaking, a possible schedule might be:

Decision of FTC as to appropriate action—fall 1980.

Available Documents

Documents available to the public include:

(1) FTC Press Release, dated December 27, 1975, describing the initiation of the original FTC brokerage investigation; (2) FTC Press Release, dated March 31, 1978, announcing that the Los Angeles Regional Office of the FTC was assigned to coordinate the consolidated FTC brokerage investigation; (3) "Notice of Intent to Make Recommendations and Invitation to Comment," issued in July 1979, to State and local government officials.

Copies of these documents can be obtained from the FTC Office of Public Information, Sixth and Pennsylvania Avenue, N.W., Washington, D.C., 20580, or from the staff contact listed below.

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FTC

Trade Regulation Rule Concerning Credit Practices

Legal Authority

Federal Trade Commission, §§ 5 & 18, 15 U.S.C. §§ 45 & 57(a).

Reason for Including This Entry

This proposed rule is a major reform proposal which, if adopted by the Commission, would change the relationship between creditors and debtors in the United States and affect a large sector of the economy.

The rule focuses on the practices used by creditors when consumers have difficulty repaying their debts. The current state of the economy has produced a marked increase in consumer credit problems. It is reasonable to anticipate that continuing inflation and a possible recession will protract this trend.

For these reasons, the proposed Credit Practices Rule is highly significant to those who obtain consumer credit, as well as those who extend it.

Statement of Problem

Most Americans use consumer credit at some time in their lives. At any given time about half of all households in the Nation are making payments on installment debt. Many encounter financial or other problems which cause them to become delinquent in their payments. Only rarely is such delinquency intentional. Studies show that the leading causes are such unplanned events as unemployment, illness, and circumstances in which the consumer is overburdened with debt obligations.

When debtors default they become subject to a variety of legal remedies that creditors use to collect money. Many creditor remedies are appropriate collection devices. Certain others, however, inflict injury on debtors that may be disproportionate to the gain to creditors. The injury includes not only dollar losses, but also nonpecuniary harm, such as emotional distress, loss of privacy, and disruption of family relationships. The disproportionate nature of the injury may mean that many consumers may be obtaining credit on terms that they would not choose in a market in which more complete information about credit terms were available.

The right of creditors to use remedies derives largely from provisions included in credit contracts. Credit contracts are standardized form documents prepared by creditors. There is generally no bargaining over terms between debtor and creditor.

The record shows that consumers frequently cannot shop for credit terms because they lack the specialized legal knowledge necessary to understand and evaluate remedy terms in contracts. Furthermore, creditors often do not compete with each other with more favorable remedy terms of contracts, and therefore, in a given market, consumers will find little variation in such terms. We believe that all these factors indicate market forces have not produced an optimum balance of creditor and debtor rights in credit contracts.

Specific contractual and other creditor remedies which may cause injury to consumers and which are in widespread use include the following:

1. *Confession of judgment*—The debtor signs a form which authorizes the creditor to obtain a court judgment against him without notice to the consumer and without any opportunity for the consumer to appear and defend himself. The debtor thus loses due process rights, such as the ability to contest disputed claims.

2. *Waivers of state property exemptions*—The debtor waives the right, granted by state law, to keep certain minimal property if a court judgment is obtained against him. In many States, a court will not honor the waiver; however, the rulemaking record shows that some creditors nonetheless have used this waiver to threaten debtors with loss of all their goods.

3. *Wage assignments*—The debtor authorizes the creditor to seize a portion of his wages without first obtaining a court judgment. The debtor loses the ability to contest disputed claims. Moreover, some debtors may be subject to disciplinary action or firing by employers who do not like to divide employee wages between a creditor and an employee because of the accounting costs this imposes.

4. *Blanket security interests in household goods*—These security interests give the creditor the right to take all of the debtor's household goods in the event of default. Because in many instances such goods may have little resale value, it appears that creditors may use security interests primarily to

threaten the debtor and deter default, rather than to actually secure the debt.

5. *Cross-collateral security interests*—These security interests allow a merchant to take all goods that a consumer has purchased from that merchant over an extended period of time, in the event of the consumer's failure to pay for a single purchase.

6. *Deficiencies*—Following the repossession and sale of collateral, the creditor can sue the debtor for a deficiency, i.e., the difference between the sale price of the product and the amount the consumer owes. The evidence shows that the sale prices of repossessed collateral may frequently be very low, resulting in large deficiencies.

7. *Attorney's fee provisions*—The provisions require the debtor to pay the creditor's attorney fees. They thus may tend to inhibit debtors from defending themselves against payment of disputed debts. The evidence indicates that in some instances, attorneys' fees assessed by courts may be larger than actual court costs or the cost of actual service provided.

8. *Late charges*—Late charges are penalty fees that the creditor assesses when the debtor fails to pay an installment on time. The rulemaking record shows that sometimes they are "pyramided," i.e., a creditor allocates payments in such a way that a single late or missed payment may result in the debtor being assessed a late fee on all subsequent installments.

9. *Third party contacts*—The record indicates that creditors make contacts for debt collection purposes with third parties, such as relatives, neighbors, or the debtor's employer. Such contacts may tend to invade privacy and may harm a debtor's employment relationship and lead to job loss.

10. *Cosigners*—Creditors sometimes have the debtor obtain one or more cosigners who agree to pay the debt if the principal debtor does not. The evidence shows that cosigners frequently do not understand that the obligation they undertake is substantial.

Alternatives Under Consideration

The rule that the Commission initially proposed on April 11, 1975, would ban a number of the above creditor remedies and restrict the use of others. It would prohibit or limit confessions of judgment, waivers of state property exemptions, wage assignments, nonpurchase money security interests in household goods, and attorneys' fee provisions. Creditors would have to promise in the contract not to make third party contacts except to locate the debtor or his property. The Commission would permit cross-collateral security only if creditors released collateral from the security agreement as the consumer paid for it in the order it was purchased by the consumer. Creditors could collect deficiencies only if they credited the debtor with the fair market retail value of the collateral. Late fees would be limited. Cosigners would have to be given a notice explaining their obligation and a three day "cooling-off" period to evaluate that obligation. Creditors would also be required to give cosigners copies of relevant documents, to notify cosigners in the event of default by the principal, and to make serious efforts to collect from the principal before seeking payment from the cosigner.

Following publication of the NPRM, members of the public (including many members of the credit industry which would be affected by the rule) have suggested numerous modifications, alternatives, exceptions, and deletions to the proposed rule. The Commission will consider these alternatives and will decide what form of rule, if any, it ultimately should promulgate.

Summary of Benefits

Sectors Affected: Consumer debtors.

The primary beneficiaries of this rule would be consumers who borrow to obtain goods or services and have difficulty repaying their debts. While the rule would not prevent creditors from compelling consumers to pay legitimate debts where necessary, it seeks to limit unjustified consumer injury arising from the use of certain boilerplate collection remedies where the benefits to creditors from such use are small and the injury to consumers is substantial.

Although at the present time the Commission does not know what form of rule, if any, it will adopt, it is possible to identify the type of benefits that should result if it promulgates certain provisions of the proposed rule. For example, several provisions would produce dollar benefits for consumers by eliminating requirements to pay excessive deficiencies and late fees. If the final rule eliminates collection methods which result in injury to the employment relationship, it would benefit consumers by protecting their employment security. Eliminating practices by which creditors evade due process requirements would increase the fairness with which creditors treat consumers and would improve consumers' ability to protect themselves against fraud.

An important qualitative benefit of any final rule should be fairer treatment of people suffering from financial difficulties. We believe that the proposed rule attempts to rectify practices that currently result in such individuals being threatened unfairly with the loss of their possessions and jobs, and harassment of their friends and relatives.

Quantitative information relevant to an assessment of current injury to consumers is available for a number of provisions of the proposed rule. For example, evidence in the rulemaking record indicates that over 60,000 consumers have wage assignments filed with their employers each year. One source estimates that use or threatened use of wage assignments results in loss of employment 10 to 20 percent of the time, at least for low-income consumers. Next, the rulemaking record indicates that well over 10 million consumers are subject to contracts containing blanket security interests in household goods. Creditors sometimes make an implicit or explicit threat to repossess when borrowers become seriously delinquent. We estimate, using the rulemaking record, that creditors make threats to repossess to at least several hundred thousand borrowers each year. Finally, over 750,000 automobiles are repossessed each year. In most cases where an auto is repossessed, it is sold at less than its wholesale value and the consumer continues to owe the creditor money. The amount owed totals over $400 million. The provision of the proposed rule relating to deficiency judgments, if adopted, may significantly reduce this amount.

Summary of Costs

Sectors Affected: Consumer debtors; banking, credit agencies other than banks, particularly installment sales finance companies, and other establishments providing consumer credit; retail trade of consumer products; adjustment and collection agencies; and State governments.

Cost to consumers of any rule may potentially take two forms: increases in the price of consumer credit and reductions in availability of credit to certain consumers.

The rulemaking record contains empirical economic evidence based on data in States with credit laws similar to the proposed rule. These economic studies and other information on the record provide an imprecise estimate of the effect a rule would have on the cost of credit, but suggests that adopting the rule in the form we originally proposed may cause no more than a small increase in the annual percentage rate of loans made by finance companies in States with no existing regulation.

Testimony by State officials, some creditors and others who have

experience in States with laws similar to the proposed rule, indicates that prohibitions on the covered creditors' remedies have not had significant impact on either the cost or availability of credit in those States.

However, the Commission and its staff will analyze this economic data carefully before determining whether or what form of rule should be issued.

The main costs of creditors' compliance with any rule should be those associated with revising contract forms and instructional materials that they give their employees. They will have to do these tasks only once. Creditors can spread the costs over all subsequent transactions; costs will therefore be low on a per transaction basis. While the rule restrains creditor remedies, the evidence suggests that such restraints will not prevent creditors from collecting debts.

The proposed rule is likely to affect large and small creditors in similar ways. Finance companies will be affected by this rule more than other creditors.

The rule will not impose any requirements on State and local governments. However, several of the proposals concerning cosigners could preempt State laws on this subject.

Related Regulations and Actions

Internal: None.

External: If the Commission decides to adopt the proposed rule, the Federal Reserve Board is required by Section 18 of the FTC Act to consider adopting a substantially similar rule for banks, unless the Board determines that such acts or practices of banks are not unfair or deceptive or that implementation of similar regulations would seriously conflict with essential monetary and payment systems policies of the board.

Most States have laws similar to one or more provisions of the proposed rule. A small number of States—including Connecticut, Iowa, and Wisconsin—have laws similar to most provisions of the rule, though they differ in detail.

Active Government Collaboration

Federal, State, and local government agencies participated in the rulemaking proceeding. Representatives of over half of the States testified at hearings, along with a number of local government officials. A number of the Federal Reserve Board staff also testified. The Commission received written comments from additional government agencies including, among others, the Department of Defense, the National Credit Union Administration, and several State and local agencies.

Timetable

Publication of Staff Report—fall 1980
Public Comment Period—fall 1980
Commission Consideration—1981

Available Documents

40 FR 16347, April 11, 1975
Final Notice Concerning Proposed Trade Regulation Rule, 42 FR 32259, June 24, 1977
Report of the Presiding Officer—August 1978

Copies of these documents can be obtained from the Office of Legal and Public Records, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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CHAPTER 7—TRANSPORTATION,

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Certification of Vehicle Size and Weight Enforcement (23 CFR Part 658.9*)

Legal Authority

Federal-Aid Highway Amendments of 1974, §§ 106 and 107, 23 U.S.C. §§ 127 and 141. Surface Transportation Assistance Act of 1978, §§ 161 and 123, 23 U.S.C. §§ 315 and 141.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because it is extremely controversial. If enacted, the rule would permit FHWA to withhold a substantial portion of a State's Federal-aid highway funds if it failed to comply with the size and weight enforcement regulations.

Statement of Problem

The need for highway maintenance, which is the responsibility of the States, is increasing much more rapidly than the FHWA and the States anticipated it would when the highways were constructed. Inflation has sent maintenance costs soaring and reduced the amount of work that the States can accomplish with the money available. This has created an undesirable backlog of deferred maintenance for many States. Accelerating pavement deterioration, which is partially due to increasing amounts of vehicular traffic, particularly heavy trucks, also increases maintenance needs. On many sections of the Interstate and other highway segments, current traffic volumes have exceeded the volumes the roads were designed to accommodate.

While legally loaded trucks contribute to inevitable pavement deterioration, this fact is accounted for in pavement design. Regular operation of trucks with loads above the current legal limits, some of them operating legally under special permits, or operating above the weight limits for which the pavement originally was designed, also greatly accelerate the rate of pavement deterioration. The latter case would be a factor in those States that opted to increase their legal axle and gross weight limits as a result of the Federal-Aid Highway Amendments of 1974, which Congress enacted as a response to the need for improved energy conservation and to make truck transportation more efficient. All of these factors force maintenance work or reconstruction sooner than the States originally planned, administratively and financially.

The objective of the proposed regulation is to make each State enforce its vehicle size and weight laws, as well as to document enforcement.

Alternatives Under Consideration

The FHWA considered three alternatives in developing the NPRM that it published in the **Federal Register** on March 14, 1979. They were to:

(A) rescind present regulations, which require a State to submit substantial data on enforcement, and simply require a statement by the State that it enforced the laws;

(B) adopt a purely quantitative approach to evaluate enforcement in each State in terms of the number of weighings, arrests, etc. (actually only an expansion of present regulations); and

(C) use an approach whereby each State would develop annually a size and weight enforcement program geared to its own requirements, which the FHWA would approve. At the end of the year, each State would submit quantitative information to certify its enforcement of the program.

The States probably would prefer Alternative (A) because they would not have to develop a plan or collect data to submit to the FHWA. However, the statement called for in this alternative would not provide the FHWA with the information required by 23 U.S.C. to verify the States' enforcement efforts.

Alternative (B) would increase the States' data collection and reporting efforts but, again, the quality of the information would be insufficient to verify these efforts. Alternative (C) also would increase the States' data collection and reporting efforts. Since this alternative would require each State to establish an enforcement and documentation program, it is the only one that would provide the FHWA with sufficient information to assess enforcement efforts.

The NPRM described the approach in Alternative (C). Under this approach, the FHWA would require each State to submit for review and acceptance a truck size and weight enforcement plan for the next year. In addition, States would submit the actual certification to the FHWA by January 1 of each year. It would provide the quantitative information upon which the FHWA would base the annual program assessment.

The program would specify, among other things, the number of personnel necessary for size and weight enforcement, the use of fixed and portable scales for weighing trucks, methods for handling excessive loads to bring them within legal limits, and the manner in which repeat offenders would be handled. Once the FHWA approved the State's program, it would become the norm by which the agency would evaluate the State's activity for that year to determine whether the State was enforcing vehicle size and weight laws adequately. The Surface Transportation Assistance Act of 1978 provides for a penalty of 10 percent of the highway funds apportioned to a State if the State fails to enforce size and weight laws adequately.

The comment period on the NPRM closed June 2, 1979. The next step is to prepare a final rule.

Summary of Benefits

Sectors Affected: State governments; and users of highways, including the trucking industry, truckers, and the general driving public.

The primary benefit of this regulation would be to reduce the number of illegally overweight vehicles on the highway system. State governments would realize a long-range benefit from the savings in highway maintenance costs, including lengthening the lives of pavements and bridge structures, maintaining the safe condition of the highways, and saving repair and maintenance funds. Operators of cargo-carrying vehicles and the general public also would realize safety benefits from improved highway conditions.

Summary of Costs

Sectors Affected: State governments; and the trucking industry.

The direct cost to each State for implementing the proposed regulation would vary, depending on its present enforcement program. States with extensive programs to enforce size and weight laws would probably incur only the modest costs of additional reporting requirements. However, States with limited enforcement programs would incur some substantial costs through increases in personnel and equipment.

Operators of cargo-carrying trucks who, as a matter of company policy, load their vehicles beyond legal limits, would incur additional costs because they would need more vehicles to haul a given tonnage on legally loaded vehicles. They would not be able to haul the same tonnage in fewer vehicles loaded beyond legal axle and gross vehicle weights. It should be noted, however, that the economics of motor truck transportation cannot be based on a philosophy of deliberately loading vehicles beyond legal limits.

At this time, the FHWA cannot estimate what it will cost a State to expand its weight enforcement program. Similarly, the agency has no estimates of reduced maintenance costs associated with fewer overloaded trucks using a State's highway system. However, States that would be required to upgrade their programs substantially could do so incrementally over several years, rather than incurring a one-time, lump sum expenditure.

Related Regulations and Actions

Internal: The department of Transportation recently completed an inventory of systems of penalties for violations of State vehicle weight laws, rules, and regulations, as well as systems in the States for issuing special permits authorizing a vehicle to exceed the applicable weight limitation. FHWA submitted a final report to Congress on January 28, 1980.

The department is also currently conducting a congressionally mandated study covering vehicle sizes and weights and their effect on road construction, reconstruction, and maintenance; the relationship of highway design, construction practices, and maintenance costs in States with weight laws above the Federal maximum; the adequacy of current standards for highway and bridge design regarding present and future transportation needs; and the need for and desirability of uniformity in maximum truck size and weight limits throughout the United States. The Department is to complete and report upon this study no later than January 15, 1981.

External: "Excessive Truck Weight: An Expensive Burden We Can No Longer Support," General Accounting Office Report, July 16, 1979.

Active Government Collaboration

None

Timetable

Regulatory Analysis—will accompany Final Rule
Final Rule—July 1980

Available Documents

ANPRM—43 FR 2634, January 18, 1978
NPRM—44 FR 15637, March 14, 1979
Federal Highway Administration Docket 77-21, Notice 2, Current size and weight regulations, 23 CFR 658.9
Draft Regulatory Analysis
"Excessive Truck Weight: An Expensive Burden We Can No Longer Support," General Accounting Office Report, July 16, 1979
All documents are available for review in the Office of the Chief Counsel, Federal Highway Administration, Room 4205, 400 Seventh Street, S.W., Washington, D.C. 20590.

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DOT-FHWA

Design Standards for Highways—Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways (23 CFR Part 625*)

Legal Authority

Federal-Aid Highway Act of 1976, §§ 106, 108(a)(1), 23 U.S.C. §§ 101(a), 104(b)(5). Surface Transportation Assistance Act of 1978, § 116, 23 U.S.C. § 119.

Reason for Including This Entry

The Federal Highway Administration (FHWA) believes this rule is important because of the controversy over its possible impacts on safety and because the geometric design criteria proposed in the ANPRM would substantially affect the condition of the Nation's highway system.

Statement of Problem

The 1976 and 1978 Highway Acts provided for a Federal-aid program to

assist the States in resurfacing, restoration, and rehabilitation (RRR) of streets and highways. Under current procedures, RRR work must meet the standards contained in FHWA regulations for new construction. The FHWA permits exceptions on a project-by-project basis. The intent of this action is to amend existing regulations in order to establish separate RRR procedures to carry out this program. Many highways in need of RRR work have deteriorated and do not meet today's traffic demands, or the design standards that are currently required by FHWA regulations for new construction for safety features such as banking of curves, roadway and bridge width, and horizontal clearances of obstructions. Failure to provide design standards for RRR work would mean that the work would have to meet design standards for new construction or be exempted. This practice has probably resulted in RRR work not being accomplished in a timely manner. In light of this, the FHWA is considering a number of alternatives for implementing the RRR program.

Alternatives Under Consideration

The FHWA explored major alternatives through the publication of an ANPRM on August 25, 1977. The three alternatives discussed in the ANPRM were:

(A) continue FHWA design approval operations within the provisions of the current regulations (23 CFR Part 625) by granting exceptions to existing design standards on an individual project basis for RRR projects;

(B) incorporate, by reference, the American Association of State Highway and Transportation Officials' (AASHTO) "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets" as the acceptable criteria for Federal-aid RRR work; and

(C) develop, with State officials, individual RRR standards for each State by using the AASHTO "RRR Guide" and other guides.

After reviewing the ANPRM comments on all three alternatives, an FHWA task force formulated new recommendations. The task force rejected all three previous proposals, and the FHWA withdrew the ANPRM.

The FHWA then recommended a new set of geometric design standards for RRR projects, which it published as an NPRM in August 1978. The NPRM elicited more than 100 comments, primarily from State and local highway agencies. The FHWA subsequently established an internal working group to review the comments it received on the NPRM and to identify and evaluate alternatives for implementing the RRR program.

Summary of Benefits

Sectors Affected: Users of highways; State and local governments; and the general public.

The primary benefits of this program would be to prolong the life of the existing highway system and to enhance highway safety features. These highways would otherwise continue to deteriorate to the point of structural failure, requiring a much larger expenditure for reconstruction. Other anticipated benefits include reducing costs related to vehicle operation and future highway repair, lowering energy consumption, and increasing the comfort, convenience, and safety of drivers.

Summary of Costs

Sectors Affected: Users of highways; State and local governments; the highway construction industry and its suppliers; and engineering services.

The FHWA is preparing an analysis of the impact of the major alternatives. A full analysis will be available when we publish the next rulemaking action. Using estimates of the funding levels that Congress might provide, the analysis will discuss the impact of various levels of design standards.

Related Regulations and Actions

Internal: FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR Part 625).

External: None

Active Government Collaboration

None

Timetable

NPRM—May/June 1980
Draft Regulatory Analysis—will accompany NPRM

Available Documents

ANPRM—42 FR 42876, August 25, 1977, FHWA Docket 77-4

Withdrawal of ANPRM—43 FR 2734, January 19, 1978

NPRM—43 FR 37556, August 23, 1978

Notice regarding status of proposed rulemaking—44 FR 29921, May 23, 1979

Draft Regulatory Analysis of the proposed regulation

FHWA Docket 78-10

All documents are available for review in the Office of the Chief Counsel, Federal Highway Administration, Room 4205, 400 Seventh Street, S.W., Washington, D.C. 20590

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DOT-FHWA

Withdrawal of Interstate Segments and Substitution of Alternative Transportation Projects (23 CFR Parts 450 and 476*)

Legal Authority

Federal-Aid Highway Act of 1973, 23 U.S.C. § 103 (e)(2) and (e)(4). Federal-Aid Highway Act Amendments of 1974, 23 U.S.C. § 103 (e)(2) and (e)(4). Federal-Aid Highway Act of 1976, 23 U.S.C. § 103 (e)(2) and (e)(4). Surface Transportation Assistance Act of 1978, as amended, 23 U.S.C. § 103 (e)(2) and (e)(4). National Mass Transportation Assistance Act of 1974, 49 U.S.C. §§ 1602, 1603, 1604.

Reason for Including This Entry

The Federal Highway Administration (FHWA) has determined that this program has substantial cost implications for State and local governments, and the effect on transportation systems has created considerable public interest.

Statement of Problem

A number of segments of the Interstate Highway System are involved in serious controversy or litigation due to opposition to their construction from environmental groups, community action groups, or others seeking alternative transportation methods. Recognizing that opposition to such projects could preclude their construction and that transportation needs are changing, Congress, in 1973, enacted legislation to permit State and local governments to withdraw segments of proposed Interstate routes from the system and receive Federal funds for substitute alternative transportation projects. These projects include mass transit construction and equipment purchases for mass transit. The FHWA issued regulations implementing the initial substitution provisions in 1974. The regulation currently under development reflects amendments enacted in the Federal Highway Act of 1976 and the Surface Transportation Assistance Act of 1978. Among other things, these laws revise Federal funding shares, expand projects eligible for Federal funding to include certain highway construction projects, and impose deadlines for withdrawing

Interstate segments and substituting alternative transportation projects. The legislation also prohibits FHWA from designating new Interstate routes and expands the eligibility of routes that State and local governments may wish to withdraw. The regulation would provide additional guidance for the States on how to proceed with withdrawal and substitution actions.

Alternatives Under Consideration

Under the statutory provisions, there are no alternatives to this approach. These provisions simply permit State and local governments to submit withdrawal requests, and the FHWA and the Urban Mass Transportation Administration approve them if they meet the statutory requirements.

Summary of Benefits

Sectors Affected: State highway agencies; transportation planning services; local and suburban transit in specific urban areas that choose to take advantage of these provisions; and the general public.

The substitution program would increase transportation choices and permit shifting resources from Interstate construction to other transportation projects. In addition, there is a potential benefit to the mass transit construction and manufacturing industry because substitution funds can be used for either highway or mass transit projects.

Summary of Costs

Sectors Affected: State and local governments.

Under this provision, State and local governments would be required to provide 15 percent matching funds for projects as opposed to 10 percent matching funds for Interstate projects. Consequently, they may decide not to build segments of Interstate highways worth billions of dollars and receive similar amounts of Federal funds for alternative transportation projects. The FHWA has made more than $8 billion in Federal funds available for public mass transit projects or alternate highway projects since Congress first enacted the substitution program in 1973.

Related Regulations and Actions

Internal: Current FHWA regulations require State and local governments to develop transportation plans for urban areas (23 CFR Part 450). Other FHWA regulations prescribe requirements and standards for the disposition and use of property acquired by States with Federal-aid highway funds in connection with projects that they modify or terminate (23 CFR Part 480).

External: None

Active Government Collaboration

The FHWA and the Urban Mass Transportation Administration are preparing the regulations jointly within the Department of Transportation.

Timetable

Regulatory Analysis—will accompany Final Rule
Final Rule—June/July 1980

Available Documents

We issued regulations on June 12, 1974 (39 FR 20663), which provided rules for initial implementation of 23 U.S.C. § 103(e)(4) and 23 CFR Part 476
NPRM—45 FR 2296, January 10, 1980
Draft Regulatory Analysis
FHWA Docket 79–29

All documents available for review in the Office of the Chief Counsel, Federal Highway Administration, Room 4205, 400 Seventh Street, S.W., Washington, D.C. 20590.

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CIVIL AERONAUTICS BOARD

Air Carrier Fitness (14 CFR Part 204)

Legal Authority

The Federal Aviation Act of 1958, §§ 401 and 419, 49 U.S.C. §§ 1371 and 1389, as amended by the Airline Deregulation Act of 1978, P.L. 95–504, 92 Stat. 1705.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) thinks this rule is important because airline safety and financial fitness are of broad public interest.

Statement of Problem

In amending the Federal Aviation Act with the Airline Deregulation Act of 1978, Congress retained the requirement that air carriers demonstrate that they are fit, willing, and able to conduct air transportation service and comply with the law. The Congress emphasized the importance of this "fitness" requirement by amending the declaration of policy in the Federal Aviation Act to stress the need for safe airline operations, and by adding a new requirement directing CAB to monitor and evaluate on a continuing basis the airlines' fitness for scheduled operations. In addition, as part of the Deregulation Act's program to guarantee essential air service to small communities, Congress required the CAB to ensure (1) the fitness of all airlines serving points that are eligible for CAB-subsidized service, and (2) the reliability of those airlines proposing to provide essential air transportation.

The general purpose of this public policy is to ensure that airline operations are conducted safely and without undue financial risk to consumers. In order to comply with the Congressional mandate, the CAB has proposed a comprehensive system of informational requirements for original fitness determinations and ongoing data-filing requirements for continuing fitness. The CAB has also reached an accord with the Federal Aviation Administration (FAA) to integrate the CAB's economic monitoring of the airlines with the FAA's safety jurisdiction, because each agency has expertise that is relevant to the other's statutory mission.

Alternatives Under Consideration

The major alternatives are: (1) continuing the current, case-by-case approach to informational standards; and (2) codification of those standards in a regulation. The CAB is inclined towards the second alternative because of the benefits listed below.

Summary of Benefits

Sectors Affected: Air travelers, including prospective travelers.

The rule should help the CAB and the FAA to determine the fitness of air carrier applicants for new operating authority. It should also help the CAB and the FAA to monitor airlines' continuing fitness. While the benefits are difficult to quantify, they are complementary to other FAA and CAB requirements that are designed to ensure that airline operations are conducted safely and without unacceptable financial risk to consumers.

Summary of Costs

Sectors Affected: The air transportation industry, the CAB, and the general public.

The direct costs of compliance with the rule on the part of applicant and incumbent air carriers should be minimal in relation to the revenue involved. The CAB has an ongoing project to weigh the costs and benefits of reports and suggest ways to simplify them. The project will include a review of data received in accordance with this rule. Over time, the results of this project could further reduce the cost of this rule.

In the case of initial licensing of an airline, direct costs for an applicant

consist of legal counsel, in-house or external consultants, and management time. For a major new applicant such costs could run between $100,000 and $500,000, taking into account the cost of the time necessary to pursue the application.

The cost of complying with CAB reporting requirements for monitoring continuing fitness will vary with the magnitude of the airline's operations. It appears that all of the data that the proposed rule may require to be filed and reported are already collected and compiled by each airline for general business and tax purposes. Accordingly, the additional cost for the airlines of complying with CAB requirements is probably minimal.

The major indirect cost to the national economy of the fitness licensing provision relates to the delay between the filing of an application and the granting of the application by the CAB. For a new air carrier, this delay may vary between 6 and 18 months. The only other substantial direct cost is that incurred by the government in processing applications and monitoring ongoing fitness. No other substantial indirect or direct costs appear likely.

Related Regulations and Actions

Internal: The CAB has historically made fitness determinations, including decisions about what information it needs, on a case-by-case basis. Requirements for the submission of information are also found in 14 CFR Parts 201 and 241.

External: Federal Aviation Administration safety regulations:

"Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft," 14 CFR Part 121

"Air Taxi Operators and Commercial Operators of Small Aircraft," 14 CFR Part 135

Active Government Collaboration

The CAB and the Federal Aviation Administration have reached an accord to integrate their procedures and share their expertise.

Timetable

Final Rule—late spring 1980
Final Rule Effective—summer 1980
Regulatory Analysis—the CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under E.O. 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

NPRM—44 FR 44106, July 26, 1979 (CAB reference number for this document: EDR-385)

Public comments available for review in Civil Aeronautics Board Docket 36176

Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

Agency Contact:

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Bureau of Domestic Aviation
Civil Aeronautics Board
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CAB

Air Carrier Insurance and Liability (14 CFR Part 205)

Legal Authority

Federal Aviation Act of 1958, § 401(q), 49 U.S.C. § 1371(q), as amended by the Airline Deregulation Act of 1978, § 22(d), P.L. 95-504, 92 Stat. 1722.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it would place insurance requirements on certificated route airlines for the first time, and would substantially increase the present requirements for air taxi operators. The proposed rule would also meet a concern of Congress when it passed the Airline Deregulation Act of 1978—that passengers be protected during the airlines' transition to a more competitive environment.

Statement of Problem

The CAB staff estimates that the average bodily injury/death claim award for losses suffered by passengers and non-passengers has climbed from $55,182 in 1967 to a projected $252,834 in 1979, an increase of 450 percent. The CAB's insurance regulations, which require airlines to obtain insurance from private companies, now only apply to air taxis (operators of small aircraft), charter airlines, and domestic cargo carriers. The minimum insurance limits that the CAB requires for these carriers range from $75,000 per person to $500,000 per person. However, at the present time, there are no CAB insurance requirements for CAB-certificated passenger carriers, such as the large nationwide airlines.

The Airline Deregulation Act of 1978 requires all certificated air carriers to have liability insurance coverage as established by the CAB. Unless a carrier complies with the CAB's insurance rules, it cannot obtain or retain operating authority. Although there has not been a problem with the ability of existing scheduled carriers to pay claims made against them, Congress concluded that airline deregulation would significantly reduce the barriers to entry into air transportation. This in turn could result in operations by new carriers that are less able to compensate the public for damage losses in an accident.

Changes in the liability protection rules also appear to be needed to keep pace with the steadily increasing value of losses the public suffers in aircraft accidents. The restructuring and revision of insurance rules will also meet the mandate of the Congress, in ensuring protection of the public during the transition of air transportation from a heavily regulated to a deregulated market.

Alternatives Under Consideration

Possible alternatives the CAB is considering include (1) minimum standards for insurance policies and self-insurance plans, to prohibit certain types of exclusions of liability or to require certain specific terms, (2) minimum limits of coverage, (3) requiring disclosure of the carrier's insurance and liability limits to passengers and shippers, (4) establishing different limits and standards for different types and sizes of air carriers, and (5) no action at all at this time.

Minimum limits of liability and minimum standards for insurance policies, alternatives (1) and (2), would set specific amounts and terms and conditions that the carriers must meet. These standards would be similar to the CAB's current insurance rules. These alternatives have the advantage of ensuring a minimum financial responsibility for all existing carriers, whatever their past records, and for new carriers as the historical barriers to entry are reduced. They would also go further in meeting the intent of the Airline Deregulation Act, which emphasizes that safety in air transportation be given primary importance in the transition to deregulation.

For domestic air cargo transportation, the CAB now uses alternative (3), and requires carriers to disclose their insurance and liability limits, but does not require specific amounts for those limits. While the CAB has only used this type of approach in regulation of insurance liability for a short time, it has the advantage of allowing carriers to establish their own liability limits within the boundaries of competition and internal economic management. Its disadvantages are that it depends on a

generally knowledgeable consumer, such as a shipper in cargo transportation, and may not be as effective in giving actual notice to vacation travelers and others who might not be regular users of air transportation.

Alternative (4) is important because of the wide variety in the size of airlines, the aircraft they use, and the size of their businesses. The advantages of different rules for large and small aircraft or businesses are that the rules may be structured so that the costs are not overwhelming, and that they better address the special problems of each situation. The disadvantage is that nonuniform rules may be misleading to passengers and shippers.

Alternative (5) is based on the assumption that the present standards, conditions, and applicability of the CAB's insurance requirements are adequate, and that the burden should generally be on passengers and shippers to ensure that they have necessary insurance coverage in case of an accident. Advantages are no increase in costs, other than inflation. The disadvantages are the possibility of substantial loss for some passengers, and that passengers would have no way of knowing whether the airline has adequate coverage.

The CAB is proposing to use a combination of alternatives (1) through (4). The proposal includes authorized exclusions and standards for insurers, and minimum coverage of $300,000 per passenger. The minimum for passenger liability per accident would be $300,000 × 75 percent of the number of seats. For third-party liability, the proposed amounts are $300,000 per person and $20 million per accident ($2 million for small aircraft). The proposal would also require disclosure of a carrier's insurance and liability limits to shippers. This would allow the agency to tailor insurance regulations to the needs of each group of shippers and passengers, and to the ability of carriers to afford needed coverage.

Summary of Benefits

Sectors Affected: Air cargo carriers; air travelers; and shippers using air transportation.

Both air passengers and air shippers can be expected to benefit from the proposed insurance requirements because they would be better able to recover money damages in the event of an accident or damage to property. Cargo air carriers would benefit by being able to set their own insurance levels and liability limits to meet market demand, thus ensuring they will be at the most efficient amounts.

Summary of Costs

Sectors Affected: The air transportation industry, including certificated air passenger carriers, flying charter services, air taxis, and air cargo carriers; the insurance industry; air travelers; and shippers using air transportation.

Although the CAB has not previously required certificated route carriers to maintain insurance, most already have coverage in amounts equal to or greater than the limits being considered. All but one of the charter airlines also have such coverage. Some air taxi operators may have to increase their insurance coverage to meet the proposal, and new carriers would, of course, have to obtain coverage meeting these standards. The CAB staff estimates that the increased annual cost to the air taxis for new passenger liability coverage may be approximately $200 per seat, and the increase in cost for public liability coverage (insurance for liability to people other than passengers) may be approximately $200 to $4,000 (1979 dollars) per plane, depending on the size of the plane. These costs would likely be passed on to passengers and shippers as increases in prices.

The insurance industry would have some costs in rewriting present policies and obtaining reinsurance to meet the new coverages and conditions.

Operators of small aircraft would have somewhat smaller costs for the proposed third-party liability coverage, because the per occurrence limit set for those aircraft would be $2 million rather than $20 million.

Related Regulations and Actions

Internal: Insurance requirements for special classes of air carriers:

Indirect Cargo Carriers, 14 CFR Part 296
Air Taxis, 14 CFR Part 298
Domestic Cargo Carriers, 14 CFR Part 291
Charter Carriers, 14 CFR Part 208

External: The CAB staff is researching related actions by other agencies.

Active Government Collaboration

CAB staff held discussions with the Federal Aviation Administration, whose experience with accident litigation and insurance problems is helpful to the CAB in formulating a proposed rule, and with the Military Traffic Management Command for information about insurance of air carriers carrying civilians for the Department of Defense.

Timetable

Final Rule—summer 1980
Final Rule Effective—fall 1980
Regulatory Analysis—the CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under E.O. 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

NPRM—45 FR 7566, February 4, 1980 (EDR-395)
Extension of comment period—45 FR 14062, March 4, 1980 (EDR-395A) (Note: Numbers in parenthesis are CAB reference numbers for these documents.)
Civil Aeronautics Board Dockets 37531 and 37532
Public comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C.

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CAB

Essential Air Service Subsidy Guidelines (14 CFR Part 271)

Legal Authority

Federal Aviation Act of 1958, § 419(d), 49 U.S.C. § 1389(d), as amended by the Airline Deregulation Act of 1978, P.L. 95-504, 92 Stat. 1739.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it should significantly reduce the Federal subsidy of airlines. It also represents a major shift in focus of the subsidy program. Rather than subsidizing certificated airlines to aid in their economic viability and expansion, the new subsidy program will focus on smaller commuter airlines in order to improve air service to small communities.

Statement of Problem

The primary thrust of the Airline Deregulation Act of 1978 is to let the level, quality, and price of air

transportation be determined by free competition of airlines seeking to meet consumer demand, instead of by pervasive government regulation. However, to minimize the potential disruption caused by airlines' increased freedom to reduce or eliminate service in particular markets, the Deregulation Act also established a program to preserve essential air service to small communities, using Federal subsidy when necessary. The CAB is responsible for determining the level of essential air transportation at each eligible point and ensuring that such service is provided. "Eligible points" basically are those to which any certificated airline was authorized to provide service on October 24, 1978 (555 points), plus certain other points that the CAB may designate. "Essential air transportation" is a level of air transportation that the CAB, according to statutory criteria, finds will satisfy the community's needs for air transportation to one or more principal destinations, and will ensure the community's access to the nation's air transportation system.

This rulemaking to establish subsidy guidelines responds to § 419(d) of the Federal Aviation Act, as amended, which states:

> The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point.

During FY 1979, the CAB began work on deciding whether subsidy is needed for essential service to 27 points. During FYs 1980 and 1981, the CAB expects to provide subsidy support for 12 additional points each year.

Alternatives Under Consideration

The Airline Deregulation Act does not point the CAB toward any particular subsidy approach. On the contrary, Congress expects the CAB to develop new and innovative subsidy methods. The primary emphasis is on ensuring essential services, rather than on minimizing the costs of the program; i.e., the subsidy program must be structured so as not to hinder in any way the provision of essential services. But, of course, the CAB must be prudent with Federal expenditures, so it is faced with the dual and conflicting objectives of keeping subsidy at a reasonable level without interfering with the provision of essential air services.

Developing a market for air service is a step common to achieving both goals. Specifically, increased traffic volumes can at once justify better service (more flights) and reduced subsidy cost. The CAB is considering three alternatives for achieving these goals. One alternative is cost-plus subsidy, under which airlines are reimbursed for their expected losses, allowed a reasonable profit, and, in addition, compensated for any additional losses that they incur in actually providing the service. This approach does not appear to promote either goal. Instead, the CAB favors two innovative incentive approaches. Under one, the fixed incentive rate, the airline would be reimbursed for a predetermined projected loss and allowed a reasonable profit. If it incurred additional losses, it would not receive additional compensation. If the airline received additional revenue, however, it could keep the extra profit. The possibility of making large profits with subsidy gives airlines the incentive to be cost-efficient and develop the market. The possibility of uncompensated losses, however, poses the danger of service terminations. To avoid this problem, the CAB is also considering a third approach, the shared incentive rate. Under this approach, as with the others, the airline would be reimbursed for a predetermined projected loss and allowed a reasonable profit. The difference is that under the shared rate, the CAB would compensate the airline for some of its additional losses instead of all of them (cost-plus approach) or none of them (fixed rate approach). These three alternatives will be discussed in the NPRM.

Summary of Benefits

Sectors Affected: Small communities; air travelers and potential travelers to these communities; the air transportation industry, particularly small, commuter airlines; CAB; and the general public.

The benefits from the subsidy program are the avoidance of severe economic dislocation and the continuation of essential air service to communities that would otherwise lose that service as a result of airline deregulation. In some subsidy cases, the combination of deregulation and subsidy will result in more flights and better air service. This may lead to other tangible benefits to the communities, such as the attraction of new industry or business, and to intangible benefits, such as an improved way of life stemming from better and continued access to the Nation's air transportation system.

Smaller commuter airlines will benefit as the program focuses on subsidizing them to provide services to smaller communities.

The subsidy guideline rule, as opposed to the subsidy program itself, should also provide several benefits. It would simplify the procedures for computing subsidy amounts, thus saving administrative time for the CAB and airlines. It could also result in improved services and lower subsidy costs if it uses an incentive approach. Although the effect on individual taxpayers of the choice of guidelines will be slight in any event, the incentive plan should minimize subsidy compensation and save taxpayers in the aggregate several million dollars annually, when compared with other approaches to subsidy.

The Congressional Budget Office estimated that when this new system is phased in and the old subsidy system phased out (1986), there will be a savings of 26 million subsidy dollars per year. The subsidy program and guidelines are not predicated on a cost/benefit analysis by the agency, but are required by law.

Summary of Costs

Sectors Affected: CAB.

The CAB staff's preliminary estimates of the costs to the government of the underlying subsidy program are $380,000 for FY 1979, $9.4 million for FY 1980, and $13.4 million for FY 1981. The program is still in an early stage, and these estimates could prove to be understated, particularly if the defined level of "essential air transportation" is raised. A regulation establishing subsidy guidelines, as opposed to the subsidy program itself, is not likely to impose any significant costs.

Related Regulations and Actions

Internal: The CAB has adopted the following new regulations:

Criteria for Designating Additional Eligible Points—14 CFR Part 270

Terminations, Suspensions, and Reductions of Service—14 CFR Part 323

Procedures for Compensating Air Carriers for Losses—14 CFR Part 324

Guidelines for Individual Determinations of Essential Air Transportation—14 CFR Part 398

External: The CAB is a party to an interagency cooperative agreement, described below.

Active Government Collaboration

The CAB is a party to an interagency cooperative agreement for the purpose

of fostering optimum air service to small communities through coordinated financial assistance. The agreement is titled "Small Community Air Transportation Memorandum of Cooperation." Other parties to it are: the Economic Development Administration (Department of Commerce), the Federal Aviation Administration (Department of Transportation), the Farmers Home Administration, and the Small Business Administration (Department of Commerce).

Timetable

NPRM—spring 1980.
Final Rule—fall 1980.
Final Rule Effective—fall 1980.
Regulatory Analysis—the CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under E. O. 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

Final Rule adopting Part 270: 44 FR 76767, December 28, 1979 (ER–1166)
Final Rule adopting Part 323: 44 FR 20635, April 6, 1979 (PR–200)
Final Rule adopting Part 324: 44 FR 42171, July 19, 1979 (PR–209)
Final Rule adopting Part 398: 44 FR 52646, September 7, 1979 (PS–87) (Note: Numbers in parentheses are CAB reference numbers for these documents.)

Agency Contact:

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CAB

Plain English for Airline/Passenger Contracts.

Legal Authority

Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. §§ 1373, 1374, and 1381.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it should greatly benefit a large portion of the public by increasing passengers' ability to understand their agreements with the airlines, and to make informed choices about what airlines to fly and what services to buy. It should also help airlines to prepare for the later stages of deregulation, when they will have to make contracts directly with passengers, rather than through tariffs filed with the CAB.

Statement of Problem

Contracts between airlines and their passengers are very complicated. The airlines write thousands of contract provisions in technical legal language and publish them in tariffs, which are documents that airlines file with the CAB. These documents contain crucial information about the rights passengers do or do not have when they encounter air travel problems like mishandled baggage, delayed or canceled flights, oversold flights (bumping), lost tickets, or fare misunderstandings. Unlike the practice with most contracts, airlines do not give air travelers a copy of the tariffs to take home and read. The CAB requires airlines to inform passengers about a few basic subjects by using airline ticket notices and ticket counter signs written by the CAB. But even these notices have been technical and hard to understand, and to read most of the terms of their contracts, passengers must visit the Tariffs Section at the CAB or an airline ticket office where tariffs are kept open for public inspection. It is hard for the average passenger to locate and understand important information in the tariffs, and most airline passengers don't find out about many important limitations on their rights until after they have a serious problem and register a claim with the airline. But because of the legal doctrine of "constructive notice," under which passengers are assumed to know what is in the tariffs, passengers are usually bound by the contents of tariff rules, whether or not they are aware of them when they agreed to buy their tickets.

Alternatives Under Consideration

The CAB is considering issuing an NPRM that would propose the airlines find some simpler, more direct way than tariffs of informing passengers of their contract terms. One alternative would simply be to state that airlines may not use the tariff system to put terms in the contract without giving passengers a direct opportunity to read and know of them. The courts would review the adequacy of the airlines' notification efforts, as they do in unregulated industries. Other possible alternatives under consideration would entail increased amounts of CAB involvement in specifying "plain English" standards for the contract documents prepared by airlines, or in reviewing the clearness and completeness of documents. More detailed regulation has the disadvantages of restricting airline management decisions, and not necessarily using the most effective and least costly method.

Summary of Benefits

Sectors Affected: Air travelers (over 250 million passengers yearly), the air transportation industry, and travel agents.

Passengers would have more reasonable expectations of just what is included in their air fares, and would be able to take precautions to avoid many types of air travel problems or minimize the consequences when problems do arise. They would also be able to make more informed choices among competing airlines, because they would have a clearer understanding of the differences in the services offered. Airlines would also receive some benefits, because they would gain valuable experience for the later phases of deregulation, when they will no longer have the protection of a government-regulated tariff system and the doctrine of constructive notice. Similarly, travel agents would be better able to serve their customers, because they could more easily determine the differences between different airlines' service offerings.

Summary of Costs

Sectors Affected: The air transportation industry; and air passengers.

There would be one-time airline costs to develop "plain English" contract documents, as well as printing and distribution costs to make the documents available to passengers. Under airline deregulation, when tariffs are eliminated for domestic air transportation in 1983, however, airlines will eventually face this problem and these costs in some form anyway. The effect of the CAB regulation would not be to add significantly to costs in the long run, but instead to assist the industry in developing the most cost-effective means of making passengers aware of the terms and conditions of their travel.

Related Regulations and Actions

Internal: On April 16, 1980, the CAB issued an NPRM to simplify the notices that it already requires airlines to give passengers (45 FR 25817; CAB reference number for this document is EDR–396)

Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints, Order 78–12–49, Docket 34189

Air Carrier Rules Governing Failure to Operate on Schedule or Failure to Carry, Orders 79–4–115, 79–9–129, 79–11–23, and 80–3–10, Docket 35361

Air Carrier Rules Governing the Application of Tariffs, Order 79–2–106,

79-12-98, and Order 80-4-52, Docket 34772.
14 CFR Part 221, *Tariffs*
14 CFR Part 250, *Oversales*
External: None.

Active Government Collaboration

None

Timetable

NPRM—summer 1980.
Final Rule—winter 1980-1981.
Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under E.O. 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

The orders listed under Related Regulations and Actions can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428 (202) 673-5432

Agency Contact:

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Bureau of Consumer Protection
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FEDERAL COMMUNICATIONS COMMISSION

Children's Television Programming and Advertising Practices

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 307, 308, and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks that these proposed regulations are of significant public interest because it receives heavy citizen mail about children's television programming and practices. This proposed rulemaking puts out for comment the options we think may be available for changing children's television programming practices, if change is appropriate.

Statement of Problem

On January 26, 1971, at the request of a public interest group, Action for Children's Television (ACT), the FCC issued a Notice of Inquiry into children's programming and advertising practices, calling for comments on ACT's proposal that the Commission adopt certain guidelines for television programming for children. As a result of this inquiry, the FCC issued a Children's Television Report and Policy Statement in October 1974 stating that it expected television licensees to make meaningful efforts to voluntarily regulate themselves in several areas:

- to air programming specifically designed for children;
- to air a reasonable amount of programming (no less than 14 hours) designed to educate and inform and not merely to entertain;
- to provide programming for specific age groups; and
- to improve scheduling practices;

It also set forth specific advertising guidelines regarding too many commercials, separation of program matters from commercial matters, host selling (use of a program host or other program personality to promote products), and tie-ins (promotion of products during a program in such a way that it constitutes advertising). In 1978, the Commission reopened its inquiry and issued a Second Notice of Inquiry seeking information to evaluate the effectiveness of its 1974 guidelines and to assess possible alternatives to these guidelines. As a result of the Commission's findings, the FCC issued a Children's Television Task Force Report in December 1979, concluding that industry self-regulation during this period had not been effective in fully meeting the programming guidelines set forth in the 1974 Children's Television Report and Policy Statement. Because the industry had not regulated itself enough in the programming area, the Commission issued an NPRM asking for comments on a number of options for rules to be applied to the broadcast industry. Comments are due on June 2, 1980.

Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to regulate children's television programming, the FCC is considering the following alternatives.

(A) repealing the existing Policy Statement;

(B) maintaining or modifying the Policy Statement in accordance with comments received;

(C) adopting interim programming rules requiring a minimum amount of educational programming for preschool and school-age children; (The Task Force report recommended 2½ hours per week of educational and instructional programming for school-age children and 5 hours per week for preschool children.);

(D) adopting similar requirements as license-renewal processing guidelines; and/or

(E) encouraging competition among broadcasters by increasing the number of cable systems, subscription television, and other types of pay television.

Summary of Benefits

Sectors Affected: Children nationwide and their families; cablevision services, subscription or closed circuit television, and other types of pay television.

If adopted, this proposal could improve the amount of educational television programming and decrease the number of commercials which children watch, and by deregulating the industry as proposed, improve competition among broadcasters throughout the pay television industry.

Summary of Costs

Sectors Affected: The entire broadcasting industry, including networks, stations, and production and programming activities; and the advertising industry.

The FCC expects public comments on the question of potential costs of this proposal. For this reason, the FCC has not made any express findings of the costs of this proposal.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Public Comment Period—closes June 2, 1980 Reply Comments—closes August 1, 1980

Available Documents

The Notice of Inquiry/Notice of Proposed Rulemaking of January 9, 1980 is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request Docket 19142.

Agency Contact

Susan Greene, Chief Children's Television Task Force Federal Communications Commission Washington, D.C. 20554 (202) 653-7586

FCC

Creation of "New" Personal Radio Service

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C.§§ 154(i) and 403.

Reason for Including This Entry

The Federal Communication Commission (FCC) thinks this rule is

important because it would make a new radio service available to the public at large.

Statement of Problem

For over 30 years, the Federal Communications Commission has recognized the need for, and the value of, personal radio communications. The largest personal radio service is the Citizens Band (CB) Radio Service, in which the FCC has licensed more than 14 million people. Other personal radio services include the General Mobile Radio Service, which offers the general public very high quality communications, but at considerable equipment costs; and the Radio Control Radio Service, which licenses people to operate model boats, cars, and airplanes by radio control. The CB Radio Service meets many personal and business needs, but there are continuing complaints by CB users about channel congestion and interference.

The FCC is now exploring several issues:

(1) to what extent does the public view the limitations of the three personal radio services as problems (the limitations include the complaints discussed above, as well as any other problems brought to our attention during the comment period);

(2) whether creation of a new personal radio service in a different frequency range would solve any problems;

(3) what the demand would be for a new personal radio service; and

(4) what features the public would like to see incorporated in a new personal radio service.

Alternatives Under Consideration

The FCC is considering whether to establish a new personal radio service in the 900 MegaHertz (MHz) band. The major alternative under consideration is for the FCC to decline to create a new personal radio service. A secondary alternative which we are considering involves decisions about the specific features of a new personal radio service, if the FCC creates one. For example, the FCC will decide whether equipment to be used in this new service should be designed so that it automatically identifies the station, and what frequencies should be allocated to the new service.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale and retail trade of two-way radio transmitting, signalling and detection equipment and apparatus; all two-way radio users: and all owners of home entertainment equipment (such as stereos and television sets).

Some members of the public have suggested that the benefits of a new personal radio service at 900 MHz would include better quality communications than those available in CB Radio Service, less potential than CB Radio Service for causing home entertainment equipment interference, and the possibility to incorporate special features (such as channels devoted to special uses) in the new service. A new service could reduce congestion in the CB Radio Service and offer a higher quality radio service than the current CB service offers.

The FCC is interested in knowing whether this Inquiry will affect other sectors, and, because the FCC has asked the public to comment on the potential benefits of a new service, it has not yet taken a position on the merits of the suggested benefits.

Summary of Costs

Sectors Affected: Manufacturing, wholesale and retail trade of two-way radio transmitting, signalling, and detection equipment and apparatus; all two-way radio users; all owners of home entertainment equipment (such as stereos and television sets).

The FCC has requested the public to comment on the issue of possible costs. For example, the FCC expressly asked for comments on whether the costs of radios in the new service could be kept within the financial means of most potential users, and if the CB industry would suffer sales loss.

Because the issue of costs is open for public comment, the FCC has not taken a position on many of the questions related to potential costs. However, when issuing this Inquiry, the FCC stated that it would expect the initial cost of basic 900 MHz equipment to be in the range of $300 to $500. FCC expects that prices would decrease as demand grows. This contrasts with the range of approximately $50 to $500 for CB equipment, depending on whether or not the unit has special features.

The FCC is interested in knowing whether this Inquiry will affect other sectors.

Related Regulations and Actions

Internal:

The FCC has received a number of petitions from individuals and CB clubs for changes in the fundamental purpose of the Personal Radio Services. Two of these (RM–2776 and RM–3071) called for the creation of a "special" radio service between 27.505 and 27.900 MHz, which was, in effect, to be like the current Amateur Radio Service, without the requirement that now exists in the Amateur Radio Service that licensees pass examinations in receiving messages in Morse code. The FCC dismissed the petitions on the basis that a radio service (the Amateur Radio Service) satisfying the described communications requirements (which were almost exclusively amateur in nature) already existed, and that the creation of a codeless service would be contrary to international agreements. (International agreements require amateur radio operators using certain radio frequencies to be proficient in the international Morse code.) The FCC also based its denial on the fact that stations in other radio services and the U.S. government were already using the requested frequency band. Recently, too, the Commission terminated the proceeding in Docket 19759 (the proposal to create a new personal radio service in the 220 MHz band). The public comments filed in this proceeding were inconclusive. The FCC concluded that a "fresh start" was necessary on the creation of a new Personal Radio Service, and, therefore, that it would start a new rulemaking proceeding to request public comment.

External: None

Active Government Collaboration

None

Timetable

NPRM—early 1981

Available Documents

The Notice of Inquiry (June 7, 1979) is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. For review of public comments, request PR Docket 79–140.

Agency Contact

Joseph M. Johnson, Engineer, Federal Communications Commission, Washington, D.C. 20554, (202) 254–3301

FCC

Deregulation of Competitive Domestic Telecommunications Market (47 CFR 61.38)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201, 202, 203, 204, 205, 214, and 403.

The Administrative Procedure Act, 5 U.S.C. § 553.

Reason for Including This Entry

The Federal Communications Commission (FCC) is attempting to

change from its traditional approach to regulating common carriers to one where only the commission would exercise that amount of regulation that is necessary, given the size and amount of competition faced by the particular common carrier.

Statement of Problem

The telecommunications industry provides telephone, telegraph, and similar "common carrier" services. As a result of technological and regulatory developments in recent years, the telecommunications industry has evolved from one dominated by a few large entities to one where there is now some competition for the provision of some communications services.

The FCC is considering the problem that the rules it originally adopted to regulate a monopoly telecommunications market may now result in unnecessary regulatory burdens on smaller, competitive carriers.

Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to continue to regulate extensively in the common carrier field, the FCC is considering a number of alternatives:

(1) Should the FCC allow smaller ("nondominant") carriers to file tariffs (prices, terms, and conditions of service) without requiring them to file underlying cost support data? (The current rules require them to do so.)

(2) Should the FCC assume that rates contained in the tariff filings of nondominant carriers are lawful?

(3) Should the FCC relax its rules that now restrict the addition of new circuits or the discontinuation of service by smaller (nondominant) carriers?

(4) If the FCC establishes any of the above procedures for nondominant carriers, how should it determine which carriers are dominant or nondominant?

The FCC is also considering further deregulatory options, such as not regulating the smaller (nondominant) carriers at all. The FCC has not made a specific proposal, but has set forth the issues for public comment.

Summary of Benefits

Sectors Affected: The telecommunications industry, particularly nondominant carriers; telecommunications users; and the FCC.

If adopted, this proposal could affect the internal work priorities of FCC.

In proposing this deregulation, the FCC speculates that the proposal could save smaller carriers the costs of complying with FCC regulation and reduce entry barriers associated with the regulations. This savings in turn could be passed on to the consumer. The proposal could also save the FCC the costs of implementing and enforcing the rules.

The FCC expects public comments on the question of potential benefits of the proposed deregulation. For this reason, the FCC will not make any express findings of benefits unless it decides to proceed with deregulation.

The FCC would like to learn during the public comment period of any other sectors that this Inquiry/Proposal would benefit.

Summary of Costs

Sectors Affected: The telecommunications industry, domestic telecommunications users, and the FCC.

The FCC would like to learn during the public comment period of any other section for which this Inquiry/Proposal would cause costs.

The FCC expects public comments on the question of potential costs of this proposal. For this reason, the FCC has not made any express findings of the costs of this proposal.

Related Regulations and Actions

Internal: The FCC is considering whether the public interest requires that long-distance telephone service be provided on a sole source (monopoly) basis or whether it should be opened to competition. (FCC Docket 78–72, MTS–WATS Market Structure Inquiry.)

External: None.

Active Government Collaboration

None.

Timetable

Memorandum Opinion and Order—late summer 1980

Available Documents

The Notice of Inquiry/NPRM of September 27, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request FCC Docket 79–252.

Agency Contact

Kenneth Levy, Attorney, Federal Communications Commission, Washington, D.C. 20554, (202) 632–6317

FCC

Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation (47 CFR Part 73)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 154(j), 303(g), 303(r), and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks this proposed rule is important because it proposes a major change in the traditional FCC emphasis on detailed regulation of the broadcast industry. The proposed rules would better reflect structural changes in the radio industry which have occurred over the past two decades.

Statement of Problem

The FCC is reviewing some of its regulations governing commercial radio broadcast stations. In particular, the FCC is reviewing four groups of regulations which may no longer be needed in today's radio market.

In the 1930s and 1940s, when the FCC first began to regulate radio broadcasting, the radio marketplace was very different than it is today. There were many fewer stations, for example, and television was not the dominant medium it is today.

The FCC is exploring whether the regulatory assumptions it made in the 1930s and 1940s are still valid. In particular, the Inquiry/Proposal will focus on whether current radio regulations are the most effective and least costly way to achieve such goals as:

(1) adequate informational (nonentertainment) programming,

(2) reasonable limits on the number of commercial minutes each hour,

(3) consideration by the radio broadcaster of community needs and interests, and

(4) retention by the broadcaster of adequate records of nonentertainment programming and commercial time ("program logs").

Current FCC regulations accomplish these goals in a variety of ways. In the area of nonentertainment programming, FCC rules specify that the amount of nonentertainment programming must be at least a minimum percentage of a station's total programming. For AM stations, FCC rules specify that nonentertainment programming should be at least 8 percent of total programming. For FM stations, FCC rules specify 6 percent of total programming. If a radio station is applying for renewal of its license and

proposes to program less than 8 percent (or 6 percent, as appropriate) nonentertainment programming, the FCC's Broadcast Bureau staff cannot routinely grant the renewal until the application is considered by the full Commission.

In the area of commercial limits, FCC rules now set commercial limits (18 to 20 minutes per hour, plus additional time during political campaigns) that, if a radio station renewal applicant exceeds them, can prevent routine granting of an application by the Broadcast Bureau under its delegated authority.

FCC policies also now require a radio broadcaster to consider the community's needs and interests when planning a station's programming. The FCC adopted a detailed primer setting out procedures for determining the composition of the area to be served, consulting with community leaders and members of the general public, enumerating and evaluating community problems and needs, and relating proposed programming to these evaluated problems and needs. The FCC has denied applications based on the failure of the applicant to ascertain these criteria in accordance with the requirements of the primer. The FCC calls this procedure "ascertainment."

Current FCC rules require a broadcaster to keep detailed records of his programming and commercial time. The program log rules require numerous entries, such as the source of each program, the time each program begins and ends, the sponsor(s) of the program, and the public service announcements that the station broadcasts. A radio station licensee must make these logs available to the public on request.

In the notices proposing radio deregulation, the FCC said, "We have long been, and remain, committed to the principle that radio must serve the needs of the public. We have never, however, believed that radio is a static medium that requires the retention of every rule and policy once adopted. A regulation that was reasonable when adopted, and appropriate to meet a given problem, may be most inappropriate if retained once the problem ceases to exist. In our view, it is vital that our rules and policies be appropriate for the industry and marketplace we regulate, reducing regulation to the maximum extent consistent with the public interest, convenience, and necessity. We note in passing that Congress is now examining whether legislative reform is necessary to foster optimum development of all communications industries, including broadcasting. Additionally, the President has ordered executive agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones."

Alternatives Under Consideration

(1) There are a number of alternative approaches by which the FCC could modify or eliminate current nonentertainment rules and policies:

(a) The FCC could remove itself from all consideration of the amounts of nonentertainment programming that commercial radio licensees furnish, leaving it to the marketplace to determine what levels of such programming broadcasters would present;

(b) The FCC could relieve individual licensees of any obligation to provide nonentertainment programming but instead, could analyze the amounts of such programming on a marketwide basis, and, if the amount of such programming in a particular market fell below a certain level, the FCC then could take action to redress the matter;

(c) The FCC could free licensees of any specific responsibilities with respect to nonentertainment programming (as well as ascertainment and commercial limits) but would require licensees to show, if their renewals were challenged, that they were serving the public interest (FCC would use the wants and needs of the marketplace for such evaluation);

(d) The FCC could impose quantitative programming standards (and not just set out guidelines) for each nonentertainment programming category, such as a minimum number of hours per week for each category of programming or a specified percentage of time to be devoted to each category;

(e) The FCC could impose quantitative standards, but measure the adequacy of programming on the basis of each station's expenditures. In other words, the FCC could mandate a proportion of revenues or profits that a station must reinvest in nonentertainment programming;

(f) The FCC could establish a minimum, fixed percentage of local public service programming that licensees would have to present—including local news, public affairs and public service announcements, community bulletin boards, or any other locally produced nonentertainment programming that served local needs.

(2) Changes in the commercial limit rules that the FCC is now considering include:

(a) eliminating all rules and policies dealing with the amount of commercial time and allowing the marketplace to determine tolerable levels of commercialization;

(b) setting quantitative standards which, if ignored, would result in the FCC imposing some sanction against the licensee;

(c) eliminating all rules specific to individual licensees but interceding if heavy levels of commercialization occurred marketwide; or

(d) retaining quantitative guidelines but only with regard to the Broadcast Bureau's delegation of authority.

(3) The Commission said there were four options warranting consideration in the area of ascertainment of community problems and needs:

(a) The FCC could eliminate all federally mandated ascertainment requirements and leave it to marketplace forces to ensure that stations provided programming to meet the needs and problems of each station's listenership;

(b) The FCC could require that licensees conduct ascertainment but permit them to decide in good faith how best to conduct that ascertainment without the current detail of formalized FCC requirements;

(c) The FCC could retain the ascertainment requirement, but in a simplified form; or

(d) The FCC could retain existing ascertainment requirements.

(4) The FCC's requirements for program logging are intended, in part, to assure documentation of nonentertainment programming and commercial practices. If we removed nonentertainment programming and commercial requirements as a result of this proceeding, we also would consider eliminating or modifying program log requirements. However, members of the public challenging a station's programming failure might need these records to substantiate such claims. Therefore, the FCC is considering the following three options:

(a) The FCC could eliminate the need for AM and commercial FM stations to keep program logs;

(b) The FCC could eliminate its program log requirements, but require any licensee keeping records of its programming or commercial schedules for its own purposes to make these available to the public in accordance with procedures outlined in the Commission's rules;

(c) The FCC could continue current program logging and disclosure requirements.

Summary of Benefits

Sector Affected: The radio broadcasting industry, including networks, local stations, and programming and production services;

the advertising industry; radio listeners; and the FCC.

If adopted, this Inquiry/Proposal could affect the internal work priorities of the FCC.

The FCC said in the Inquiry/Proposal that it had seen evidence that market forces will, in most instances, yield programming that serves consumer well-being. If the FCC adopts deregulation, the FCC anticipates that radio programming would reflect listeners' tastes, rather than regulatory decisions.

The FCC has asked for public comments on the issue of potential benefits of this proposal. Therefore, the FCC will not make any express findings of benefits from this Inquiry/Proposal unless it decides to proceed with deregulation.

The FCC is interested in learning during the comment period if this proceeding will affect any other sectors.

Summary of Costs

Sectors Affected: The radio broadcasting industry, including networks, local stations, and programming and production services; the advertising industry; radio listeners, and the FCC.

If adopted, this Inquiry/Proposed could also affect the internal work priorities of the FCC.

The FCC is interested in learning during the comment period if this proceeding will affect any other sectors.

The cost of complying with FCC regulation could be passed on to the consumer. Some members of the public have suggested that the deregulation Inquiry/Proposal will not result in broadcasting which serves the public interest.

The FCC has asked for public comment on potential costs of the Inquiry/Proposal. For this reason, the FCC has not made any express findings of costs.

Related Regulations and Actions

Internal:

The FCC is continuing a long-standing broadcast deregulation project. The purpose of this project is to review the continued usefulness of each radio and television broadcast regulation. The FCC will closely coordinate the work of this project with the radio deregulation Inquiry/Proposal.

External: None.

Active Government Collaboration

None.

Timetable

Reply Comments—until June 25, 1980

Available Documents

The Notice of Inquiry/NPRM issued September 6, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request BC Docket 79–219.

Agency Contact

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FEDERAL MARITIME COMMISSION

Amendments to Tariff Filing Requirements for Controlled Carriers (46 CFR Part 536*)

Legal Authority

The Shipping Act of 1916, §§ 18(b), 18(c), 21, and 43, 46 U.S.C. §§ 817(b), 817(c), 820 and 841(a).

Ocean Shipping Act of 1978, P.L. 95–483, 92 Stat. 1607.

The Administrative Procedure Act, § 4, 5 U.S.C. § 553.

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will have a salutary impact on the U.S. liner trades.

Statement of Problem

Section 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, provides that the FMC shall regulate the rates and charges for ocean transportation services filed by certain state-owned or controlled carriers operating in the foreign commerce of the United States. The term "state-controlled carrier" means a common carrier by water in the foreign commerce of the United States whose operating assets are directly or indirectly owned or controlled by the sovereign government (i.e., state) under whose registry the carrier's vessels operate. Controlled carriers, operating as "cross-traders" (carriers that operate in a specific trade and do not fly the flag of the exporting or importing nations in that trade) in the U.S. oceanborne foreign commerce and backed by the resources of their government have penetrated the United States liner trades by actively and systematically pursuing a practice of rate cutting (maintaining rates in their tariffs that may be below a level which is just and reasonable) to attract more cargo for their ships. Such rate cutting threatens to disrupt the international trade of the United States and may jeopardize the economic viability of U.S. flag carriers as well as other privately owned carriers. The seriousness of the problem was underscored by the fact that the state-controlled carriers of one nation which did not trade at all in the U.S. ocean commerce several years ago had captured 5 to 10 percent of the cargo on several U.S. trade routes at the time of the enactment of the Ocean Shipping Act of 1978.

The Ocean Shipping Act of 1978 (P.L. 95–483) strengthens the provisions of the Shipping Act of 1916 and thus the powers of the Federal Maritime Commission to regulate the rate cutting practices of state-controlled carriers. The provisions of § 18(c) of the Shipping Act of 1916, which were created by the Ocean Shipping Act of 1978 and became effective November 17, 1978, impose upon the Federal Maritime Commission the responsibility to regulate the rates and practices of certain state-owned or controlled carriers operating in the oceanborne foreign commerce of the United States in order to eliminate the threat posed by such rate cutting.

The Commission proposes to amend 46 CFR Part 536 to implement the requirements of P.L. 95–483. The proposed amendments prescribe the technical requirements for the publication, filing, justification, and suspension of controlled carrier tariff rates, charges, classifications and rules. They also require that all common carriers annually file with the Federal Maritime Commission an information circular which contains specific questions related to the carriers' ownership, vessels, subsidiaries, service, flag, form of organization, forwarding activities, consolidation activities, intermodal operations, and the number of containers owned or leased.

The Commission, acting under the authority of § 21 of the Shipping Act of 1916, added this requirement to 46 CFR Part 536 so that it will be apprised of all controlled carriers serving the U.S. trades. However, the Commission will give these controlled carriers an opportunity to submit information which may warrant an exemption from the requirements of § 18(c).

Alternatives Under Consideration

There are no realistic alternatives because the proposed rules are necessary to implement the requirements of P.L. 95–483. In enacting this legislation, the Congress provided the Commission with no flexibility in the interpretation of the tariff filing requirements needed to put the law into effect, and specifically mandated that Commission responsibilities be broadened to address the problem. Although the Commission has many

alternatives in the administration of P.L. 95–483, there are no alternatives to the tariff-filing requirements which literally implement the law.

Summary of Benefits

Sectors Affected: All common carriers in the foreign commerce of the United States.

It is necessary to provide a systematic method to adopt the standards set forth in P.L. 95–483, which was designed to prevent controlled carrier penetration and disruption of U.S. trades through rates and practices which are unjust and unreasonable. The requirement that all common carriers file an information circular with the Federal Maritime Commission is needed for the Commission to properly classify common carriers entering or leaving trades in the U.S. foreign commerce and to identify those which are state-controlled. The proposal will protect all privately owned carriers operating in the U.S. oceanborne foreign trade from the noncompensatory rates and predatory practices of controlled carriers which operate without covering the cost of the resources used in the provision of a shipping service. The information obtained from the circular will also benefit privately owned carriers, shippers, and the general public by identifying those carriers which are state-owned and providing those sectors with information regarding their ownership, registry, and operations.

Summary of Costs

Sectors Affected: All common carriers in the foreign commerce of the United States.

All carriers required to file the information circular will have some administrative costs. We will ask the carriers to provide an estimate of the financial and man-hour burden expected of them. In our NPRM, we will also ask controlled carriers to submit a separate estimate of the financial and man-hour burden, if any, which will be incurred in complying with the other requirements of the proposed rules. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

Related Regulations and Actions

None

Active Government Collaboration

The Department of State and the Commission, before the rulemaking, coordinated an effort to initially identify state-controlled carriers.

Timetable

NPRM—June 1980
Regulatory Analyses; other analyses—This rule does not require a regulatory analysis under E.O. 12044 because we are developing it through a formal rulemaking process in accordance with the Administrative Procedure Act.
Public Comment Period—60 days following publication of NPRM
Final Rule—winter 1980–1981
Final Rule Effective—winter 1980–1981

Available Documents

None

Agency Contact

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N. W., Washington, D.C. 20573, (202) 523–5725

FMC

Filing of Currency Adjustment Factors (46 CFR Parts 536 and 538*)

Legal Authority

The Shipping Act of 1916, 46 U.S.C. §§ 813(a), 817(b), 820, 833(a), and 841(a).
The Administrative Procedure Act, 5 U.S.C. §§ 552 and 553.

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will provide shippers with greater rate stability and the consequent ability to improve long-range commercial marketing practices.

Statement of Problem

The shocks absorbed in foreign exchange markets since 1971, arising from two devaluations of the U.S. dollar and a shift of most of the major currencies from fixed to floating exchange rates, have created frequent and substantial fluctuations in these exchange rates. Consequently, ocean carriers and conferences (associations of carriers permitted, pursuant to an agreement approved by the Commission under § 15 of the Shipping Act of 1916, to discuss, establish, and file rates and practices on behalf of their member lines) have filed numerous currency adjustment factors with the Commission in recent years to accommodate currency fluctuations. A currency adjustment factor is a surcharge imposed upon the shipping public by steamship carriers and conferences to allow for the adjustment of ocean freight rates to reflect currency fluctuations. Several years ago, carriers in the U.S. foreign commerce began to impose these surcharges upon the shipping public in response to currency changes.

Whenever currency adjustment factors are established by steamship conferences, the shipping public frequently registers legitimate complaints about their establishment. Over the last several years the Commission has received an increased number of such complaints centering on three major issues. One major complaint refers to the fact that such surcharges often do not reflect current foreign exchange market conditions because currency surcharges are generally implemented some time after the negative currency fluctuation in question has occurred. Another complaint concerns the allegedly disproportionate level of the surcharge imposed in response to the currency fluctuation and the methods used in its computation. The shipping public also protests the lack of reciprocal adjustments to reflect positive tariff currency changes.

When a surcharge of any type is filed by an ocean carrier or conference, the Commission has an obligation to ensure that these transportation costs will not unduly impede our international trade by interfering with the efficient flow of goods or imposing costs upon U.S. exporters that are unreasonably high in comparison to costs imposed upon their foreign counterparts. In response to this obligation, the Commission promulgated rules to provide for a procedure under which certain carriers and conferences that operate pursuant to a Commission-approved system of dual-rates could justify and impose currency surcharges on less than the required statutory notice period (90 days) in the event of a depreciation of the tariff currency. (Dual-rate contracts are used as a patronage or loyalty device to offer lower rates to shippers who agree to give all or a fixed portion of their shipments to a specific carrier or conference. The Shipping Act of 1916 requires that the contract rate shall not be more than 15 percent lower than the published ordinary rate.) Owing to its cumbersome requirements for justifying a "short-notice" currency surcharge, this rule has never been used by any carrier or conference since its promulgation.

Since this rule has never been used, the staff of the Commission developed other, informal procedures in February 1977 to validate currency surcharges. However, this system did not produce sufficient data to permit proper evaluation of the surcharges. Since the existing formal rule has never been used and the Commission's informal system has yielded inadequate data regarding

the validity of currency surcharges, it has become apparent that a new procedure is required.

The proposed regulation replaces the existing rules, which apply only to carriers and conferences employing approved dual-rate systems. The purpose of the new regulation is to establish procedures and tariff filing requirements under which steamship carriers and conferences may publish and file currency adjustment factors in their ocean freight rate tariffs on not less than 15 days' notice in the event of a change in the value of the tariff currency. The proposed rule will establish a simplified and uniform procedure for the filing of all currency surcharges and will apply to all carriers and conferences.

The proposed regulation represents an effective system which will ensure prompt Commission consideration of all currency surcharges. The proposal establishes clear, understandable procedures that are equitable to the industry and permit adequate review by the Commission to ensure protection of the shipping public.

Alternatives Under Consideration

Retention of the existing rules and the informal currency surcharge validation system is an alternative. However, to do so would cause the Commission to be unresponsive to problems that have arisen under these procedures. For example, one of these problems concerns the selection of a base date used by a carrier or conference to compute the level of a currency surcharge. The proposed rule eliminates the uncertainties under existing procedures by specifically defining the base date that must be used.

If the Commission takes no action, regulatory supervision over carriers and conferences imposing currency surcharges will continue to be inadequate and the shipping public will not benefit from the increased degree of protection that would be provided through the rule.

Other alternatives would entail different systems of evaluating currency adjustment factors. The Commission has deemed the existing proposal the simplest and most equitable, however, affording shippers the greatest protection while imposing the least burden upon the industry and generating the least administrative cost within the FMC.

Summary of Benefits

Sectors Affected: Steamship carriers and conferences operating in the U. S. foreign commerce; and shippers.

All steamship carriers and conferences operating in the U.S. foreign commerce will be affected by the proposed rule if they impose currency surcharges. The rule will allow carriers and conferences to impose such surcharges on short notice (15 days), thus permitting more responsive and faster adjustments in rates due to currency fluctuations. The proposal establishes a simplified and uniform procedure for the publication of currency adjustment factors. This will enable the Commission to fairly, reasonably, and promptly review these surcharges under statutory standards, and provide a greater degree of protection to the shipping public.

The rule also requires a reciprocal adjustment in rates if the tariff currency appreciates by 2 percent or more. This requirement permits the currency adjustment factor to operate as a true adjustment, restoring the prior currency relationship, and it is, therefore, clearly responsive to shippers' complaints. Since the methods used to compute a currency adjustment factor level as prescribed in the rule are uniform, shippers will be aware of how individual currency surcharges are determined. The Commission will benefit from the elimination of uncertainty and the streamlining of procedures, enabling more efficient and effective planning of regulatory policies affecting the U.S. foreign commerce.

Summary of Costs

Sectors Affected: Steamship carriers and conferences.

No quantitative estimate of the relative costs are available. However, those carriers and conferences imposing currency surcharges must submit expense data in a specific format (Currency Adjustment Factor Computation Statement), and thus will incur some administrative costs.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Regulatory Analyses; other analyses—This rule does not require a regulatory analysis under E.O. 12044 because we are developing it through a formal rulemaking process in accordance with the Administrative Procedure Act.
Public Comment Period—on or before June 9, 1980
Final Rule—fall-winter 1980
Final Rule Effective—fall-winter 1980.

Available Documents

NPRM—45 FR 23708, April 8, 1980
Federal Maritime Commission Docket 80–19
Commission General Order 13, "Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States" (46 CFR Part 536)
Commission General Order 19, "Dual-Rate Contract Systems in the Foreign Commerce of the United States" (46 CFR Part 538)
All documents are available for review in the Office of the Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N. W., Washington, D. C. 20573.

Agency Contact

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FMC

Revision of Commission General Order 4, "Licensing of Independent Ocean Freight Forwarders" (46 CFR Part 510*)

Legal Authority

Shipping Act of 1916, 46 U.S.C. §§ 820, 841(a) and 841(b).
Administrative Procedure Act, 5 U.S.C. § 553.
46 CFR Part 510 (45 FR 17029, March 17, 1980).

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will substantially affect the entire ocean freight forwarding industry and that industry's commercial relationships with the shipping public and oceangoing common carriers, thus impacting a significant portion of United States export commerce. It will modernize the Commission's regulations affecting the freight forwarding industry, which have not been substantially modified in 18 years, to reflect significant changes in the practices and economics characterizing the U. S. ocean commerce.

Statement of Problem

There has been a need to revise and modify FMC General Order 4, "Licensing of Independent Ocean Freight Forwarders," to reflect the changing nature of the U.S. export commerce. An independent ocean freight forwarder is an individual, corporation, partnership, association, or other legal entity that, for a fee, dispatches shipments on behalf of

oceangoing common carriers and handles the processing incident to such shipments. Services rendered by this industry include the dispatching and facilitation of export cargo on behalf of shippers; examining instructions and documents received from shippers; preparing and processing export declarations; booking or confirming cargo space; preparing and processing delivery orders and dock receipts; arranging for and furnishing trucks and lighters (boats used in unloading and loading vessels not lying at wharves, or in transporting freight about a harbor); preparing instructions to truckmen and lightermen; preparing and processing ocean bills of lading; preparing and processing government international commercial documents and arranging for their certification; arranging for and furnishing warehouse storage; arranging for insurance; clearing shipments in accordance with United States government export regulations; preparing and sending advance notifications of shipments and other documents to banks, shippers or consignees; advancing necessary funds in connection with the dispatching of shipments; coordinating the movement of shipments from origin to vessel; rendering special services in connection with unusual shipments or difficulties in transit; and giving expert advice to exporters concerning letters of credit, licenses, and inspections.

General Order 4 sets forth regulations affecting all aspects of these functions by establishing criteria for qualification as an independent ocean freight forwarder and setting guidelines for the performance of forwarding duties, specifically providing for the Commission's licensing of independent ocean freight forwarders, the procedure for applying for licenses, the qualifications required of applicants, and the grounds for Commission revocation or suspension of licenses. The General Order also contains rules pertaining to the practices of licensed independent ocean freight forwarders, ocean freight brokers (persons engaged by a carrier to sell transportation services and who hold themselves out by solicitation or advertisement as entities who negotiate between shipper and carrier for the purchase, sale, conditions, and terms of transportation), and oceangoing common carriers pursuant to 46 U.S.C. § 841(b), as enumerated above. The FMC believes that since the General Order was originally issued in December 1961, many of the rules published in that Order have become outdated and impractical, creating confusion and consequent inefficiency in their application.

Additionally, substantive questions have arisen which the proposed rule attempts to resolve. At present, each branch office of a licensed forwarder is not required to post a separate surety bond covering the cargo shipments it handles nor have a qualified individual supervise its operation. For better protection of the shipping public, the FMC believes that consideration should be given to requiring each branch office to be separately licensed, individually bonded, and have its own qualifying officer or individual. The FMC also needs to clarify fitness qualifications for prospective forwarders and establish a more realistic rule governing the forwarder's payment of freight monies to the carrier. Increased costs compel higher license fees and the policies of the Shipping Act Amendments of 1979, P.L. 96–25, 93 Stat. 71, need to be reflected in the General Order, ensuring that forwarders certify, as required by the FMC, that they will not engage in illegal rebating activities (46 U.S.C. § 820(b) and will be subject, if necessary, to the Commission's assessment of civil penalties for such activities (46 U.S.C. § 831[b).

If the FMC takes no action at this time, regulatory supervision over freight forwarding will be more difficult and less current, and the shipping public may not be sufficiently protected from injury caused by inexperience, malpractice, negligence, or financial mismanagement.

Alternatives Under Consideration

Retention of the existing General Order 4 is an alternative, but it represents an option that would be unresponsive to current commercial practices in the ocean shipping industry and to the problems that have arisen under the regulations encompassed in the current Order. The proposed rule requires a surety bond in the same amount from each licensed branch office. This may prove to be too burdensome for some small branch offices while providing insufficient indemnification of the shipping public for other, larger offices. The proposal invites comments on the alternative approach of graded levels of surety bonds from a forwarder's home office, depending on the company's number of branch offices.

In evaluating alternative criteria which may be used to determine the qualifications for a forwarding license, the Commission must weigh the administrative costs, paperwork burden, and overall regulatory burden of extensive criteria for qualification against the need to protect the shipping public from unscrupulous or financially irresponsible applicants. Similarly, in considering alternative criteria for revocation and/or suspension of forwarding licenses, the FMC must balance the regulatory burden of careful monitoring and oversight of the forwarding industry against the ongoing need to protect the shipping public.

The FMC invites comments on alternative proposals and methodologies from interested parties on all or any part of the proposed rule.

Summary of Benefits

Sectors Affected: Independent ocean freight forwarders; shippers; and oceangoing common carriers.

Through more detailed clarification of the qualifications necessary to obtain a license and the rights and duties of forwarders in their relationships with shippers and carriers, the FMC anticipates fewer problems developing within this industry, with a resulting decrease in the need for more burdensome regulation in the form of formal proceedings and assessment of civil penalties.

There are more than 1,300 licensed independent ocean freight forwarders located in almost every State, most of whom will benefit from this rule. By increasing the time within which such forwarders must make payment of freight monies to carriers, a more orderly and commercially realistic operation should emerge. Forwarders will also benefit by being allowed to deduct from such freight payments monies owed them by the carriers. Currently licensed responsible freight forwarders will also be better protected from competition from irresponsible or inexperienced forwarders, both licensed and unlicensed.

All manufacturers of goods for export abroad, located in every State of the United States, represent shippers that will benefit from the protections afforded by the proposed rule. A stringent rule requiring payment by the forwarder to the carrier of the freight monies advanced by the shipper should minimize those situations where the carrier sues the shipper for such freight monies when a forwarder does not pay it. A more experienced and responsive forwarding industry will perform better services for shippers. Where something does go wrong, shippers will be better protected by more stringent and adequate surety-bond requirements.

Oceangoing common carriers departing every U.S. port will benefit by a more responsive forwarding industry. More cargo will be generated for carriage leaving little to do by the

carrier itself other than loading cargo aboard ship and taking the cargo to its destination.

A revised and clarified General Order should benefit all affected sectors by providing a better description of the rights and obligations attendant upon all participants in forwarding activities and transactions. Revision of General Order 4 also provides the opportunity to modernize existing regulations to conform to current commercial needs and practices, with consequent benefits for all affected sectors.

Summary of Costs

Sectors Affected: Independent ocean freight forwarders.

As a result of increased costs determined by an FMC cost analysis, the proposed rule would increase license application fees from $125 to $350 and add new fees of $100 each for supplementary investigations and processing applications for approval of changes. Recordkeeping and reporting requirements have been slightly changed. Other than these, the FMC cannot accurately evaluate the regulatory burden but is asking interested parties to provide an estimate of the financial and work-hour burdens which will be incurred in complying with the recordkeeping and reporting requirements as well as with other substantive regulations.

Related Regulations and Actions

Internal: The proposed rule would eliminate publication in the **Federal Register** of notice of applications for independent ocean freight forwarder licenses as unnecessary. A separate rulemaking to accomplish this in more expeditious fashion is being considered.

External: None

Active Government Collaboration

None.

Timetable

Regulatory Analyses; other analyses—This rule does not require a regulatory analysis under E.O. 12044 because we are developing it through a formal rulemaking process in accordance with the Administrative Procedure Act.

Public Comment Period—on or before July 15, 1980.

Final Rule—winter 1980–1981.

Final Rule Effective—winter of 1980–1981; branch office licensing may become effective somewhat later, depending on comments.

Available Documents

NPRM—45 FR 17029, March 17, 1980

Federal Maritime Commission Docket 80–13

All documents are available for review in the Office of the Secretary, Federal Maritime Commission, Room 11101, 1100 L Street N.W., Washington, D.C. 20573.

Agency Contact

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5725

INTERSTATE COMMERCE COMMISSION

Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5)) (49 CFR Part 1090)

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10321, 10505, 10701, 10702, 10705, 10921, 10922, 10923, 10927, and 11101.

Reason for Including This Entry

The Interstate Commerce Commission believes that this proposed rule is important because it could cause an increase in productivity and/or profits in the motor common carrier and rail transportation industries without causing any adverse effects.

Statement of Problem

The Federal Railroad Administration, the General Accounting Office, and the Interstate Commerce Commission have undertaken recent studies of efforts by the various transportation modes to provide a continuous movement of freight between two points in combined service (such as motor-rail, motor-water, or any other combination of modes). These studies show that numerous factors have discouraged the development of combined (intermodal) traffic movement plans.

The principal factors that discourage intermodal traffic are that carriers would have to make substantial changes in established operations to implement the plans; negotiate with collective bargaining representatives to modify established work rules (where employees are members of a labor union); and make significant and often substantial cash outlays to install special material-handling equipment.

The major intermodal traffic movement concepts that the Commission presently regulates are the Trailer-on-Flatcar (TOFC) and Container-on-Flatcar (COFC) plans. Generally, these plans implement the transportation of a truck, trailer, semitrailer, or detachable container on a rail car.

There are five basic intermodal plans presently in use. Under Plan I, a motor carrier (truck operator) may substitute rail for motor service between points which the motor carrier is authorized to serve. Under Plan II, a railroad may provide complete door-to-door service; under Plan III the portion of the service that the railroad performs is limited to rail transportation between established TOFC ramps (the shipper must provide the trailers); and Plan IV is comparable to Plan III, except that the shipper must also furnish the rail car. Plan V involves coordinated continuous motor-rail or motor-rail-motor services at joint rates which may be originated by either mode on the originator's shipment request (bill of lading). This latter plan facilitates coordination of rail and motor operations where the carriers serve different territories.

To date, motor carrier participation in these intermodal traffic movement plans has been very limited. The Commission's TOFC/COFC traffic data indicates that more than 50 percent of all current TOFC/COFC traffic moves under Plan II (all-rail plan); 15 percent moves under Plans III and IV, and the remaining traffic moves under Plans I and V. In 1978, TOFC/COFC traffic represented only 7.9 percent of total rail carloads.

The purpose of this rulemaking proceeding is to determine what the Commission can do to increase the use of TOFC/COFC services. The proceeding is limited to motor-rail intermodal movements; it does not embrace intermodal movements with a prior or subsequent movement by water.

The Commission is proposing this action at this time because studies have suggested that Commission regulation has impeded the use of TOFC/COFC service. We hope to determine whether and how regulation should be adjusted to eliminate any impediments and, if possible, to provide incentives to stimulate the growth of TOFC/COFC traffic.

Alternatives Under Consideration

There are several major alternatives under consideration. The first alternative is to exempt the rail and truck portions of TOFC/COFC service-pricing from our regulation under § 10505 of the Interstate Commerce Act, on the grounds that the limited scope of such plans makes economic regulation unnecessary (in 1978, for example, containerized shipments represented less than 8 percent of total railcar loadings). The principal benefit of this alternative is that railroad and trucking management would be permitted to establish a price (rate) for the

continuous movement of traffic without Commission intervention, essentially allowing free market forces to establish the rate. (Under present regulation, decisions of this kind are subject to Commission review.) However, we will require participants to adhere to the statutory provisions designed to prevent broad differences in rates that tend to favor or discriminate against a particular shipper or group of shippers. Similarly, this alternative will require participants to publish their rates in a public price sheet (tariff) with the accompanying 30-day notice period so that the Commission can monitor unjustified broad differences in rates. This alternative will also require that participants adhere to the Commission's present accounting and reporting requirements.

The major disadvantage is that the users of intermodal service would have little recourse—other than making a unilateral decision not to use a particular service—for a rate which is unreasonably disproportionate to the cost of providing the service. Under present regulation, concerned shippers could challenge an unreasonably high rate under the rate investigation and suspension provisions of the Interstate Commerce Act.

A second alternative would relax the rules and regulations governing the practices of motor carriers which participate in intermodal movements. At the present time, a motor carrier must have operating authority from the Commission to serve the ultimate origin and destination points of a movement, as well as the points at which it gives traffic to or receives traffic from the railroad. This requirement discourages participation in intermodal plans, because a carrier has to seek new authority if the shipment consolidation points are changed. Similarly, carriers which do not now possess authority to perform transportation in intermodal service must petition the Commission for authority for each point at which they will perform service. This practice also tends to discourage efforts to experiment or develop intermodal plans. To remove this problem, the Commission is considering developing a so-called "master certificate," which would encompass a generalized nationwide finding of public convenience and necessity based on the foreseen benefits of TOFC/COFC service and competition.

The benefit of this second alternative is that it would eliminate the need for specific, localized authority to serve the interchange point and eliminate the attendant delay that would accompany each application for authority. The disadvantage of this alternative is that carriers now authorized to participate in intermodal traffic plans could lose traffic they now handle to new carriers, who would not have to obtain authority from the Commission to participate in the traffic plans.

A third alternative would revise our current policies regarding participation by truck operators performing services under contract (contract carriers) in intermodal plans. At present, contract carriers are not permitted to participate in intermodal service; this alternative would permit contract carriers to enter into intermodal service and negotiate with railroads for service under agreed rates. The principal benefit of this alternative is that contracts would generally be of several years duration and would reflect the individual needs and operating characteristics of the railroad and truck operators. This would lend stability to the intermodal plan and insure its continuance. A disadvantage is that the entrance of contract carriers into this freight market would further dilute the traffic available to existing truck operators.

Summary of Benefits

Sectors Affected: Railroad transportation and trucking; and shippers of goods by rail and truck, especially in the Western States.

The principal benefit of revised TOFC/COFC regulations is that improved intermodal service will combine the best characteristics of rail and motor transportation by offering the long-haul cost and energy advantages of rail, and the geographic operating flexibility of motor carriers. Moreover, it should offer containerized service to some shippers who do not have it available to them now as a transportation alternative because of present Commission regulatory practices, and it will generate another source of revenue for the financially ailing railroad industry. Similarly, the increased competition that should result from implementation of the proposals would be an effective force in allocating transportation resources and improving the quality of service.

The alternatives we are considering could have their most significant impact in the Western United States, where the long-haul benefits of rail transportation can be realized. Shippers in the Western States could conceivably benefit most from improved TOFC/COFC regulation.

Summary of Costs

Sectors Affected: Railroad transportation and trucking; and shippers of goods by rail and truck, especially in the Western States.

The Commission staff expects the proposed rules to promote coordination of rail and motor services. This would more than likely force a realignment of the market for some freight. Some freight, which is transported by all-rail or all-motor movement, for example, could be diverted to a shared movement.

Related Regulations and Actions

Internal: "Practices of For-Hire Carriers of Property Participating in Trailer-on Flatcar Services," 49 CFR 1090.

External: None

Active Government Collaboration

None

Timetable

NPRM—May or June 1980.
Final Rule—September 1980.
Regulatory analysis—the Commission does not plan to issue a separate regulatory analysis in this proceeding. The NPRM and the notice of final rules will incorporate the results of our regulatory analysis.

Available Documents

ANPRM (44 FR 49279, August 22, 1979). "Substituted Service-Water for Motor Service (Fishy-back Service)—Alaskan Trade," 44 FR 30786, May 29, 1979, 361 ICC 359(1979).

Agency Contact

John Robinson, Chief, Rail and Intermodal Competition Branch, Office of Policy and Analysis, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7418.

ICC

Intercorporate Hauling (Ex Parte No. MC-122) (49 CFR Chapter X)

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10321 and 10524.

Reason for Including This Entry

The Interstate Commerce Commission (ICC) believes that this rulemaking is important because it could cause an increase in the productivity of private motor carriers of property.

Statement of Problem

Critics of government intervention in truck transportation focus on allegations that regulation causes inefficiency. They say that prices for truck transportation are too high because regulated truck operations can collectively establish

rates, and because regulation imposes artificial constraints on entry into the trucking business and operational freedom. Accordingly, they argue that regulation prohibits business enterprises which perform their own trucking operations from engaging in efficient use of their equipment.

Critics of regulation also claim that regulation distorts markets and distribution facilities and that it retards innovation in patterns of operation. These critics say that regulation imposes unnecessarily high costs on change because of the various administrative and legal requirements it imposes on carriers. They believe that decisionmaking in a regulatory environment results in commodities being transported inefficiently, and that a reliance on normal market forces would cure many of these problems.

In June 1977, at the request of the Commission, a staff task force studied and recommended to the Commission ways in which it could use market forces to improve regulation of the trucking industry. One recommendation was to relax the Commission's control over hauling between related corporations (those with some degree of common ownership). At the present time, transportation in furtherance of a primary business other than transportation is exempt from regulation by the Commission; this is so-called "private carriage." The statute does not define private carriage, but the Commission historically has defined the term narrowly to exclude transportation between corporations with a common owner; private carriage was limited to the transportation for and by a single corporation. The primary motivating factor in using or expanding private transportation is the necessity to meet unusual service demands that regulated carriers find impractical or impossible to meet.

As a result of the task force recommendations, the Commission published a proposed policy statement that would broaden the definition of private carriage to include (and thereby exempt from Commission regulation) transportation between and for members of a corporate family. Public response has endorsed the change in policy. It is generally felt by private truck operators that a more liberal Commission policy over intercorporate hauling will provide opportunities to reduce the number of miles operated without freight, thereby allowing for the consolidation of fleets, improved fuel efficiency, and lower overall transportation costs.

The Commission is proposing this action at this time as part of its overall program to improve its regulation of the motor carrier industry, and in response to staff studies and public comments that have indicated the Commission should change its policy toward intercorporate hauling. If we do not act now, Commission policy will continue to have the effect of preventing private carriers from conducting their operations as efficiently as they could.

Alternatives Under Consideration

There are four major alternatives under consideration in this proceeding.

The first is to maintain the status quo. At the present time, Commission regulations do not permit hauling between or for related corporations by private carriers for compensation (it can be done, however, if it is performed without charge). The problem with this alternative is that it does not permit corporations and their subsidiaries to make the most efficient use of their transportation fleets.

The second, third, and fourth alternatives are related to the degree of control a parent corporation has over its subsidiary, but they would encourage change in corporate transportation policies and encourage efficient operations.

The second alternative would permit compensated intercorporate hauling (without Commission regulation) for and between corporations that are at least 50 percent commonly owned.

The major advantage, relative to the options that require a more restrictive level of ownership, is that a greater number of private shippers could use compensated intercorporate hauling.

The primary disadvantage is that advocates of compensated intercorporate hauling may have underestimated the diversion of traffic from regulated carriers and the resulting adverse economic impact on carriers. If such diversion took place, undesirable effects would be maximized with this option. Moreover, it provides for less gradual adjustment to a new regulation by shippers, carriers, and consumers who might be affected adversely than the other alternatives.

The third alternative would permit compensated intercorporate hauling only for and between corporations that are 100 percent commonly owned.

This option is the most restrictive of the three options that would allow compensated intercorporate hauling. Its advantage is that it would minimize any adverse impacts the new policy might have on regulated carriers. At the same time, it would give the Commission actual experience with the effects of relaxing the restrictions on intercorporate hauling before proceeding to relax the restrictions further.

The major disadvantage is that we believe this alternative would be too restrictive. A survey by one of the respondents to ascertain the benefits of relaxed rules on intercorporate hauling indicates that roughly two-thirds of the 1,500 corporations surveyed by that respondent would not be able to take advantage of the relaxed policy because they are not 100 percent commonly owned.

The fourth alternative (which ICC proposes to adopt) would permit intercorporate hauling by corporations that are 80 percent commonly owned. This alternative is a compromise between the 100 percent and 50 percent common ownership levels. A policy of caution and gradualism is reflected in this alternative, but it broadens the scope and size of overall net benefits; moreover, it is consonant with Internal Revenue Service guidelines permitting consolidated financial reports at the 80 percent common ownership level and recognizing a subsidiary owned 80 percent or more by its parent as part of a corporate family.

The Commission's approach to the problem of intercorporate hauling is self-regulatory; the policy, if the Commission adopts it, will broaden the area of corporate transportation that is exempt from regulation by the Commission. At the present time, a substantial amount of intercorporate hauling is performed without compensation.

Summary of Benefits

Sectors Affected: Corporations which now operate or desire in the future to operate private truck fleets; and users of these corporations' products.

If the proposed policy change is adopted, a corporation which has a private truck fleet would be able to expand the use of that fleet by using it to haul freight for any subsidiary corporation at least 80 percent of which is owned by the parent corporation. For example, private trucks owned by a parent company and hauling freight from the parent to the subsidiary could also haul freight from the subsidiary to the parent. This could reduce considerably the empty mileage traveled by trucks in the private fleet. In cases where a parent corporation and its subsidiary both operate private fleets, it would be possible to consolidate the fleets and to eliminate duplicate staff positions. Corporations which do not have private fleets, but wish to have them, will find private hauling a more efficient and, therefore, a more attractive alternative if this proposal is adopted.

The proposed change in policy could virtually guarantee a reduction in direct costs for trucking between related corporations by removing a portion of corporate decision-making from regulatory overview. Estimates from some of the parties which responded to the NPRM indicate that cost savings which could result from the broader definition of private carriage would be as much as three cents per mile less than the present cost to corporations which operate their own transportation fleet. Moreover, the policy change would alleviate the present burden on corporations to obtain operating certificates from the ICC where transportation is performed for and between a parent corporation and its subsidiary for compensation. A precise estimate of the savings to corporations is not available, but if we change the present policy, corporations would no longer have to obtain operating certificates, wait for accompanying agency action, or bear the expenses associated with those activities.

Similarly, there should be indirect cost savings to consumers. Although improved efficiency will not necessarily lower existing consumer prices (because a multitude of cost and competitive factors enter into pricing decisions), the change in policy should relieve inflationary pressure and defer or reduce future consumer price increases. The increased efficiency that corporations should be able to realize as a result of the proposal should help them to keep overall production costs down.

Summary of Costs

Sectors Affected: The regulated trucking industry.

If the proposed policy change leads to an increase in the amount of freight hauled by private truck fleets, it could result in a reduction in the amount of freight hauled by ICC-regulated trucking companies.

Related Regulations and Actions

Internal: "Intercorporate Parent-Subsidiary Transportation," 123 M.C.C. 768 (1975).

External: None

Active Government Collaboration

The Department of Transportation is appearing as a party in the proceeding and is advocating use of the 50 percent common-ownership level to determine what constitutes a closely knit corporate family.

Timetable

Legislation currently being considered by Congress may result in a change in the Interstate Commerce Act to achieve a result similar to that proposed in this proceeding. If no action is taken by Congress in this regard, we will issue a final policy statement in this proceeding sometime after June 1, 1980.

Regulatory Analysis—this proceeding will be discussed in the notice of the final policy statement.

Available Documents

"Intercorporate Parent-Subsidiary Transportation," 123 M.C.C. 768 (1975)

"Status Report-Intercorporate Hauling Regulation," Bureau of Economics, Interstate Commerce Commission, December 1978

"Request for Comments: Intercorporate Hauling," 43 FR 58002, December 11, 1978

NPRM, "Intercorporate Hauling" (Ex Parte No. MC–122) Proposed Policy Statement, 44 FR 42838, July 20, 1979; public comments available for review at Secretary's Office, ICC, 12th & Constitution Avenues, Washington, D.C.

Agency Contact

Richard Klem,
Deputy Director for Motor Carrier Policy
Office of Policy and Analysis
Interstate Commerce Commission
Washington, D.C. 20423 (202) 275–7824

ICC

No Suspend Zone—Motor Common Carriers of Property (Ex Parte No. Mc-137) (49 CFR Chapter X)

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10321 and 10708.

Reason for Including This Entry

The Interstate Commerce Commission thinks that this rulemaking is important because it involves a precedent-setting approach to the regulation of motor carrier rates. This new approach could be beneficial to the motor common-carrier industry and to the national transportation system.

Statement of Problem

When motor common carriers raise or lower their rates their action is subject to challenge. Shippers and others may protest the rate changes and the Commission can suspend the effectiveness of the new rates pending an investigation. This process impedes the carriers' ability to compete and inhibits them from seeking some rate changes. The Interstate Commerce Act generally requires that rates be published on 30-days' notice. This limits carriers ability to react quickly to market changes. The Commission would like to adopt a new procedure to provide Commission approval. At the same time, we want to retain safeguards to ensure that carriers do not charge rates which are unfair or destructive of competition.

The purpose of this proceeding is to consider establishing a "no suspend zone" for freight rates published by motor common carriers of property. The limits of the zone would be percentages by which carriers could propose to raise or lower their rates without their action being subject to suspension, or investigation on the grounds that the rates appear to be unreasonably high or low. Rates within the zone would be immune from challenge unless they appear to be unfair and destructive competitive practices, unduly prejudicial, unjustly discriminatory, beyond the scope of the proponent's operating authority, or in violation of an outstanding order or regulation of the Commission. Otherwise, rate changes within the zone might be taken at any time and as needed, within the carrier's managerial discretion. We are also considering establishment of a more limited no notice zone within which rates changes could be made effective without notice and would not be subject to suspension or investigation on any grounds whatsoever. We contemplate that the competitive ratemaking freedoms would apply only for rates published individually by carriers and would not extend to rate increases (or reductions) proposed by carriers collectively through a rate bureau.

The Commission is proposing this action at this time in response to a staff study, the Initial Report of the Motor Carrier Task Force (published in May of 1979) and a petition from the Federal Trade Commission, both of which recommended similar action. If we do not act now, carriers will continue to be exposed to regulatory ratemaking requirements which restrict both their ability to compete and the services that they can offer.

Alternatives Under Consideration

The Commission does not believe that maintaining the status quo is a viable alternative in this instance. Nor have we discovered any method other than the one proposed for accomplishing the goals outlined in this proceeding. We are pursuing the alternative of working to secure changes in the Act, and legislation currently being developed by the Congress may adopt a similar approach to that being proposed here, thus influencing the outcome of this proceeding.

We believe that the development of a no-suspend zone would be an innovative regulatory technique which would allow competition to play a

greater role in regulating the level of carrier rates.

We are actively considering a number of alternatives within the scope of the present proposal; that is, we are trying to determine what the actual percentage figures should be for the maximum and minimum limits of the zone. We have specifically solicited suggestions from the public in this regard.

Summary of Benefits

Sectors Affected: The trucking industry; and shippers and consumers of products transported by truck.

It is our belief that, through establishment of a no-suspend zone, increased competition may be readily translated into rates which are more representative of market conditions. The net result should be improved transportation, distribution, and location practices which produce benefits for the economy. The proposed rule would directly benefit carriers because they will be able to act quickly to raise rates to cover increased costs, such as those resulting from fuel increases. They will also be freer to lower rates to attract new business or to meet new competition. The zone would enable motor carriers to respond rapidly to changing market conditions with rates which are competitively priced and which offer a broad variety of rate-service options, while at the same time enhancing the ability of carriers to meet their service commitments. To the extent that lower rates or increased efficiency result from adoption of the zone, we would hope that the benefits would be shared by the users of the carriers service and indirectly, through reduced rates, by consumers of the goods which the carriers transport.

Summary of Costs

Sectors Affected: The trucking industry; and shippers and consumers of products transported by truck.

It is possible that the increased competition, which would result from adoption of the zone, might lead to a loss of business for less efficient or less market-sensitive carriers. The fact that, within the zone, carriers would be able to raise rates more quickly—without prior Commission approval—would mean that shippers would feel the effects of the increases sooner than they would were they able to protest the increase or were the Commission to institute an investigation and suspension proceeding. Any passing-on of the increase to consumers would also occur more quickly. The opportunity to challenge rates, which shippers and others presently have, would be limited.

Related Regulations and Actions

Internal: The Commission has opened a number of proceedings to determine whether it could or should adopt a master certificate licensing procedure for various specialized segments of the motor common carrier industry. The outcome of these proceedings depends on the outcome of the legislation pending in Congress. If the Commission were to proceed with those rulemakings, we would propose to consider refining the "no-suspend zone" concept to apply to each of the specialized segments.

External: None

Active Government Collaboration

The Federal Trade Commission has filed a petition seeking action similar to that which we propose in this proceeding, and we expect them to be active participants.

Timetable

Final rule—Sometime after June 1, 1980 Regulatory Analysis—we will discuss the conclusions reached as a result of the analysis in the notice of final rules, instead of issuing a separate regulatory analysis.

Available Documents

NPRM appears at 45 FR 6974, January 31, 1980; corrections appear at 45 FR 12273, February 25, 1980.

Agency Contact

Richard B. Felder, Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275–7693.

POSTAL RATE COMMISSION

Experimental Classification Rulemaking (39 C.F.R. §§ 3001.120 et seq.)

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3603, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Reason for Including This Entry

This rulemaking may have a national effect because it may help to facilitate the offering of new postal services which have been developed with the assistance of marketplace experiments. It is of national concern because changes in postal services can have an effect on all mail users.

Statement of Problem

The Postal Service must request a recommended decision from the Postal Rate Commission before implementing a change in postal rates and fees or classifications (39 U.S.C. §§ 3622–23). The Postal Rate Commission issues its decision after giving interested parties an opportunity for a hearing in compliance with 5 U.S.C. §§ 556–57.

From the time the Postal Service took over the functions of the Post Office Department in 1971, it presumed that it had authority to conduct marketplace experiments (experimental changes in services, fees, classification, or required mail preparation) without requesting a recommended decision from the Postal Rate Commission.

On August 7, 1979, the Court of Appeals for the Third Circuit held that the Postal Service must come to the Postal Rate Commission for a recommended decision before conducting any marketplace experiment which includes a change in rates any mailer pays, or the classification of any mail. (*United Parcel Service* v. *USPS*, No. 78–2390 [3d Cir. Aug. 7, 1979]).

The Postal Rate Commission has designed its current rules of procedure (39 CFR §§ 3001.1–3001.116), with a view toward recommending decisions on proposals for permanent rates and classifications. The rules require the Postal Service to provide in writing the detailed information necessary if the mailing public is to participate meaningfully in Commission proceedings. This information also is necessary for the Commission to fulfill its statutory duties, found in 39 U.S.C. §§ 3622(b) and 3623(c), in recommending changes in rates and classification.

The rules may not be suited for requests for authority to conduct experiments. A substantial amount of the information required by the rules may not be available because it may be the very information the Postal Service seeks to acquire through the experiment. Any change in the rules will attempt to bring into better balance the right of the public to participate in this decisionmaking and the need for the Postal Service to obtain expeditious consideration of its proposed experiments from the Postal Rate Commission.

Alternatives Under Consideration

The Commission held a conference on possible rulemaking on this subject on September 26, 1979 to explore potential solutions to the perceived problem. Six parties have submitted written comments, which the Commission is considering. Additional alternatives may appear during the course of the Commission's consideration. The Commission also is considering taking features from different sets of comments

to fashion the best set of rules for use in this category of cases. The alternatives that parties have advanced or the Commission is otherwise considering are:

(A) No change in the rules of procedure. The Postal Service would be required to provide all the information in accordance with the current rules unless it requested and received a waiver (39 CFR § 3001.22). Parties who regularly take part in Commission proceedings are familiar with the current rules and should have no problem dealing with waiver motions. The Commission's rules of procedure, however, were not designed for use with experimental proposals. The waiver procedure may be unduly time-consuming and repetitious. Additionally, the Commission may be able to design rules that permit it to consider experimental proposals more expeditiously.

(B) The Postal Service proposes a notice and comment procedure similar to informal rulemaking. After the Postal Service filed a proposed experiment with the Commission, interested parties could file statements of position containing as much factual material and as many arguments as they desired. The Postal Service's proposed rules require the Commission to approve the experiment unless a party's statement of position has demonstrated that the experiment would not be in the public interest or in accordance with the policies of the Postal Reorganization Act. While this alternative might be the most appropriate if the Commission could choose it, the law requires the Commission to give interested parties an opportunity for a hearing on the record (39 U.S.C. § 3624). Specifically, the statute requires the procedures, including the opportunity for a hearing, called for in §§ 556–557 of the Administrative Procedure Act (5 U.S.C. §§ 556–557).

(C) The Commission could adopt rules providing for a procedure to identify, at the beginning of the proceeding, the issues not requiring a trial-type hearing. Also, the rules could provide that satisfactory explanation of the absence of information normally required would preclude that absence being used as an argument against approving the experiment. A procedural deadline for considering the proposed experiment could be set. These changes might streamline the necessary procedure.

(D) The rules proposed by the Officer of the Commission, who represents the interests of the general public in Commission proceedings, contemplate that the Postal Service need not file the information that would be required in a proceeding for permanent changes if the Postal Service can give a satisfactory explanation for the absence of that information. The rules, however, would require the Postal Service to provide estimates for most of the information required for consideration of a permanent change. Each accounting quarter the Postal Service would submit to the Commission a summary of the data collected. The Postal Service could make changes in the experiment with 30-days notice unless the Commission suspended the proposed change. To end the experiment early, the Postal Service would file a motion with the Commission. These rules are designed specifically to regulate Postal Service experiments, unlike the current rules. It appears that they would require a substantial amount of Commission involvement in the conduct of the experiment and limit the Postal Service's flexibility in this regard.

(E) Another alternative is advanced by Purolator Courier Corporation, *et al.*; it supports the Officer of the Commission's proposed rules with one exception. It proposes that the rules contain a definite time limit to prevent the Postal Service from continuing an experiment indefinitely.

(F) The American Bankers Association's (ABA) proposed rules would give the Postal Service extensive authority to experiment. The primary restriction that the ABA proposes is a definite time limit on the experiment. These rules limit the Commission's role to preventing experiments if it finds sufficient cause. These proposed rules appear to give the Postal Service substantial flexibility, but the public's ability to affect the decisionmaking might be severely limited.

(G) United Parcel Service proposes rules requiring the Postal Service to file all information and data underlying the Postal Service's decision to experiment. The Postal Service would have to show that the cost of providing the experimental service would be covered by the revenues generated. The experiment could not begin earlier than 90 days after publication of a notice in the **Federal Register**, and it would run for a definite time. When the experiment is completed, the Postal Service would file a report with the Commission. These rules appear to call for the Postal Service to use a substantial amount of effort to justify an experiment, and the public apparently would have a strong voice in the decisionmaking.

The Commission has not yet made even a tentative decision on what is the best alternative.

The parties who have taken part in the proceedings are: Officer of the Commission, United Parcel Service, Purolator Courier Corporation, *et al.*, Mail Order Association of America, American Bankers Association, National Association of Greeting Card Publishers, Time Incorporated, and the United States Postal Service.

Summary Of Benefits

Sectors Affected: United States Postal Service; the Postal Rate Commission; and the mailing public.

Rules designed specifically for the expeditious consideration of proposed experiments should assist the Postal Service in developing new services and improving current ones to meet the needs of the mailing public. The rules should help the Commission and interested parties focus on the factors that are important for an experiment, without having to make case-by-case, repetitious identification of what is important in considering a permanent change, but not an experiment.

Special rules for this group of cases should enable the parties to participate in a more meaningful way and the Commission to consider the cases more expeditiously. Additionally, the opportunity for interested parties to participate in the decisionmaking for experiments should give the Postal Service valuable insight and information concerning mailers' needs. The parties may suggest improvements in the proposed experiments that otherwise would not have been considered.

Summary Of Costs

Sectors Affected: United States Postal Service; the Postal Rate Commission; and the mailing public.

Adoption of special rules for consideration of proposals for experiments may result in lower costs of regulation to the Postal Service and of participation to the other participants. If the Postal Service had to follow the current rules, it is possible that it and the other participants would expend efforts on issues that need not be explored when considering a proposal for an experiment. The Postal Rate Commission's costs of considering proposed experiments may be less if it has a special procedure for that category of cases than if it must use its current rules of procedure, which were designed for other types of cases.

Related Regulations And Actions

None

Active Government Collaboration

None

Timetable

NPRM—to be determined Public Comment Period—30 days after NPRM

Available Documents

The transcript of the September 26, 1979, conference and the comments that parties have filed on Possible Rulemaking on USPS Experimental Services are available by contacting the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, D.C. 20268. (202) 254–3800.

Agency Contact

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Postal Rate Commission
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PRC

Postal Rate Commission Docket MC79–3 (Red-Tag)

Legal Authority

39 U.S.C. §§ 3621, 3622, 3623 and 3601.

Reason For Including This Entry

The Postal Rate Commission thinks this case is important because it involves a proposal to change the rates that publishers pay to send periodicals through the mail.

Statement of Problem

This proceeding stems from a previous case, Docket MC76–2, in which the Officer of the Commission, who represents the interests of the general public in Commission cases, proposed to extend to all second-class mail users the availability of the expeditious (red-tag) treatment currently afforded certain time-sensitive publications, such as newspapers, and to impose a surcharge for this preferential treatment. Second-class mail consists of magazines and newspapers, and red-tag treatment is preferential delivery treatment for it, similar to the expeditious treatment given first-class mail. Currently there is no surcharge for red-tag treatment.

When the Officer of the Commission made his proposal in the prior case, the Commission found insufficient evidence to justify a surcharge for red-tag treatment. The Commission also found inadequate cost information to justify extension of the "red-tag" treatment to any second-class mailer requesting it.

In the last postal rate case, Docket R77–1, filed on July 13, 1977, two months after the record had closed on the original red-tag surcharge proposal, the Postal Service introduced service-related cost (SRC), a new costing concept, which traced the higher costs of priority handling to the mail causing them. However, in Docket R77–1 there was insufficient data and time to pursue the precise allocation of service-related cost to the different types of second-class mail. Because the SRC concept was not involved in the original red-tag proposal, the Commission believed it should institute a new case to investigate the desirability of a red-tag surcharge covering costs allocated by the SRC costing theory. If the Commission were to recommend such a change, it also would be appropriate to explore the feasibility of offering such priority handling to all second-class mailers willing to pay the surcharge.

The Commission instituted this proceeding on January 4, 1979. Because this case did not originate with the Postal Service, as is usual, the Commission directed the Postal Service to file its case by March 15, 1979. However, the Postal Service was unable to meet this deadline and the date of filing was reset to May 31, 1979. The deadline for other parties to file their responses was changed from June 15, 1979, to June 29, 1979. Hearings began on September 11, 1979, and ended on December 18, 1979. Initial briefs were filed on January 16, 1980, and reply briefs were filed on January 30, 1980. We held oral argument on February 8, 1980.

Alternatives Under Consideration

Parties in this case have advanced various alternatives. Representative alternatives advanced by four parties, the Postal Service, Dow Jones & Company, Inc., Reader's Digest and the Officer of the Commission are as follows:

(A) The Postal Service believes that, at this time, the rate schedule should contain no surcharge for red-tag service and the criteria used for deciding which publications are entitled to red-tag treatment should remain as they are. The Postal Service believes it should be given more time to study the costs involved.

(B) Dow Jones & Company, Inc. opposes any surcharge for red-tag service. It believes that the record contains insufficient data to support a surcharge.

(C) Reader's Digest proposes an increase of 1.9¢ per piece for red-tag service and a reduction of 1.4¢ per piece for nonred-tag second-class mail. Mailers could choose between red-tag and nonred-tag.

(D) The Officer of the Commission proposes an increase of 2.75¢ per piece for red-tag service and a reduction of 1.4¢ per piece for nonred-tag second-class mail. Mailers could choose between red-tag and nonred-tag.

Parties in the proceeding include: United States Postal Service, Agricultural Publishers Association, Inc., American Business Press, American Library Association, American Newspaper Publishers Association, American Retail Federation, Association of American Publishers, Inc. and Book Manufacturers Institute, Association of Second Class Mail Publications, Catholic Press Association, Classroom Publishers Association, Department of Defense, Direct Mail/Marketing Association, Inc., Dow Jones & Company, Inc., Gestetner Corporation, Macmillan, Inc., Magazine Publishers Association, Inc., Meredith Corporation, The National Industrial Traffic League, National Newspaper Association, Samuel C. Pennington, Purolator Services, Inc., The Reader's Digest Association, Inc., Time Incorporated, Fairchild Publications, International Labor Press Association AFL-CIO/CLC, James T. Lowder, Publisher, Ohio Antique Review, Inc., National Association of Greeting Card Publishers, The New Republic, Inc., New York Magazine Company, Inc., The New Yorker Magazine, Inc., Newsweek, Inc., U.S. News & World Report, Inc., United Parcel Service, Council of Public Utility Mailers, Washington Monthly Corporation, National Rural Cooperative Association, and the Officer of the Commission.

Summary of Benefits

Sectors Affected: United States Postal Service; and publishers and recipients of second-class mail.

The purpose of this case is to explore possible ways of refining the allocation of costs among second-class mailers. More precise allocation of costs means that it might be possible to make the rate and classification schedule more fair and equitable. Additionally, the Commission is considering the arguments advanced by some of the parties that offering red-tag service to any second-class mailer willing to pay a surcharge would lead to better allocation of resources than the criteria the Postal Service is using currently.

It would be inappropriate for the Commission to comment further on the issues in this case before issuing a final decision.

Summary of Costs

Sectors Affected: United States Postal Service; and publishers and recipients of second-class mail.

The purpose of the proponents of a surcharge is not to change the Postal

Service's revenues from second-class but to reallocate some of the costs underlying the rates. The proponents of the surcharge want the rate schedule changed so that mailers choosing priority service would get a rate increase while mailers declining priority service would get a rate decrease.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

Commission Decision—second quarter, 1980

Available Documents

All of the following documents are available by contacting the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, D.C. 20268. (202) 254–3800:

Commission Order No. 228, instituting the proceeding in MC 79–3 and the Notice sent to the **Federal Register** on January 10, 1979, 44 FR 2211–14

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination for Docket MC 79–3

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions and Notices, Petitions for Leave to Intervene and Request for Limited Participation; Commission's Recommended Decision (when issued) for Docket MC 79–3

Agency Contact

Richard Legon, Special Assistant to the Chairman, Postal Rate Commission, 2000 L Street, N.W., Room 500, Washington, D.C. 20268 (202) 254–9566

PRC

Postal Rate Commission Docket R80–1 (Postal Rate and Fee Changes, 1980)

Legal Authority

Postal Reorganization Act, 39 U.S.C. §§ 3621–23.

Reason for Including This Entry

This case is important because it may result in changes in every postal rate and fee charged the mailing public. The Postal Service estimates that its proposed changes would increase its revenues by $3.75 billion in the 12-month period from March 21, 1981 to March 20, 1982.

Statement of Problem

On April 21, 1980, the United States Postal Service (USPS) filed with the Postal Rate Commission (PRC), Docket No. R80–1, a request for a recommended decision on its proposed changes in postal rates and fees, together with proposals for certain changes in mail classification. The Postal Service says that unless the PRC recommends the proposed changes in postal rates and fees, the Service will suffer a deficit of $4.9 billion in the 12-month period from March 21, 1981 to March 20, 1982.

In addition to rate and fee increases—and certain decreases for some mail given special preference by Congress—the Postal Service proposes a number of changes in the way rates are structured and mail is classified.

Alternatives Under Consideration

At this point in the proceeding, the Postal Service is the only party to have presented its proposal although four parties have filed petitions to intervene. The procedural schedule will give all interested parties—the Commission anticipates 50 to 60 intervenors—an opportunity to present their proposals for consideration by the Commission. A summary of the Postal Service's proposal and statements of positions from four parties' petitions to intervene are as follows:

(A) The percentage rate increases the Postal Service proposes for the various major categories of mail service are approximately as follows:

First-class (includes letter mail)—33.1% (increase from 15¢ to 20¢ for the first ounce).

Second-class (regular) (magazines and newspapers)—1.9% (increase in average rate paid per piece from 10.2¢ to 10.4¢).

Third-class bulk rate (regular)—17.7% (increase in average rate paid per piece from 8.5¢ to 9.5¢).

Fourth-class Parcel Post—8.4% (increase in average rate paid per piece from $2.12 to $2.34)

Special-rate (for books, records and tapes)—0.6% (increase in average rate paid per piece from 112.8¢ to 113.4¢).

Included with the Postal Service's request are various proposals affecting mailing practices. The proposed rate structure includes a three-cent discount for mailers who presort first-class mail by ZIP codes, and a four-cent discount for mailers who presort to the carrier route on which the mail will be delivered. Mailers who presort post cards to ZIP codes or carrier routes will receive discounts of one and two cents, respectively.

Other highlights of the proposed rate structure include a merger for rate purposes of the controlled circulation category of publications with regular second-class mail so that mailers of both categories of publications would pay the same rates. Second-class is for periodicals that have paying subscribers. Controlled circulation can be used with periodicals that do not have paying subscribers, such as trade journals sent without charge to the recipient. The Postal Service proposes an additional parcel post zone for items mailed within the delivery area of the bulk mail center, which is the central point in the area to which parcels are sent for processing; and a reduction of rates for lockbox rentals in small post offices where neither rural nor city delivery service is provided.

Additionally, the proposed rate structure and associated classification changes would eliminate some fees now required of mailers of presorted bulk first-class; create an additional zone for express mail and make return receipts available with it; charge an additional fee, of 20¢ or 60¢ depending on destination, for parcel post not compatible with Postal Service processing machines, and make insurance optional with registered mail.

(B) In its petition to intervene, the Council to Save the Post Card states that it intends to oppose the Postal Service's proposed 3¢ increase for post cards.

(C) In its petition to intervene, the Bank Stationers Association (BSA) states that it intends to oppose some of the Postal Service's proposed increases. From the petition, it appears that BSA may challenge the proposed increases in first-class, third-class, and fourth-class in the local and first zones.

(D) In its petition to intervene, the American Retail Federation states that upon preliminary inspection of the Postal Service's proposal, it is concerned that the proposed discounts for presort may not reflect the cost savings appropriately.

(E) In its petition to intervene, the National Newspaper Association supports the Postal Service's proposals for within-county rates and second-class regular rates, but it is concerned that the Postal Service's proposal to merge controlled circulation with second-class may have an adverse impact on second-class.

Currently, the parties to the proceeding are: USPS; Council to Save the Post Card; Bank Stationers Association; American Retail Federation; National Newspaper Association and the Officer of the Commission. The deadline for petitions to intervene was May 12, 1980. Based on past experience, there will probably be

approximately 50 to 60 parties in total, although as of this writing we do not know the number.

Summary of Benefits

Sectors Affected: United States Postal Service; the mailing public; and recipients of mail.

The purpose of this case is to adjust rates so that the Postal Service's revenues, together with appropriations, as nearly as practicable equal its expenses in accordance with 39 U.S.C. § 3621. The Postal Service says that the proposed increases, totaling $3.75 billion, are necessary to comply with the provisions of 39 U.S.C. § 3621. Any change in rates and fees that the Commission recommends must be in accordance with the factors listed in 39 U.S.C. § 3622(b). Any change in mail classification that the Commission recommends must be in accordance with the factors listed in 39 U.S.C. § 3623(c).

The Postal Service believes that an additional zone in the rate schedule for Express Mail and a new zone for parcel post to be delivered within the delivery area of the bulk mail center will allocate costs more accurately; that is, mail causing lower costs to the Postal Service will pay lower rates. Additionally, the Postal Service believes that the elimination of certain fees currently required with presorted bulk first-class mail will encourage more mailers to presort, to the benefit of both the mailers, through lower rates, and the Postal Service, through reduced processing of the mail before delivery. The Commission will consider the merits of these proposals, and those which other parties advance, during the course of the proceedings.

Summary of Costs

Sectors Affected: The mailing public; and recipients of mail.

The Postal Service estimates that its proposal would increase postal revenues by $3.75 billion. Increases in rates must be paid by users of the mails; businesses may pass along higher postal costs to their customers in higher prices for the goods and services they provide. The Commission cannot estimate the economic effect of this case until all the evidence is on the record, and it has made its analysis.

Related Regulations and Actions

None

Active Government Collaboration

None

Timetable

The following is a tentative hearing schedule:

Procedural Stage Month/Date/Year
Completion of all discovery directed to the Postal Service. (Answers due July 10, 1980 or 20 days after filing of the interrogatory, whichever is earlier.)—June 23, 1980
Filing of the case-in-chief of each participant (including that of OOC).—July 21, 1980
Conferences for the purpose of clarification of each participant's case.—August 1, 1980
Beginning of hearings, i.e., cross-examination on the Postal Service's case-in-chief.—to be issued
Completion of all discovery directed to the intervenors. (Answers will be due no later than 20 days after filing of the interrogatory.)—to be issued
Completion of evidentiary hearings as to the Service's case-in-chief.—to be issued
Beginning of evidentiary hearings as to the case-in-chief of each participant.—to be issued
Rebuttal evidence of the Postal Service and each participant. (No discovery to be permitted on this rebuttal evidence; only oral cross-examination.)—to be issued
Completion of the evidentiary hearings as to the case-in-chief of each participant.—to be issued
Beginning of evidentiary hearing on rebuttal evidence.—to be issued
Close of the evidentiary record. November 14, 1980
Initial briefs filed.—to be issued
Reply briefs filed.—to be issued
Oral argument.—to be issued

Available Documents

As the following documents are filed with the Commission or issued by it during the course of the proceedings, they will be available by contacting the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, D.C. 20268. (202) 254–3800:

Commission Order No. 332 instituting the proceeding in R80–1 and the Notice sent to the **Federal Register**, published at 45 FR 28552, April 29, 1980

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, and Requests for Oral Cross-Examination and Written Cross-Examination for Docket R80–1

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions and Notices, Petitions for Leave to Intervene and Requests for Limited Participation; and Commission's Recommended Decision for Docket R80–1

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INDEX I.—SECTORS AFFECTED BY REGULATORY ACTIONS

This index graphically highlights those sectors of our society—economic, environmental, and social—which the regulatory agencies have identified as being affected by the regulations that they are developing. This index is not intended to be a comprehensive listing of every sector affected either directly or indirectly by the regulations. We designed it to display only those sectors most directly affected. For full information on the effects of the regulation, the reader must refer to the more complete description in each Calendar entry.

This index presents the regulations in the order they appear in the Calendar—by chapter, and alphabetically by agency within each chapter. The seven chapters represent the broad policy objectives of agency regulatory activity.

For each regulation, the index identifies the major industrial and other sectors affected, and also highlights impacts on State and local governments, geographic areas, and "special" populations. (Special populations are those with particular characteristics such as age, income, health status, or ethnicity.)

A reader who is interested in a particular industry or group can easily identify those regulations that have a major impact on that industry or group. The reader should locate the relevant "Affected Activities" or "Special Impacts" heading and scan the columns within them to locate the specific industry or other sector in which he or she is interested. For each entry, the reader can then see the agency issuing the regulation, the title of the regulation affecting the sector of interest, and the page number on which the regulation appears in the Calendar.

Similarly, a reader who is interested in a particular regulation can identify the activities and groups that the particular regulation will affect significantly. Some regulations have an across-the-board impact on all sectors, which we indicate by drawing an arrow across all the appropriate columns.

Where possible in the "Affected Activities" columns, we have used nomenclature from the Standard Industrial Classification Manual published by the Office of Management and Budget in 1972. The S.I.C. terms define industries in accordance with the composition and structure of the economy and cover the entire field of economic activities. For industries, the index shows the following two categories: (1) regulated industries, that is, those industries that the regulation requires to take a specified action, and (2) industries that are important customers of the regulated industries, important suppliers, and providers of substitute products. We therefore identify the affected sector (1) and the sectors that will experience the most important indirect effects (2). By limiting category (2), we highlight the industries that will experience the largest impacts. It also avoids our burdening this index with a large number of entries that represent small impacts which are only remotely connected to the regulation.

The Sectors Affected Categories are listed below:

Affected Activities Include:

Agriculture, Forestry, Fishing, Mining

This division includes establishments primarily engaged in agricultural production of crops, seeds, and livestock, forestry, commercial fishing, mining, coal processing, oil and gas extraction, and related services. Manufacturing and processing of agricultural products away from the farm, packaging of fish, petroleum refining, and smelting and refining of metal are classified under "Manufacturing."

Construction

This division includes establishments primarily engaged in construction. The term "construction" includes new work, additions, alterations, and repairs. Three broad types of construction activity are covered: (1) building construction; (2) heavy construction, such as highways, tunnels, cemeteries and mines; and (3) construction by special trade contractors, such as painting and carpentry.

Manufacturing

This division includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. These establishments are usually described as plants, factories, or mills. The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying as well as products of other manufacturing establishments.

Transportation, Communications, Electric, Gas, and Sanitary Services

This division includes establishments providing to the general public or to other business enterprises passenger and freight transportation, communication services, electricity, gas, steam, water or sanitary services, and the U.S. Postal Service.

Trade

This division covers both wholesale and retail trade. Wholesale trade includes establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Retail trade includes establishments engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of the goods.

Finance, Insurance, Real Estate

This division includes establishments operating primarily in the fields of finance, insurance, and real estate. Finance includes banks, trust companies, credit agencies other than banks, investment companies, brokers and dealers in securities and commodity contracts, and security and commodity exchanges. Insurance covers carriers of all types of insurance, and all insurance agents and brokers. Real estate includes owners, lessers, lessees, buyers, sellers, agents and developers of real estate.

Services

This division includes establishments primarily engaged in providing a wide variety of services for individuals, business and government establishments, and other organizations. Included are health, engineering, and other professional services; educational institutions; business and repair services; and membership organizations.

Other

This category includes those affected sectors which do not readily fall into any of the previous six divisions.

Special Impacts Include:

State, Local Government

Entries appear in this category if State or local governments are regulated directly by the proposed regulatory action, are involved in implementing it, or are affected by it in some other way.

Special Populations

This includes population groups which agencies have identified as being potentially affected by the regulation. They include segments of the population defined by age, income, health status, ethnicity, or nationality.

Geographic Areas

In this category, agencies have indicated certain areas of the country that may be affected by the regulation, such as specific States or regions.

Other

This category includes any special remarks the agencies may wish to make. Agencies also use the column to record the words "small business", if the regulation affects or is specially designed to account for effects on small business.

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Chapter 1: Energy

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DOE-ERA 36868 Motor Gasoline Allocation Regulations Revisions					Retail Gasoline Sales Outlets					Urban	Small Business
DOE-ERA 36870 Natural Gas Curtailment Priorities for Interstate Pipelines	Agricultural Users		Industrial Users.	Interstate Pipelines; Natural Gas Distribution	Commercial Users						
DOE-ERA 36871 Powerplant and Industrial Fuel Use Act of 1978; Implementing Regulations	Coal Mining		Major Fuel-burning Installations	Electric Services							
DOE-ERA 36872 Proposed Amendments to the Equal Application Rule			Petroleum Refining		Independent Gasoline Retail; Chain Retail and Wholesale						Small Business
DOE-RA 36874 Outer Continental Shelf (OCS) Sequential Bidding Regulations	Off-Shore Oil and Gas Extraction									Outer Continental Shelf	Small Business
DOE-RA 36875 Profit Share Bidding System Regulations for Federal Outer Continental Shelf (OCS) Oil and Gas Leases	Off-Shore Oil and Gas Extraction									Outer Continental Shelf	Small Business
DOE-RA 36876 Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales	Coal Mining										Small Business
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EPA-OANR-OMSAPC Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy Duty Engines	36917			Heavy Duty Engines; Light Duty Trucks								
EPA-OANR-OMSAPC Heavy-Duty Diesel Particulate Regulations	36919			Heavy Duty Diesel Engines and Vehicles								
EPA-OWWM Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron & Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters into Publicly Owned Treatment Works	36920			Iron and Steel						State		
EPA-OWWM Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways	36922			Pulp, Paper, and Paperboard Mills						State		
EPA-OWWM Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants	36923				Electric Services				Aquatic Environment	State		Small Business
HUD-FHA Coinsurance for Private Mortgage Lenders (New Construction)	36925		Residential Building Contractors				Savings and Loans and Banks; Rental Housing Developers				Occupants of Low- and Moderate Income Housing Projects	

Chapter 3: Finance and Banking

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION	PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
TREAS-OCC Description of Office, Procedures, Public Information; Supplemental Application Procedures; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Policy Statements	36926						National Banking Industry					
TREAS-OCC Lending Limits; Unimpaired Surplus Fund	36926						National Banking Industry			State; Local	Rural Areas	
NCUA Deregulation of Loan Interest Rate Classification	36928						Federal Credit Unions					
CFTC Proposed Rules Concerning Foreign Brokers and Traders	36930						Registered Domestic Futures Commission Merchants; Foreign Commodities Brokers and Traders					
CFTC Review of Guideline No. 1--Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation	36930						Commodities Markets; Boards of Trade					
FHLBB Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	36932	Saving and Loan Associations; Federal Home Loan Banks										
SEC Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems	36933	← Publicly Traded Companies Required to Register with SEC →										

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION / PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
SEC 36935 Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies						Registered Open-ended Management Investment Companies; Unit Investment Trusts					
USDA-FSQS 36938 Proposed Polychlorinated Biphenyls (PCBs) Regulation			Meat, Poultry and Egg Products								
USDA-FSQS 36940 Voluntary Meat and Poultry Quality Control Systems			Meat and Poultry Processed Products								Small Business
HEW-FDA 36942 Chemical Compounds Used in Food Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues	Livestock		Veterinary Pharmaceuticals								
HEW-FDA 36943 Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food-Packaging Materials Plants; Polychlorinated Biphenyls (PCBs)			Transformers and Capacitors; Food; Food Packaging Materials		Food and Feed Warehousing						
HEW-FDA 36946 Food Labeling Initiatives			Food								Small Business
HEW-FDA 36947 Prescription Drug Products; Patient Labeling Requirements			Pharmaceuticals				Health				
HEW-HCFA 36949 Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities							Skilled Nursing and Intermediate Care Facilities		State Health Agencies		

Chapter 4: Health and Safety

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION / PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
HEW-HCFA 36950 Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)--General Notice							Health				
HEW-HCFA 36951 Uniform Reporting Systems for Health Service Facilities and Organizations							Health				
HUD-NVACP 36952 Lead-Based Paint Poisoning Prevention Act Regulations						Hud-assisted Housing				Children	
DOL-MSHA 36953 Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines	Coal Mining										
DOL-MSHA 36954 Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers		Mine Construction									
DOL-MSHA 36955 Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines	Metal and Nonmetal Mining										
DOL-MSHA 36956 Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations	Metal and Nonmetal Mining										
DOL-MSHA 36957 Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines	Mining	Mine Sites									
DOL-OSHA 36958 Chemical Substance Identification (Labeling)								All Industries Involved with Hazardous Chemicals			Small Business
DOL-OSHA 36960 Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation			Pesticides								

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AGENCY / TITLE OF REGULATION / PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
DOL-OSHA 36962 Occupational Noise Exposure Hearing-Conservation Amendment			All Manufacturing Industries	Electric, Gas and Sanitary Services					State Agencies with Industrial Programs		
DOL-OSHA 36964 OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standard for Ladders and Scaffolding, and Floor and Wall Openings, and Stairways	← All General Industries →										
DOL-OSHA 36965 Regulation for Reducing Safety and Health Hazards in Abrasive Blasting Operations		Construction, Particularly Heavy Construction	Manufacturing Using Abrasive Blasting	Railroads							
DOL-OSHA 36967 Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas		Construction						All Other Industries Involved in the Building and Maintenance of Underground Facilities			
DOL-OSHA 36968 Safety and Health Regulations for Entry and Work in Confined Spaces in Construction								All industries with Employees Working in Confined Spaces			Small Business
DOL-OSHA 36970 Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry		All Construction Industries	All Manufacturing Industries	Machinery and Process Users	Machinery and Process Users		Machinery and Process Users				
DOL-OSHA 36971 Standard for Occupational Exposure to Asbestos		Uses of Asbestos Products	Asbestos; Asbestos Substitutes				Establishments which Use Asbestos-Containing Products				
DOL-OSHA 36974 Standard for Occupational Exposure to Cadmium			Industries Using or Producing Cadmium								

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DOL-OSHA 36975 Standard for Occupational Exposure to Chromium			Industries Producing or Using Chromium or Substitutes								
DOL-OSHA 36977 Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities	Grainhandling Facilities; Grain Producers		Grain Products		Grain Shipping						
DOT-FAA 36979 Flammability Standards for Crewmember Uniforms			Textile Mill Products and Apparel; Other Textile Products	Air Transportation							
DOT-FHWA 36980 Hours of Service of Drivers				Interstate Trucking and Interstate Busing			Charter Bus Services		State		
DOT-FHWA 36981 Minimum Cab Space Dimensions			Trucks; Truck Cabs	Interstate Trucking							
DOT-FRA 36982 Alerting Lights Display--Locomotives				Rail Transportation							
DOT-NHTSA 36983 Heavy Duty Vehicle Brake Systems			Trucks, Buses, Tractor Trailers and Braking Systems	Trucking; Busing Bus Charter Services							
DOT-NHTSA 36984 Pedestrian Protection			Autos and Auto Parts	Automobile			Body Repair Shops				
DOT-USCG 36985 Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases			Liquified Cargo Vessels	Water Transportation of Bulk Liquified Gas				Marine Environment			
EPA-OANR 36986 Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes				Commercial Nuclear Power Plants							

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EPA-OANR 36987 Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	Mineral Mining		Industries Emitting Carcinogenic Substances							Gulf Coast, West Va., Northern New Jersey	
EPA-OANR 36989 Remedial Action Standards for Inactive Uranium Processing Sites									State	Southwest U.S., Oregon, North Dakota Pennsylvania	
EPA-OPTS 36992 Chemical Hazard Warning Labels			Chemical; Other								Small Business
EPA-OPTS 36994 Pesticide Registration Guidelines	Agriculture		Pesticides; Agricultural Chemicals					Chemical Biological Testing Laboratories			
EPA-OPTS 36995 Premanufacture Notification Requirements and Review Procedures			Chemical		Chemical Importing						
EPA-OPTS 36996 Rules Restricting the Commercial and Industrial Use of Asbestos Fibers	Asbestos Mining		Asbestos and Substitute Products		Wholesale Trade and Importing of Asbestos and Substitute Products			Industrial Users of Asbestos and Substitute Products	State; Local		
EPA-OPTS 36998 Test Rule for Chemical Substances and Mixtures -- Chloromethane and Chlorinated Benzenes			Chloromethane Chlorobenzenes								
EPA-OWWM 37000 Control of Organic Chemicals in Drinking Water				Municipally and Privately Owned Water Supply Systems					State; Local	Urban	
EPA-OWWM 37001 Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from General to Final Disposal			Industries Generating Hazardous Waste	Public and Private Waste Management					State		

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CPSC 37004 Consumer Products Containing Asbestos	Asbestos Mining		Products Containing Asbestos								
CPSC 37006 Omnidirectional Citizens Band Base Station Antenna Standard			CB Antennas								Small Antenna Manufacturers
CPSC 37007 Upholstered Furniture Cigarette Flammability Standard			Upholstered Furniture; Textile Mill Products								Small Business
CPSC 37009 Urea Formaldehyde Foam (UFF) Insulation			UFF Insulation				Installers of UFF Insulation			People with Respiratory Problems and Allergies	
NRC 37011 Decommissioning of Nuclear Facilities Regulation			Nuclear Materials	Nuclear Power Plants					State		Small Business
NRC 37012 Disposal of High Level Radioactive Waste in Geologic Repositories Regulation								Establishments Producing High Level Radioactive Waste	State; Local		
HUD-HOUS 37014 Minimum Property Standards for One- and Two-Family Dwellings		Residential Buildings				Mortgage Banking					
DOJ-CRD 37014 Regulations Prohibiting Discrimination Solely on the Basis of Handicap in Federally Assisted Programs								DOJ Funded Private Entities	State; Local Law Enforcement	Handicapped	
DOJ-CRD 37015 Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance								DOJ Funded Private Entities	State; Local Law Enforcement		

Chapter 5: Human Resources

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION	PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
DOJ-INS Admission of Refugees and Asylum Procedures	37016								International Relief Organizations	State	Refugees	
DOJ-INS Employment Authorization	37017	← Industries Employing Aliens →									Aliens	
DOJ-OJARS/LEAA Equal Service Evaluation Guidelines	37018									State; Local Law Enforcement	Minorities	
DOL-ESA Sex Discrimination Guidelines--Employee Benefits	37019	← Industries with Employee Benefit Plans →							DOL Funded Activities		Women	
DOL-ETA Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance	37021								DOL Funded Activities		Handicapped	Small Business
DOL-LMSA Definition of Plan Assets and Establishment of Trust	37023	← Industries with Employee Benefit Plans →										Small Business
DOL-LMSA Individual Benefit Reporting and Recordkeeping	37024	← Industries with Employee Benefit Plans →										
EEOC-OPI Guidelines on Discrimination Because of Religion	37025			Industries Subject to Title VII of the Civil Rights Act of 1964								
EEOC-OPI Interim Amendment to Guidelines on Discrimination Because of Sex	37026			Industries Subject to Title VII of the Civil Rights Act of 1964								
EEOC-OPI Interpretive Guidelines on Employment Discrimination and Reproductive Hazards	37027								Industries in Which Workers are Exposed to Hazardous Substances			

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GSA-HRO Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Financial Assistance	37028								GSA Funded Programs and Activities	State; Local	Handicapped	Small Business
GSA-NARS Freedom of Information Act Requests for National Security Classified Information in the National Archives	37029											
VA-DMA State Cemetery Grants	37030		Cemetary Construction							State	Veterans and Their Families	
VA-OHG Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Veterans Administration (VA)	37030								VA Assisted Activities	State; Local		
VA-OHG Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance	37031								VA Assisted Activities	State; Local	Handicapped	
FDIC Disclosure of Information	37031						Insured State Non-Member Banks					
USDA-AMS Amendments to Federal Seed Act Regulations	37032	Seed Industry				Seed Importing				State		
USDA-AMS Proposed Federal Milk Order for the Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	37034	Dairy Farming		Milk Plants							Southwest Idaho; Eastern Oregon	
USDA-FSQS Proposed Net Weight Regulations	37035			Meat and Poultry						State; Local		Small Business
DOT-FHWA Buy America Requirements	37037		Highway	Steel Industry		Steel Importing				State		

Chapter 6: Trade Practices

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION / PAGE NO.	AFFECTED ACTIVITIES: AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	SPECIAL IMPACTS: STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
TREAS-ATF 37038 Advertising Regulations under the Federal Alcohol Administration Act			Alcoholic Beverages		Wholesale and Retail of Alcoholic Beverages		Advertis-ing		State		
TREAS-ATF 37040 Implementation of the Distilled Spirits Tax Revision Act of 1979			Distilled Spirits; Wine; Alcoholic Flavoring		Importing				State		
TREAS-ATF 37041 Unlawful Trade Practices under the Federal Alcohol Administration Act			Alcoholic Beverages		Wholesale and Retail of Alcoholic Beverages				State		
TREAS-CUSTOMS 37042 Accelerated Duty Payment					Custom-house Brokerage Services; Importing						Small Business
TREAS-CUSTOMS 37044 Civil Aircraft Regulations			Aircraft and Parts	Airline In-dustry			Aircraft Repair				
TREAS-CUSTOMS 37045 Imports of Petroleum and Petroleum Products					Petroleum Importing						
TREAS-CUSTOMS 37046 Valuation of Imported Merchandise for Customs Purposes					Importing; Custom-house Brokerage Services						
GSA-FPRS 37048 National Defense Stockpile Aquisition Regulations								Industries Supplying, Trading or Using Basic In-dustrial Raw Materials			
GSA-FPRS 37048 National Defense Stockpile Disposal Regulations								Industries Supplying, Trading, or Using Basic In dustrial Raw Materials			

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SBA Revision to Method of Establishing Size Standards and Definitions of Small Business	37049	← Small Businesses in All Industries →										
FTC Amendment to Eyeglasses Rule and Eyeglasses II	37051					Ophthalmologists, Optometrists, and Opticians				State		
FTC Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans	37053						Hospital and Medical Service Plans					
FTC Proposed Trade Regulation Rule on Mobile Home Sales and Service	37055			Mobile Homes						Some States	Mobile Home Dwellers	
FTC Residential Real Estate Brokerage Industry Practices	37057						Real Estate Brokers and Agents			Some States		
FTC Trade Regulation Rule Concerning Credit Practices	37059					Retail Sales of Consumer Products	Banking and Credit Agencies					
DOT-FHWA Certification of Vehicle Size and Weight Enforcement	37061				Trucking					State		
DOT-FHWA Design Standards for Highways - Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways	37062		Highway Construction	Highway Construction Supplies				Engineering		State; Local		
DOT-FHWA Withdrawal of Interstate Segments and Substitution of Alternative Transportation Projects	37063		Highway		Mass Transit			Transportation Planning		State Highway Agencies		

Chapter 7: Transportation and Communication

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY / TITLE OF REGULATION	PAGE NO.	AFFECTED ACTIVITIES								SPECIAL IMPACTS		
		AGRICULTURE, FORESTRY, FISHING, MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	TRADE	FINANCE, INSURANCE, REAL ESTATE	SERVICES	OTHER	STATE, LOCAL GOVERNMENT	SPECIAL POPULATIONS, GEOGRAPHIC AREAS	OTHER
CAB Air Carrier Fitness	**37064**				Air Transportation							
CAB Air Carrier Insurance and Liability	**37065**				Air Transportation		Insurance					Small Business
CAB Essential Air Service Subsidy Guidelines	**37066**				Air Transportation							Small Commuter Airlines
CAB Plain English for Airline/Passenger Contracts	**37068**				Air Transportation							
FCC Children's Television Programming and Advertising Practices	**37069**				Television Broadcasting						Children	
FCC Creation of "New" Personal Radio Service	**37069**			Two-Way Radio	Radio Broadcasting						Personal Radio Service Users	
FCC Deregulation of Competitive Domestic Telecommunications Market	**37070**				Telecommunications							Small Business
FCC Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation	**37071**				Radio Broadcasting						Radio Listeners	
FMC Amendments to Tariff Filing Requirements for Controlled Carriers	**37073**				All Common Carriers in the Foreign Commerce of the United States							
FMC Filing of Currency Adjustment Factors	**37074**				Steamship Carriers Operating in U.S. Foreign Commerce			Ocean Carrier Conferences				

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FMC Revision of Commission General Order 4, "Licensing of Independent Ocean Freight Forwarders"	**37075**				Independent Ocean Freight Forwarding; Oceangoing Common Carriers							
ICC Improvement of TOFC/COFC Regulation	**37077**				Railroad and Trucking						Western States	Small Business
		← Shippers of Goods by Rail and Truck →										
ICC Intercorporate Hauling	**37078**	← Corporations with Private Truck Fleets →										
ICC No Suspend Zone--Motor Common Carriers of Property	**37080**				Trucking							Small Business
PRC Experimental Classification Rulemaking	**37081**				U.S. Postal Service							
PRC Postal Rate Commission Docket MC79-3 (Red Tag)	**37083**				U.S. Postal Service; Second Class Mail							
PRC Postal Rate Commission Docket R80-1 (Postal Rate and Fee Changes, 1980)	**37084**				U.S. Postal Service							

INDEX II: DATE OF NEXT REGULATORY ACTION

This index graphically displays the anticipated date of the next regulatory action that the agency plans to take for each proposed regulation the agency has described in this edition of the Calendar. The index is organized alphabetically by agency, unit within the agency, and then by the title of the regulation.

The actions we note fall into four general categories: ANPRM (the date on which the agency plans to publish an Advance Notice of Proposed Rulemaking in the Federal Register), NPRM (the date on which the agency or department plans to publish a Notice of Proposed Rulemaking in the Federal Register), Final Rule (the date on which the agency plans to publish the final rule in the Federal Register), and Other (the category that indicates the date of any other important next action that does not fall into the above three categories). Independent agencies are most likely to have "Other" actions, such as Staff Recommendations or Commission Decisions.

To see the schedule which the agency anticipates for all future actions on a regulation, the reader should turn to the Calendar entry for that regulation and refer to the Timetable section of the entry.

NOTE: In most cases, the Agencies can only estimate these dates. For current information on any action, please call the agency contact listed in the specific entry.

AGENCY	TITLE OF REGULATION	PAGE NO.	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	JAN '81	FEB '81	MAR '81	APR '81	MAY '81	JUN '81	JUL '81 and beyond
USDA-AMS	Amendments to Federal Seed Act Regulations	37032												←	N	→	
USDA-AMS	Proposed Federal Milk Order for the Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	37034						O									
USDA-FSQS	Proposed Net Weight Regulations	37035	←	N	→												
USDA-FSQS	Proposed Polychlorinated Biphenyls (PCBs) Regulation	36938			←	F	→										
USDA-FSQS	Voluntary Meat and Poultry Quality Control Systems	36940	←	F	→												
USDA-SCS	Watershed Protection and Flood Prevention Program	36884				←	A	→									
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean	36885		←	F	→											

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

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DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area	36887	←F→														
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters	36890				F											
DOC-NOAA /OCZM	Channel Islands Marine Sanctuary Regulations	36892		F													
DOE-CS	Emergency Building Temperature Restrictions	36851	N→														
DOE-CS	Energy Conservation Program for Consumer Products Other than Automobiles	36852								F			N				
DOE-CS HUD-NVACP	Energy Performance Standards for New Buildings	36856				N F											
DOE-CS	Standby Federal Emergency Conservation Plan	36854		F													
DOE-ERA	Amendments to Puerto Rican Naptha Entitlements Regulations	36857	N→														
DOE-ERA	Amendments to the Crude Oil Supplier/ Purchaser Rule	36859			←F→												
DOE-ERA	Amendments to the Emergency Provisions of the Crude Oil Buy/Sell Program	36850	Final rule date unknown														
DOE-ERA	Decontrol of Propane/Simplified Propane Price Rules	36862	Awaiting final decision about whether to proceed														
DOE-ERA	Decontrol of Synthetic Natural Gas Feedstocks	36864	←N→														

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	JAN '81	FEB '81	MAR '81	APR '81	MAY '81	JUN '81	JUL'81 and beyond
DOE-ERA	Entitlement Adjustments to Alaskan North Slope (ANS) Upper Tier Crude Oil	36864	←N→														
DOE-ERA	Gasohol Marketing Regulations	36866	←N→														
DOE-ERA	Incentives to Refine Lower Quality Crude Oil	36867		←O→													
DOE-ERA	Motor Gasoline Allocation Regulations Revisions	36868	←N→														
DOE-ERA	Natural Gas Curtailment Priorities for Interstate Pipelines	36870	←N→														
DOE-ERA	Powerplant and Industrial Fuel Use Act of 1978; Implementing Regulations	36871	←F→		←F→												
DOE-ERA	Proposed Amendments to the Equal Application Rule	36872	←F→		←N→												
DOE-RA	Outer Continental Shelf (OCS) Sequential Bidding Regulations	36874	←F→														
DOE-RA	Profit Share Bidding System Regulations for Federal Outer Continental Shelf (OCS) Oil and Gas Leases	36875	F														
DOE-RA	Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales	36876				F											
HEW-FDA	Chemical Compounds Used in Food Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues	36942			F												
HEW-FDA	Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food-Packaging Materials Plants; Polychlorinated Biphenyls (PCBs)	36943	Final Rule to be coordinated with EPA, USDA														

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HEW-FDA	Food Labeling Initiatives	36946		←—	O	—→											
HEW-FDA	Prescription Drug Products; Patient Labeling Requirements	36947							←—	F	—→						
HEW-HCFA	Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities	36949	←—	N	—→												
HEW-HCFA	Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)--General Notice	36950	←—	O	—→												
HEW-HCFA	Uniform Reporting Systems for Health Service Facilities and Organizations	36951								←—						F	—→
										←—						N	—→
HUD-FHA	Coinsurance for Private Mortgage Lenders (New Construction)	36925				N											
HUD-HOUS	Minimum Property Standards for One- and Two-Family Dwellings	37014		N													
HUD-NVACP	Lead-Based Paint Poisoning Prevention Act Regulations	36952							N								
DOI-BLM	Surface Management of Mining Claims Located on the Public Lands	36894				N											
DOI-HCRS	Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands	36895		N													
DOI-HCRS	Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	36897		F													
DOI-OSM	Definition: "Surface Coal Mining Operations" and "Coal-Processing Plant"	36900					A										

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DOI-OSM	Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds	36901					A										
DOI-OSM	Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Performance Bonding	36903		F													
DOI-WPRS	Rules and Regulations for Acreage Limitation Under Federal Reclamation Law	36904								N							
DOJ-CRD	Regulations Prohibiting Discrimination Solely on the Basis of Handicap in Federally Assisted Programs	37014	F														
DOJ-CRD	Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance	37015	N														
DOJ-INS	Admission of Refugees and Asylum Procedures	37016			O												
DOJ-INS	Employment Authorization	37107			F												
DOJ-OJARS /LEAA	Equal Service Evaluation Guidelines	37018		N													
DOJ-OJARS /LEAA	Procedures Relating to the Implementation of the National Environmental Policy Act	36905				F											
DOL-ESA	Sex Discrimination Guidelines--Employee Benefits	37019	Undecided at time of publication														
DOL-ETA	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance	37021				F											
DOL-LMSA	Definition of Plan Assets and Establishment of Trust	37023	Date of publishing final rule undecided														

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DOL-LMSA	Individual Benefit Reporting and Recordkeeping	37024		N													
DOL-MSHA	Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines	36953			N												
DOL-MSHA	Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers	36954								A							
DOL-MSHA	Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines	36955					A										
DOL-MSHA	Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations	36956					O										
DOL-MSHA	Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines	36957					N										
DOL-OSHA	Chemical Substance Identification (Labeling)	36958		N													
DOL-OSHA	Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation	36960						N									
DOL-OSHA	Occupational Noise Exposure Hearing-Conservation Amendment	36962						F									
DOL-OSHA	OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standard for Ladders and Scaffolding, and Floor and Wall Openings, and Stairways	36964						N									
DOL-OSHA	Regulation for Reducing Safety and Health Hazards in Abrasive Blasting Operations	36965								N							

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DOL-OSHA	Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas	36967				N											
DOL-OSHA	Safety and Health Regulations for Entry and Work in Confined Spaces in Construction	36968								N							
DOL-OSHA	Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry	36970	A	N													
DOL-OSHA	Standard for Occupational Exposure to Asbestos	36971					N	N									
DOL-OSHA	Standard for Occupational Exposure to Cadmium	36974								N	N						
DOL-OSHA	Standard for Occupational Exposure to Chromium	36975					N	N									
DOL-OSHA	Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities	36977					A	A									
DOT-FAA	Flammability Standards for Crewmember Uniforms	36979			N												
DOT-FHWA	Buy America Requirements	37037	N														
DOT-FHWA	Certification of Vehicle Size and Weight Enforcement	37061			F												
DOT-FHWA	Design Standards for Highways-Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways	37062	N														
DOT-FHWA	Hours of Service of Drivers	36980							N								
DOT-FHWA	Minimum Cab Space Dimensions	36981					N										

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DOT-FHWA	Withdrawal of Interstate Segments and Substitution of Alternative Transportation Projects	37063		←F→													
DOT-FRA	Alerting Lights Display--Locomotives	36982			F												
DOT-NHTSA	Fuel Economy Standards for Model Year 1983-85 Light Trucks	36878								F							
DOT-NHTSA	Heavy Duty Vehicle Brake Systems	36983	Date unknown at time of publication														
DOT-NHTSA	Pedestrian Protection	36984						N									
DOT-USCG	Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases	36985								N							
DOT-USCG	Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage	36906	Date unknown at time of publication														
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	37038				N											
TREAS-ATF	Implementation of the Distilled Spirits Tax Revision Act of 1979	37040											F				
TREAS-ATF	Unlawful Trade Practices under the Federal Alcohol Administration Act	37041		F													
TREAS-CUSTOMS	Accelerated Duty Payment	37042		←N→													
TREAS-CUSTOMS	Civil Aircraft Regulations	37044		←F→													
TREAS-CUSTOMS	Imports of Petroleum and Petroleum Products	37045		←F→													
TREAS-CUSTOMS	Valuation of Imported Merchandise for Customs Purposes	37046				←F→											

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TREAS-OCC	Description of Office, Procedures, Public Information; Supplemental Application Procedures; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Policy Statements	36926	N														
TREAS-OCC	Lending Limits; Unimpaired Surplus Fund	36926		N													
EPA-OANR	Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes	36986		N													
EPA-OANR	Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	36987								O							
EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone and Lead)	36907	A														
EPA-OANR	Remedial Action Standards for Inactive Uranium Processing Sites	36989						F									
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide	36909		N													
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide	36910											N				
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter	36911					N										

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EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Dioxide	36912					←	N	→								
EPA-OANR	Standards of Performance to Control Atmospheric Emissions from Industrial Boilers	36913										N					
EPA-OANR	Visibility Protection Requirements	36914							F								
EPA-OANR -OMSAPC	Fuels and Fuel Additives	36915								A							
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks	36916	F														
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy Duty Engines	36917			N												
EPA-OANR -OMSAPC	Heavy-Duty Diesel Particulate Regulations	36919		N													
EPA-OPTS	Chemical Hazard Warning Labels	36992			N												
EPA-OPTS	Pesticide Registration Guidelines	36994	Proposed subparts will go final between June and November 1980. Other subparts will be proposed between June 1980 and March 1981.														
EPA-OPTS	Premanufacture Notification Requirements and Review Procedures	36995					F										
EPA-OPTS	Rules Restricting the Commercial and Industrial Use of Asbestos Fibers	36996								←	N	→					
EPA-OPTS	Test Rule for Chemical Substances and Mixtures -- Chloromethane and Chlorinated Benzenes	36998		N													
EPA-OWWM	Control of Organic Chemicals in Drinking Water	37000				←	N	→									

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EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron & Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters into Publicly Owned Treatment Works	36920								N							
EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways	36922					N										
EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants	36923			N												
EPA-OWWM	Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from General to Final Disposal	37001						F									
EEOC-OPI	Guidelines on Discrimination Because of Religion	37025				F											
EEOC-OPI	Interim Amendment to Guidelines on Discrimination Because of Sex	37026	Next regulatory action unknown at this time														
EEOC-OPI	Interpretive Guidelines on Employment Discrimination and Reproductive Hazards	37027	Next regulatory action unknown at this time														
GSA-FPRS	National Defense Stockpile Aquisition Regulations	37048						F									
GSA-FPRS	National Defense Stockpile Disposal Regulations	37048						F									

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GSA-HRO	Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Financial Assistance	37028			F												
GSA-NARS	Freedom of Information Act Requests for National Security Classified Information in the National Archives	37029			N												
NCUA	Deregulation of Loan Interest Rate Classification	36928			F												
SBA	Revision to Method of Establishing Size Standards and Definitions of Small Business	37049				N											
VA-DMA	State Cemetery Grants	37030		F													
VA-OHG	Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Veterans Administration (VA)	37030	N														
VA-OHG	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance	37031	F														
CAB	Air Carrier Fitness	37064	F														
CAB	Air Carrier Insurance and Liability	37065		F													
CAB	Essential Air Service Subsidy Guidelines	37066	N														
CAB	Plain English for Airline/Passenger Contracts	37068		N													
CFTC	Proposed Rules Concerning Foreign Brokers and Traders	36930					F										

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CFTC	Review of Guideline No. 1--Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation	36930					←N→										
CPSC	Consumer Products Containing Asbestos	37004	O														
CPSC	Omnidirectional Citizens Band Base Station Antenna Standard	37006												N			
CPSC	Upholstered Furniture Cigarette Flammability Standard	37007										←O→					
CPSC	Urea Formaldehyde Foam (UFF) Insulation	37009					O										
FCC	Children's Television Programming and Advertising Practices	37069		←O→													
FCC	Creation of "New" Personal Radio Service	37069									←N→						
FCC	Deregulation of Competitive Domestic Telecommunications Market	37070			←O→												
FCC	Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation	37071		O													
FDIC	Disclosure of Information	37031	Final rule pending final coordination with other federal financial supervisory agencies.														
FERC	High-Cost Natural Gas Produced from Tight Formations	36879					←F		→F								
FERC	Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978	36880			F												

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FERC	Regulations Governing Applications for Major Unconstructed Projects	36882			←N→												
FERC	Regulations Governing the Safety of all Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act	36883				F											
FHLBB	Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	36932	FHLBB will propose regulations on a continuing basis until it implements all provisions of the act.														
FMC	Amendments to Tariff Filing Requirements for Controlled Carriers	37073		N													
FMC	Filing of Currency Adjustment Factors	37074					←F→										
FMC	Revision of Commission General Order 4, "Licensing of Independent Ocean Freight Forwarders"	37075								←F→							
FTC	Amendment to Eyeglasses Rule and Eyeglasses II	37051		←		A			→								
FTC	Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans	37053		←		O			→								
FTC	Proposed Trade Regulation Rule on Mobile Home Sales and Service	37055	←O→														
FTC	Residential Real Estate Brokerage Industry Practices	37057	Commission will decide on the nature of action to take														
FTC	Trade Regulation Rule Concerning Credit Practices	37059					←	O	→								
ICC	Improvement of TOFC/COFC Regulation	37077	←N→														
ICC	Intercorporate Hauling	37078		O													

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ICC	No Suspend Zone--Motor Common Carriers of Property	37080		F													
NRC	Decommissioning of Nuclear Facilities Regulation	37011															O September 81
NRC	Disposal of High Level Radioactive Waste in Geologic Repositories Regulation	37012	A							F							
PRC	Experimental Classification Rulemaking	37081	No date available at time of this publication														
PRC	Postal Rate Commission Docket MC79-3 (Red Tag)	37083	No date available at time of this publication														
PRC	Postal Rate Commission Docket R80-1 (Postal Rate and Fee Changes, 1980)	37084					O										
SEC	Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems	36933					F										
SEC	Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies	36935					F										

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INDEX III: DATES FOR PUBLIC PARTICIPATION OPPORTUNITIES

This index provides the basic timetable information needed by readers who are interested in participating in the development of regulations. The index is organized alphabetically by agency, by unit within the agency, and then by the title of the regulation.

The index graphically displays the dates of public comment periods, meetings, and hearings on proposed regulations which agencies describe in this edition of the Calendar. Where possible, we indicate the length and closing dates of the comment periods, where the public should send their written comments, the dates and locations of public hearings and meetings, and the next regulatory action for the entry. The index also indicates whether the agencies provide funding or technical assistance for each regulation.

Not all regulations described in the Calendar are included here; only those with present or future opportunities for public participation. Those which are not listed usually had public comment periods, meetings, or hearings that have passed.

For more information about public participation opportunities, the reader should consult Appendix II: Public Participation in the Federal Regulatory Process. For further information on each regulation the reader should refer to the text of the entry in the appropriate Chapter of the Calendar.

AGENCY	TITLE OF REGULATION	PAGE	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	JAN '81	FEB '81	MAR '81	APR '81	MAY '81	FUNDING, TECHNICAL ASSISTANCE AVAILABLE (YES/NO)	NEXT REGULATORY ACTION	COMMENTS
USDA-AMS	Amendments to Federal Seed Act Regulations	37032												←C→		Funding - No Assistance - Yes	NPRM	Public meetings-September, 1979 Public hearing-Planned following NPRM, if USDA decides to amend regulations
USDA-AMS	Proposed Federal Milk Order for the Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	37034	←		C	→										Funding - No Assistance - Yes	Revised Recommeded Decision	Public hearing-December, 1978. Reopened-hearing-February, 1980
USDA-FSQS	Proposed Net Weight Regulations	37035		←	C	→										Funding - No Assistance - Yes	NPRM	2 economic studies were commissioned in late '77 and early '78 available from USDA. FSQS and FDA held several public hearings
USDA-SCS	Watershed Protection and Flood Prevention Program	36884							←C	→						Funding - No Assistance - Yes	ANPRM	
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean	36885	C	→												Yes	Final Rule	Public comment period-closed on May 27, 1980 Compensation for public participation may be available on a case-by-case basis.
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters	36890														Yes	NPRM	Compensation for public participation may be available on a case-by-case basis.
DOC-NOAA -OCZM	Channel Islands Marine Sanctuary Regulations	36892	←	C	→											Yes	Final Rule	Initial comment period on Draft Environmental Impact statement(EIS) from December 5, 1978 to March 7, 1980. Comment period indicated in this index will be on final EIS and proposed final rule. Compensation for public participation may be available on a case-by-case basis.

PUBLIC COMMENT PERIOD = C PUBLIC MEETING = M PUBLIC HEARING = H OTHER = O

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DOE-CS	Emergency Building Temperature Restrictions	36851		C												No	NPRM	Public comment period 30 days following NPRM Public hearing to be announced
DOE-CS	Energy Conservation Program for Consumer Products Other than Automobiles	36852	C	M	H											No	Final Rule	Public hearings - Washington, D.C Chicago
DOE-CS HUD-NVA-CP	Energy Performance Standards for New Buildings	36856					C	C								No	Final Rule NPRM	Public comment period - for 60 days following NPRM published by HUD
DOE-CS	Standby Federal Emergency Conservation Plan	36854			C											No	Final Rule	
DOE-ERA	Amendments to Puerto Rican Naptha Entitlements Regulations	36857			C											No	NPRM	Public comment period - for 60 days following NPRM
DOE-ERA	Amendments to the Crude Oil Supplier/ Purchaser Rule	36859	C	H												No	Final Rule	Public hearings - Washington, D.C. (May 29 1980) and Los Angeles (June 3 and 4, 1980)
DOE-ERA	Decontrol of Propane/Simplified Propane Price Rules	36862														No	Other	Awaiting decision about whether to proceed
DOE-ERA	Decontrol of Synthetic Natural Gas Feedstocks	36864		C												No	NPRM	
DOE-ERA	Entitlement Adjustments to Alaskan North Slope (ANS) Upper Tier Crude Oil	36864	C													No	NPRM	Public comment period - 30 or 60 days after NPRM
DOE-ERA	Gasohol Marketing Regulations	36866		C	H											No	NPRM	
DOE-ERA	Motor Gasoline Allocation Regulations Revisions	36868		C	H											No	NPRM	Public comment-60 days after NPRM Public hearings in Washington, D.C and other locations nationwide
DOE-ERA	Natural Gas Curtailment Priorities for Interstate Pipelines	36870	C		H											No	NPRM	Public hearings - Washington, D.C Atlanta Houston, and San Fransisco Public comment period-60 days after NPRM
DOE-ERA	Powerplant and Industrial Fuel Use Act of 1978; Implementing Regulations	36871	C		C											No	Final Rule	
DOE-ERA	Proposed Amendments to the Equal Application Rule	36872														No	Final Rule Further NPRM	Public hearings-held in Denver (October 18 1979) and Washington, D.C (October 27 1979)

PUBLIC COMMENT PERIOD = C **PUBLIC MEETING = M** **PUBLIC HEARING = H** **OTHER = O**

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DOE- RA	Outer Continental Shelf (OCS) Sequential Bidding Regulations	36874	C													No	Final Rule	Public comment period-closed November 15, 1979. Public hearing - Washington, D.C. (October 15, 1979)
DOE- RA	Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales	36876		C												No	Final Rule	Public comment period-within 60 days after NPRM
HEW-FDA	Food Labeling Initiatives	36946														No	Other	Comments accepted on individual proposals. See entry for Agency Contact.
HEW-HCFA	Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities	36949														No	NPRM	See entry for Agency Contact.
HUD-FHA	Coinsurance for Private Mortgage Lenders (New Construction)	36925					C									No	NPRM	Public comment period - 60 days following NPRM
HUD-HOUS	Minimum Property Standards for One- and Two-Family Dwellings	37014			C											No	NPRM	Public comment period - 60 days following NPRM
HUD-NVACP	Lead-Based Paint Poisoning Prevention Act Regulations	36952		C						C						No	NPRM	Public comment period - 60 days following ANPRM (May 16, 1980) and 60 days following NPRM
DOI-BLM	Surface Management of Mining Claims Located on the Public Lands	36894				C											Final Rule	Public comment period 30 days following NPRM.
DOI-HCRS	Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands	36895			C												NPRM	Public comment period closes approx. Sept 15, 1980. Public hearings will be held in Albuquerque, Sacramento, Denver, Chicago and Atlanta
DOI-OSM	Definition: "Surface Coal Mining Operations" and "Coal-Processing Plant"	36900			H						C						ANPRM	Public hearings - February 15, 1981 in Washington, Indianapolis, Denver, written comments accepted. See calendar entry for addresses.
DOI-OSM	Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds	36901						H									ANPRM	
DOI-WPRS	Rules and Regulations for Acreage Limitation Under Federal Reclamation Law	36904						C		H							NPRM	
DOJ-CRD	Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance	37015			C											No	NPRM	Public comment period - tentatively scheduled through August.
DOJ-INS	Admission of Refugees and Asylum Procedures	37016			C											No	Interim regulations	Send written comments to Commissioner, Immigration and Naturalization Service, 425 Eye Street, N.W., Room 7100, Washington, D.C. 20536

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DOJ-INS	Employment Authorization	37017	C→													No	Final Rule	Public comment period-closes May 27, 1980 Send written comments to Commissioner, Immigration and Naturalization Service, 425 Eye Street, N.W. Room 7100, Washington, D.C. 20536
DOJ-OJARS /LEAA	Equal Service Evaluation Guidelines	37018		←—	C	—→										No	Final Rule	Public comment period June to August, 1980; 60 days following NPRM
DOJ-OJARS /LEAA	Procedures Relating to the Implementation of the National Environmental Policy Act	36905	←—	C	—→											No	Final Rule	Public comment period May to July, 1980. 60 days following NPRM
DOL-LMSA	Definition of Plan Assets and Establishment of Trust	37023														No	Final Rule	Date of Final Rule - undecided
DOL-LMSA	Individual Benefit Reporting and Recordkeeping	37024														No	NPRM	Public comment period following NPRM
DOL-MSHA	Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines	36953				←—	C	—→								No	NPRM	Public hearings - begin 90 days after close of public comment period
DOL-MSHA	Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers	36954														No	ANPRM	Undecided at present
DOL-MSHA	Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines	36955												←—	C —→	No	ANPRM	
DOL-MSHA	Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations	36956	C→													No	Other	Public comment period - closed May 27, 1980.
DOL-MSHA	Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines	36957						←—	C —→							No	NPRM	Public hearings - locations will be announced
									←—	H —→								
DOL-OSHA	Chemical Substance Identification (Labeling)	36958														No	NPRM	Public comment period - following NPRM
DOL-OSHA	Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation	36960														No	NPRM	Public comment period - following NPRM
DOL-OSHA	Occupational Noise Exposure Hearing-Conservation Amendment	36962	←C	—→												No	Final Rule	Public comment period - closes June 9, 1980.
DOL-OSHA	OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standard for Ladders and Scaffolding, and Floor and Wall Openings, and Stairways	36964														No	NPRM	Public comment period - 90 days after NPRM Public hearings - will be held in at least 3 cities

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DOL-OSHA	Regulation for Reducing Safety and Health Hazards in Abrasive Blasting Operations	36965														No	NPRM	Public comment period follwing NPRM Public hearing - following NPRM
DOL-OSHA	Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas	36967					←C→		H							No	NPRM	Informal hearing - late fall, 1980.
DOL-OSHA	Safety and Health Regulations for Entry and Work in Confined Spaces in Construction	36968									←C→		H			No	NPRM	Public comment period following NPRM
DOL-OSHA	Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry	36970														No	ANPRM	Public comment period - 60 days after ANPRM Public meetings - 30 days after ANPRM
DOL-OSHA	Standard for Occupational Exposure to Asbestos	36971														No	NPRM	Public comment period - 60 days after NPRM Informal meetings- after NPRM
DOL-OSHA	Standard for Occupational Exposure to Cadmium	36974														No	NPRM	Public comment period following NPRM Public hearing - after NPRM
DOL-OSHA	Standards for Occupational Exposure to Chromium	36975														No	NPRM	Public comment period - following NPRM
DOL-OSHA	Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities	36977														No	ANPRM	Public comment period- following NPRM
DOT-FAA	Flammability Standards for Crewmember Uniforms	36979	H			←C→											NPRM	Public comment period for hearing - closes June 6, 1980. Public comment period - 90-120 days following NPRM
DOT-FHWA	Buy America Requirements	37037															NPRM	Public comment period - following NPRM
DOT-FHWA	Design Standards for Highways - Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways	37062															NPRM	Public comment period - following NPRM
DOT-FHWA	Hours of Service of Drivers	36980															NPRM	Public comment period - following NPRM
DOT-FHWA	Minimum Cab Space Dimensions	36981															NPRM	Public comment period - following NPRM
DOT-NHTSA	Heavy Duty Vehicle Brake Systems	36983															NPRM	Date unknown at time of publication
DOT-NHTSA	Pedestrian Protection	36984															NPRM	Public comment period following NPRM
DOT-USCG	Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases	36985															NPRM	Public comment period - following NPRM

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DOT-USCG	Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage	36906															Other	The National Academy of Sciences conducted a workshop on the proposal - April 15 and 16, 1980.
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	37038				←		C			→					No	NPRM	Anticipated comment period: 8/10/80 1/10/81 Write to: Director, BATF, P.O. Box 385, Washington, D.C. 20044, Public hearings - will hold if warranted.
TREAS-ATF	Implementation of the Distilled Spirits Tax Revision Act of 1979	37040	←		C	→										No	Final Rule	Public comment period - closes September 11, 1980. Send written comments to Director, BATF, P.O. Box 385, Washington, D.C. 20044.
TREAS-CUSTOMS	Accelerated Duty Payment	37042														No	NPRM	Public comment period - 60 days following NPRM.
TREAS-CUSTOMS	Valuation of Imported Merchandise for Customs Purposes	37046	C													No	Final	Public comment period - closes May 30, 1980 Send written comments to: Commissioner of Custom, Attn: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Ave., N.W. Room 2426, Washington, D.C. 20229.
TREAS-OCC	Description of Office, Procedures, Public Information; Supplemental Application Procedures; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Policy Statements	36926	←	C	→											Funding - No Assistance - Yes	NPRM	Public comment period - closes July 18, 1980 For technical assistance and place to send written comments - see Agency Contact in entry.
TREAS-OCC	Lending Limits; Unimpaired Surplus Fund	36926		←	C	→										Funding - No Assistance - Yes	NPRM	Public comment period - closes August 1, 1980. For technical assistance and place to send written comments - see Agency Contact in entry.
EPA-OANR	Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes	36986			←			C		→						No	NPRM	Public comment period a minimum of 60 days following NPRM. Public hearings to be announced.
EPA-OANR	Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	36987	←		C	→										No	Other	Public comment period closes August 12, 1980. Send comments to Central Docket Section, Room 2903 B Waterside Mall, 401 M Street, S.W. Washington, D.C. 20460. Attn: OAQPS 7914

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EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone and Lead)	36907			M											No	NPRM	Public comment period - a minimum of 60 days following NPRM
EPA-OANR	Remedial Action Standards for Inactive Uranium Processing Sites	36989				C			C							No	Final Rule NPRM	Two regulations. Public hearings - to be announced.
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide	36909														No	NPRM	Public hearing - Washington, D.C. Public comment period will be specified in NPRM
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide	36910													H	No	NPRM	Public comment period will be specified in NPRM. Public hearings - 60 days after publication of NPRM
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter	36911								H						No	NPRM	Public hearing - 60 days following NPRM
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Dioxide	36912								H						No	NPRM	Public comment period will be specified in NPRM. Public hearing - 60 days following NPRM
EPA-OANR	Standards of Performance to Control Atmospheric Emissions from Industrial Boilers	36913											H			No	NPRM	
EPA-OANR	Visibility Protection Requirements	36914		C												Yes	ANPRM	Possible pilot program.
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy Duty Engines	36917				C										No	NPRM	Address written comments to Charles L. Gray Jr, Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105
EPA-OANR -OMSAPC	Heavy-Duty Diesel Particulate Regulations	36919			C											No	ANPRM	Public hearing - 30 days after publication of NPRM in Ann Arbor, Michigan
EPA-OPTS	Chemical Hazard Warning Labels	36992	C													Yes	NPRM	Public hearings - schedule not set yet. Possible pilot program.
EPA-OPTS	Pesticide Registration Guidelines	36994														No	Final Rule, NPRM	Varying schedules for different provisions
EPA-OPTS	Premanufacture Notification Requirements and Review Procedures	36995														No	Final Rule	Public comment period - 30 days following NPRM
EPA-OPTS	Rules Restricting the Commercial and Industrial Use of Asbestos Fibers	36996											C	C		Yes	NPRM	Possible pilot program. Public comment period - 120 days following NPRM
													H	H				
EPA-OPTS	Test Rule for Chemical Substances and Mixtures -- Chloromethane and Chlorinated Benzenes	36998				C										No	NPRM	Public comment period - a minimum of 60 days following NPRM.
EPA-OWWM	Control of Organic Chemicals in Drinking Water	37000						H								No	NPRM	Public hearing - to be announced Public comment period - a minimum of 60 days following NPRM

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EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron & Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters into Publicly Owned Treatment Works	36920										C				No	NPRM	Public comment period a minimum of 60 following NPRM
EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways	36922						C								No	NPRM	Public comment period - a minimum of 60 days following NPRM
EPA-OWWM	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants	36923														No	NPRM	Public comment period - a minimum of 60 days following NPRM
EEOC-OPI	Interim Amendment to Guidelines on Discrimination Because of Sex	37026	C													No	Guidelines	Public comment period - closes June 10, 1980
EEOC-OPI	Interpretive Guidelines on Employment Discrimination and Reproductive Hazards	37027	C													No	Guidelines	Public comment period - closes June 1, 1980
GSA-FPRS	National Defense Stockpile Aquisition Regulations	37048						C								Funding - No Assistance Yes	Final Rule	Public comment period - 60 days following NPRM. For information on technical assistance - see entry, "Agency contact.
GSA-FPRS	National Defense Stockpile Disposal Regulations	37048						C								Funding - No Assistance Yes	Final Rule	Public comment period - 60 days following NPRM. For information on technical assistance - see entry "Agency contact."
GSA-HRO	Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Financial Assistance	37028		C												Funding - No Assistance - Yes	Final Rule	General comment period - closed December 31, 1979 - Comment period was extended for visually handicapped persons requesting braille or recorded cassette information - See entry for address-
GSA-NARS	Freedom of Information Act Requests for National Security Classified Information in the National Archives	37029				C										Funding - No Assistance Yes	NPRM	Public comment period - 60 days following NPRM.
NCUA	Deregulation of Loan Interest Rate Classification	36928		C												No	Final Rule	Public comment period - April 17, 1980 to June 16, 1980. Send written comments to: Robert S. Monheit, Senior Attorney, Office of the General Counsel, National Credit Union Administration, 1776 G Street, N.W., Washington D.C. 20456.
SBA	Revision to Method of Establishing Size Standards and Definitions of Small Business	37049	C H													No	NPRM	Public comment period - closes June 6, 1980 Public hearings - for schedule, see 45 FR 23704
CAB	Essential Air Service Subsidy Guidelines	37066														No	NPRM	Public comment period - following NPRM; duration to be determined
CAB	Plain English for Airline/Passenger Contracts	37068														No	NPRM	Public comment period - following NPRM. duration to be determined.

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CFTC	Proposed Rules Concerning Foreign Brokers and Traders	36930	←	C	→											No	Final Rule	Public comment period - 45 days following NPRM
CFTC	Review of Guideline No. 1--Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation	36930														No	NPRM	Public comment period - 60 days following NPRM
CPSC	Omnidirectional Citizens Band Base Station Antenna Standard	37006		M				M							C	Assistance - No Funding - Yes	NPRM	Public comment period - closes June 30, 1981. Public hearings - tentatively, Washington, D.C. (June 30, 1980 and October 31, 1980.)
FCC	Children's Television Programming and Advertising Practices	37069		C	→											Assistance - Yes Funding - Under Consideration	Final Rule	Public comment period - closes June 2, 1980. Reply comments - accepted until August 1, 1980.
FCC	Creation of "New" Personal Radio Service	37069														Assistance - Yes Funding - Under Consideration	NPRM	Public comment period - tentatively 60 days following NPRM
FCC	Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation	37071		C	→											Assistance - Yes Funding - Under Consideration	Final Rule	Public comment period - closed January 25, 1980. Reply comments accepted until June 25, 1980.
FERC	High-Cost Natural Gas Produced from Tight Formations	36879														No	Final Rule	Public comment period - originally 30 days, extended to 45 days following NPRM
FERC	Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978	36880		C	→											No	Final Rule	Public comment period - 30 days following NPRM
FERC	Regulations Governing Applications for Major Unconstructed Projects	36882														No	NPRM	Public comment period - 60 days following NPRM
FERC	Regulations Governing the Safety of all Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act	36883														No	Final Rule	Public comment period - 60 days following NPRM
FHLBB	Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	36932	←						C						→	No	ANPRM	FHLBB will propose regulations on a continuing basis until it implements all provisions of the act.
FMC	Amendments to Tariff Filing Requirements for Controlled Carriers	37073		←	C	→										No	NPRM	Public comment period - 60 days following NPRM
FMC	Filing of Currency Adjustment Factors	37074	C	→												No	Final Rule	Public comment period closes June 9, 1980.
FMC	Revision of Commission General Order 4, "Licensing of Independent Ocean Freight Forwarders"	37075	←	C	→											No	Final Rule	Public comment period - closes July 15, 1980.
FTC	Amendment to Eyeglasses Rule and Eyeglasses II	37051														No	ANPRM	Public comment period - will be announced in ANPRM
FTC	Proposed Trade Regulation Rule on Mobile Home Sales and Service	37055					←	C	→							Yes	Final Rule and Staff Report	Public comment Period - will be 30 or 60 days following - NPRM

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FTC	Trade Regulation Rule Concerning Credit Practices	37059					←	C		→						Yes	Staff Report	Public comment period - 30 or 60 days following NPRM
ICC	Improvement of TOFC/COFC Regulation	37077		←	C	→										Funding - No No Assistance- Yes	NPRM	Public comment period - 60 days following NPRM.
NRC	Disposal of High Level Radioactive Waste in Geologic Repositories Regulation	37012		←	C	→										No	ANPRM	Documents available from the Public Document Room, 1717 H St., N.W., Washington, D.C.
PRC	Experimental Classification Rulemaking	37081														No	NPRM	Public comment period - no date available at time of this publication
PRC	Postal Rate Commission Docket R80-1 (Postal Rate and Fee Changes, 1980)	37084	O	↔												No	Other	Prehearing Conference May 7, 1980 other dates - not available at the time of this publication.
SEC	Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems	36933	C	↔												No	Final Rule	The public comment period - closed April 30, 1980 for some proposals and May 15, 1980 for others.
SEC	Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies	36935	←	C	→											No	Final Rule	Public comment period - closed June 2, 1980. Send comments to George A Fitzsim - mons, Securities and Exchange Commission 500 North Capitol Street Washington D.C. 20549. Refer to File No. S7-829

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APPENDIX I—THE REGULATORY REFORM PROGRAM OF THE CARTER ADMINISTRATION

President Carter's Regulatory Reform Program has two goals: eliminating unneeded regulations and reducing the burden imposed by the regulations we do need. To achieve these goals, the Administration is implementing two broad types of reform: economic deregulation and improvement of regulatory management.

Economic Deregulation

1. Economic deregulation dismantles regulatory programs that attempt to make marketplace decisions that the marketplace itself can handle better. Federal regulation may be needed where competition is lacking, but when regulatory programs intervene to control price and entry in competitive industries, the result may very well be that prices are higher. The President is committed to deregulation in such industries and, working with Congress, has deregulated three important markets:

- airlines
- crude oil and natural gas pricing
- financial institutions

2. The Administration has identified a number of other industries where more competition can be introduced, and is supporting bills in Congress to achieve this goal. Three of these areas are:

- trucking
- railroads
- telecommunications

Improving Management

Improving management of regulatory programs leads to better regulations—cost-effective regulations that are developed in cooperation with the public, written with common sense, in plain English, and administered efficiently. The Administration is improving management in the following ways:

1. Executive Order 12044

The Executive Order is designed to ensure that regulations are as simple and clear as possible, that they achieve their legislative goals effectively and efficiently, and that they do not impose unnecessary burdens on the economy, on public or private organizations, on individuals, or on State and local governments. The Office of Management and Budget is responsible for ensuring compliance with this order.

- Twice a year agencies publish agendas of significant regulations under development to give the public adequate notice of upcoming regulations. The agencies also give the public an early and meaningful opportunity to comment on proposed regulations and participate in their development.
- Agency heads are responsible for overseeing the process of developing a regulation.
- Regulations must be written in plain English.
- Agencies periodically review their existing regulations to assess the continued need for each regulation.
- For regulations with major economic consequences, agencies prepare an analysis which includes a statement of the problem a regulation is intended to address; a description of the major alternative approaches to dealing with the problem that were considered by the agency; an analysis of the economic impact of each of these alternatives; and a detailed explanation of the reasons—not just the economic ones—for selecting one alternative over the others.

2. Regulatory Analysis Review

The President created the Regulatory Analysis Review Group (RARG), to review regulatory analyses accompanying proposed major regulations. The Council of Economic Advisers chairs RARG and the Council on Wage and Price Stability staffs it. Although agency heads may use the Regulatory Analysis Review Group's comments to make final decisions on proposed regulations, RARG's comments are not binding.

3. U.S. Regulatory Council

The President established the Regulatory Council on October 31, 1978 to coordinate Federal regulatory activity and to deal with problems of overlapping, conflicting, or duplicative regulations.

- The Council is composed of 18 executive departments and agencies with major regulatory responsibilities and 18 independent regulatory commissions.
- The Council publishes the **Calendar of Federal Regulations** to present in a concise, consistent format an overview of the most important regulatory actions under development in the Federal government.

4. Innovative Techniques

The President has encouraged regulatory agencies to use innovative, market-oriented techniques. These techniques, less rigid than traditional regulation, put private ingenuity to work at finding better long-term solutions to regulatory problems. The Regulatory Council staff is working with the agencies to identify and implement them. These techniques include:

- *Enhanced competition:* achieving needed regulatory goals more efficiently by adjusting market structure to enhance competition—often through removing regulatory and other barriers to competition.
- *Marketable rights:* allowing government-conferred rights to be exchanged by private parties, eliminating the need for detailed government involvement in their allocation.
- *Economic incentives:* structuring fees or subsidies (rather than government-enforced standards) that encourage private sector achievement of regulatory goals.
- *Performance standards:* replacing regulations that specify the means of compliance (usually detailed design standards) with more general standards. These standards are based on desired overall performance levels—leaving regulated firms free to find the most efficient means of compliance.
- *Information disclosure:* replacing direct regulation with programs to give consumers informed freedom of choice among products and services.
- *Voluntary standard setting:* negotiating voluntary rules with industry groups that pledge to adopt them, subject to regulatory agency review or audit.
- *Compliance reform:* creating market-oriented substitutes for Federal compliance inspections, including such devices as government licensed private auditors, consumer deputies, third-party inspections, self-reporting, whistle-blower programs, and noncompliance penalties.
- *Tiering:* setting less demanding standards or exempting business institutions based on the size or nature of the organizations.

5. Legislation

The President has proposed, and the Congress is working on, comprehensive regulatory reform legislation. The President's bill has the following major provisions:

- Put E.O. 12044 into statute and expand its coverage to include the independent regulatory commissions;
- Streamline lengthy and cumbersome administrative proceedings;
- Provide funds for greater public involvement in regulation development; and
- Reform the selection and evaluation of administrative law judges.

6. Paperwork Reform

The President has had a paperwork reduction program underway since 1977. Overall, federally imposed paperwork has been reduced by 15 percent.

- Under OMB's auspices, a governmentwide paperwork budget is

being put into operation for fiscal year 1981.

• The Paperwork Reduction Act, now pending before Congress, would institutionalize many of the President's paperwork reforms.

APPENDIX II—PUBLIC PARTICIPATION IN THE FEDERAL REGULATORY PROCESS

I. Introduction

This appendix provides "first step" guidance toward effective participation in the Federal regulatory process; and it discusses the major procedures at the Federal level that help to ensure that the public's interests are considered fairly in the final decisionmaking process. The appendix describes the general requirements for public participation in the agencies of the Federal government. This section of the appendix briefly discusses procedures that establish the public's role in the Federal rulemaking process. Specific information on the participation procedures at each Regulatory Council agency follows, including:

• The name of each unit, if any, in the agency that issues regulations;

• A brief description of the functions of the agency;

• A summary of the agency's public participation activities;

• A description of any special funding or technical assistance available for public participation activities;

• A list of documents describing the public participation procedures in the agency; and

• The contact person(s) who can provide further information.

Basic Definitions

Below are some basic definitions that will be helpful for those unfamiliar with Federal regulatory proceedings:

"Agency" means an organization of the Federal government, and includes executive departments and agencies, independent agencies, and their components. (It does not include Congress or the courts.)

"Executive agencies" are headed by persons chosen by the President and who serve at his pleasure, while "independent agencies" are headed by persons appointed by the President for a specific length of time to chair the agency's commission or board. (There are specific limitations on the power of the President to remove the heads of these agencies.)

We have explained in the text of this appendix other terms with which readers may not be familiar.

II. Public Participation Funding

In 1975, Congress passed the Magnuson-Moss Act that paved the way for reimbursement of selected groups and individuals to participate in rulemaking proceedings at the Federal Trade Commission. Although not all agencies offer public participation funding, in some cases because of statutory limitations, those that do offer such funding provide financial assistance to interest groups, individuals and/or businesses, or to those trade associations that can add a unique perspective to the proceeding and/or would not be able to participate otherwise. These assistance grants generally cover only out-of-pocket expenses, such as travel, telephone, duplication services, some attorney's fees, etc.

Statutes like the Magnuson-Moss Act as well as court decisions on judicial review also influenced agencies to hold more public hearings during major rulemaking proceedings. During the 1970's a great number of social regulations were promulgated, heightening public interest in rulemaking proceedings and increasing the need and demand for public hearings. The Administration is supporting legislation that would authorize public participation funding across the government.

III. Public Participation in Statutes and Executive Orders

Public participation contributes to the efficiency of government by providing policymakers with a perspective on issues that enables them to make informed decisions. The history of the public participation provisions that have permitted public access to information on agency records and proceedings shows the Federal government's sensitivity toward guaranteeing information flow between the public and the agency.

A. *Federal Register Act (1935).* The first provision permitting access to information resulting from rulemaking and other agency proceedings was the Federal Register Act of 1935. This Act requires agencies to file documents with the Office of the Federal Register, which prints the **Federal Register**, a daily government publication that announces the official actions of Federal agencies. The Act also allows for public inspection of documents the day before their publication in the **Federal Register.**

The **Federal Register** is available at Federal depository libraries, where most government publications are maintained for public use. Designated regional Federal depository libraries will have at least one copy of all Federal publications in printed or film form. There are more than 1,500 Federal depository libraries in the United States and its territories. Also, many university libraries have been designated as Federal depositories. To find the one nearest you, contact a public library, university library or your U.S. Congressional representative.

B. *Administrative Procedure Act (1946).* The first major provision for public participation in Federal regulatory proceedings was implemented in 1946 through the Administrative Procedure Act (5 U.S.C. §§ 551–559, 701–706). This Act obligates agencies to follow specific procedures in rulemaking, adjudication, and related matters where public input is most valuable.

This Act gives the public the right to participate in most rulemakings as follows:

1. *NPRM*—The agency must publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** to let the public know of proposed rules the agency is considering. The NPRM must include the time, place, and nature of the proceeding; the legal authority under which the agency is proposing the rule; and a description of the proposed rule's substance or a description of the subject and issue(s) involved.

The Act also allows for members of the public to initiate a rulemaking proceeding by petitioning the agency to amend, modify, or repeal an existing rule. Not all agencies have specific procedures explaining how to submit a petition for rulemaking, as the Act does not require them. Individuals and/or groups interested in developing a petition for rulemaking should examine the statutory basis for such a rule, the agency's mandate and related activities, or consult an attorney. The format for such a petition can follow the same as that for submitting public comments.

2. *Making Public Comments*—The agency must allow interested persons and groups the opportunity to participate in rulemaking through written comments to the agency that support, oppose, or suggest modifications in proposed or existing rules—with or without the opportunity for an oral presentation. Anyone can take advantage of this opportunity during the public comment period.

Each agency may have its own specific requirements for how it will accept public comments. Generally, agencies prefer that you:

• Type your comments neatly;

• Indicate the rulemaking proceeding that the comments address;

• Include the writer's name, full address, and title and/or affiliation; and

• Clearly state your arguments favoring or opposing the rule, e.g., you could include information about how the agency's proposal could affect the socioeconomic growth and quality of life of a community, region, or State; whether there are "new" issues that the agency rule or proposal fails to consider or give proper attention to; or how problems the agency may not have considered could be solved more efficiently through another viewpoint or an alternative or compromise solution. Be as specific as possible.

When public comments reach the agency they are officially logged into the public record (often referred to as the "docket"), and the reviewing staff analyzes the comments to determine whether any significant issues were raised that the agency should consider during the decisionmaking stage.

Interested persons should contact agencies directly for information on the opening and closing dates for comment periods on particular rulemakings, the address they should send comments to, and the number of copies they should submit. (Agency contacts whom readers can call or write are listed in this appendix.)

3. *Final Rule*—When the agency finally issues a rule it must publish the rule in the **Federal Register** along with a statement about the rule's basis and purpose, and a discussion of any significant issues raised during the public comment period. The agency must publish substantive rules, i.e., nonprocedural rules, at least 30 days before the rule becomes effective.

Rulemaking requirements, as set out in this Act, do not apply to U.S. military or foreign affairs functions or agency matters related to personnel or public property, loans, grants, benefits, or contracts. However, some agencies voluntarily apply the above NPRM and public comments requirements to those types of matters.

In addition, the requirements do not apply to rules stating a general agency policy or to rules dealing with agency organization or procedure. The Act also exempts situations where the agency believes that public participation is "impracticable, unnecessary, or contrary to the public interest." However when an agency claims such an exemption, it must give its reasons.

C. *Freedom of Information Act (1967).* The Freedom of Information Act (FOIA) (5 U.S.C. § 552), requires each Federal agency to make available to any person any agency document—whether published or unpublished—that the agency obtains, maintains, or internally produces so long as the material is specifically identified and requested in accordance with procedures established by agency rules. Agencies must usually respond to a request within 10 days of its receipt.

An agency may refuse to disclose a document in cases where the agency is prohibited by statute from distributing the material, or where the documents falls within one or more of the exemptions contained in the Act describing confidential matters and materials. However, the exemptions are not compulsory but left to the agency's discretion.

Sometimes you may only want particular parts of a document. Therefore, you should precisely word your request so the agency knows exactly what you want. The FOIA allows agencies to charge searching and copying fees; such fees may vary from agency to agency. You can obtain general information about FOIA requests from each agency's FOIA officer.

FOIA questions can be difficult to answer, and space does not permit a detailed explanation of all of the provisions of the Act. The Department of Justice's Office of Information Law and Policy oversees Federal FOIA matters. For more general information you can contact them at:

Office of Information Law and Policy
Department of Justice
Main Justice Building
10th & Constitution Ave. N.W., Room 5259
Washington, D.C. 20530
(202) 633–2674

D. *Federal Advisory Committee Act (1972).* The Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C. Appendix I) gives the public the right to know about meetings between agencies and the outside groups they establish to assist them in their work. This Act also controls the number and composition of these groups or committees. Section 10 of the Act requires open meetings and advanced public notice of most advisory committee meetings. Agencies may close such meetings if the meeting agenda includes a subject that may be kept confidential under one or more of the exemptions of the "Sunshine Act," which is explained in the following section.

The general Services Administration's Committee Management Secretariat oversees governmentwide Federal advisory committee matters. For more information contact:

Committee Management Secretariat
National Archives and Records Service
Office of the Executive Director
General Services Administration
1100 L Street, N.W., Room 9403
Washington, D.C. 20408
(202) 357–0019

E. *Government in the Sunshine Act (1976).* This provision, referred to simply as the "Sunshine Act," is an outgrowth of the Federal Advisory Committee Act and opens various agency meetings to public observation in those agencies headed by a board or commission. The Act calls for public notice of agency meetings and specifies when the agency may close meetings to the public or may withhold information from meeting notices. Exempt meetings are those dealing with (a) secret matters of national defense, (b) agency personnel rules and practices, (c) confidential commercial or financial information, (d) criminal charges, (e) personal privacy invasion, (f) investigatory records for law enforcement purposes, (g) supervision of financial institutions, (h) previously disclosed agency actions, and/or (i) agency participation in a civil court case.

Interested members of the public should contact the agency directly for information about how to receive meeting notices, how to request that a closed meeting be opened, or where to review available public records of agency meetings.

F. *Executive Order 12044 (1978).* Thirty-two years after Congress passed the Administrative Procedures Act, President Carter issued Executive Order 12044, Improving Government Regulations, which established a system for executive agencies to manage their regulatory responsibilities and included provisions for expanding public participation in the development of significant agency regulations. Executive agencies are required to comply with the Executive Order, and the President asked that independent agencies voluntarily comply. This Executive Order builds upon the requirements of the Administrative Procedure Act by asking agencies to:

• Publish an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public views before formally proposing the regulation for public comment in a Notice of Proposed Rulemaking (NPRM). An ANPRM describes problems or situations that regulatory action might deal with. Public comments on an ANPRM can raise questions and considerations that help the agency decide whether regulating is the best way to control the problem or situation, and if the agency's regulatory plan is adequate. The ANPRM is

sometimes referred to as a "Notice of Inquiry;"

- Allow at least 60 days for public comment at the NPRM stage as opposed to the 30 days customarily permitted by agencies for comment, and to analyze and prepare a discussion of significant public comments before approving regulations;
- Send notices to publications in addition to the **Federal Register** that are read by those who will be affected by the proposed regulation, such as consumer newsletters and trade journals;
- Notify the affected parties directly regarding developments in the proceeding; and
- Hold open conferences or public hearings.

This Executive Order also asks agencies to write and explain regulations clearly and simply in "plain English" so that nonspecialists can interpret the regulations easily.

In addition, the Order also requires agencies to publish, in the **Federal Register**, semiannual regulatory agendas to facilitate public participation. These agendas, which are usually available from their respective agencies, list all of the significant regulations that an agency has under development or scheduled for review. The lists also advise the public of the agency's regulatory action schedule, and thus ensure the earliest possible opportunity for public participation in rulemaking. At a minimum, the agenda items identified as "major" by executive agencies are reported here in the **Calendar of Federal Regulations** Appendix IV, of this Calendar, "Publication Date for Agency Regulatory Agendas," indicates the date each agency published its agenda in the **Federal Register.**

G. *Executive Order 12160 (1979).* Executive Order 12160, Providing for the Enhancement and Coordination of Federal Consumer Programs, establishes a comprehensive policy to guide all agencies in identifying agency consumer affairs staff who will participate in the development and review of all agency rules, policies, programs, and legislation; and it establishes procedures for the early and meaningful participation by consumers—individuals and groups—in the development and review of all agency rules, policies, and programs. In addition, the Order requires agencies to produce and distribute informational materials that explain agency services and responsibilities, procedures for consumer participation, and aspects of the marketplace over which the agency has some jurisdiction. Agencies also have to provide information to consumers who attend agency meetings open to the public.

Agencies will have their consumer programs and procedures operating by mid-June 1980.

4. Agency Public Participation Entries

Public participation activities and possibilities are many and varied, depending, of course, upon the agency's resources, the suitability of the activity to the type of proceeding the agency is conducting, and the desired participation result.

Each of the 36 Regulatory Council agencies submitted a general summary of its public participation programs which we have published in the following pages, to help you participate in their activities. Call or write the various agencies for more information. You and your community surely will benefit from your participation in the Federal regulatory process. The Regulatory Council encourages your interest and involvement.

Adminstrative Conference of the United States (ACUS)

Units That Issue Regulations

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties, found at 1 CFR Parts 301–304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure, codified at 1 CFR Parts 305 and 310.

Functions

The Administrative Conference of the United States was established as a permanent independent agency in the Executive Branch by the Administrative Conference Act, 5 U.S.C. § 571–576, enacted in 1964. It is an advisory agency, not a regulatory agency. Its mandate is to "study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies" and to make recommendations for the improvement of those procedures to the agencies, Congress, the President and the courts. The Office of the Chairman provides advisory and consultative assistance to the government and the public.

Public Participation Summary

The Administrative Conference develops and adopts its Recommendations through open meetings, which receive advance notice in the **Federal Register.** Conference members serve on nine committees, with a staff attorney serving as committee liaison. The Office of the Chairman is now developing a mailing list of persons interested in receiving early notice of ACUS committee meetings.

Funding and Technical Assistance

The Administrative Conference's activities are all open to the public and ACUS enthusiastically solicits public participation; however, none of its activities require funding of participants. Upon request, technical assistance through consultations with staff will be offered if necessary to facilitate participation.

Public Participation Documents

"An Interpretive Guide to the Government in the Sunshine Act" (1978), a staff publication that explains the provisions of the Act, and draws from the legislative history. It has been cited by several court decisions interpreting the Act. (Single copies are available from the librarian in the Office of the Chairman.)

"Guide on Agency Reports Under Executive Order 12044" (1978), a staff publication that explains the President's Order and cites agencies' responses to it. (Available free from the librarian.)

The continuing series of recommendations and reports on administrative procedure is also available from the librarian in the Office of the Chairman. There is normally no charge for such documents if an adequate supply is on hand.

Information Contact

For information on general public participation procedures or for publications requests:

Jeffrey S. Lubbers, Senior Staff Attorney
Administrative Conference of the United States
2120 L Street, N.W., Suite 500
Washington, D.C. 20037
(202) 254–7020
or
Sue Boley, Librarian
Administrative Conference of the United States
2120 L Street, N.W., Suite 500
Washington, D.C. 20037
(202) 254–7020

ACUS maintains a mailing list for its annual reports and occasional newsletters and notices of meetings. Contact either of the persons listed above.

Department of Agriculture (USDA)

Units That Issue Regulations

Agricultural Marketing Service
Agricultural Stabilization and Conservation Service

Animal and Plant Health Inspection Service
Farmers Home Administration
Federal Crop Insurance Corporation
Federal Grain Inspection Service
Food and Nutrition Service
Food Safety and Quality Service
Foreign Agricultural Service
Forest Service
Office of Energy
Office of Environmental Quality
Office of Equal Opportunity
Rural Electrification Administration
Science and Education Administration
Soil and Conservation Service

Functions

USDA establishes national policy regarding the Nation's production, distribution and consumption of agricultural commodities, foodstuffs, and forest resources, as well as national policy governing the use of agricultural commodities or services for personal or household purposes.

Public Participation Summary

The majority of rulemakings at USDA are informal, or notice and comment actions. Each of the administrative units named above solicits public comments on policy issues under consideration.

The exception is the formal rulemaking process required for commodity marketing orders administered by the Agricultural Marketing Service (AMS). Before holding an evidentiary hearing, AMS performs a prenotice investigation, reviewing public comments framing the issues that must be covered in developing an adequate decision. Following the public hearing and analysis of the record a recommended decision is issued, subject to comment and the filing of exemptions. AMS's final decision is put to a referendum by the regulated producers that the final order will affect.

Each USDA unit listed above has a public participation contact. These are listed below under "Information Contacts."

In addition to the normal educational and informational responsibilities, USDA's public participation office monitors the adequacy of the opportunity for the public to participate in all agency proceedings. The department public participation staff and agency public participation stafffs have the responsibility for assuring that a thorough and systematic effort is made to obtain timely, informed, and substantive comment from those interested in or potentially affected by a proposed action. Public participation plans are required to accompany each impact analysis; for "significant" decisions, the plans are monitored by the department's public participation staff while plans for "not significant" decisions are monitored by agency public participation staffs. Plans are sent to public participation staffs in the early developmental stages of an action for staff concurrence.

Efforts to increase participation include increased use of prenotice, development of reimbursement regulations (described below), public meetings and briefings, updating of mailing lists, and more use of "Backgrounders" providing additional information on issues and how to participate.

Recent examples of innovative public participation efforts by USDA include:

—Regulations implementing the Grain Standards Act of 1978. We published for early comment a background study and draft regulations covering complex and controversial new program areas. We received many substantive comments, resulting in substantial revision to and improvement in the regulations which we proposed.

—A Food Safety and Quality Service (FSQS) effort to involve the public early in contemplation of a possible future rulemaking activity on food grading. Recent studies have shown that consumers are confused about what the various food grading systems mean, including USDA grades and "house" grades.

USDA has graded meat, poultry, eggs, dairy products, fresh fruits and vegetables, and related products such as jams and juices since 1917. Grading means separating items of food into different levels of quality, where quality refers to the usefulness, desirability, or marketability of the product.

As phase one of this activity, we have conducted a consumer survey to understand consumer perceptions of grading as it now exists and to understand the benefits to consumers if we were to modify the system. More specifically, we are seeking information on what consumers know about USDA food grading, the extent to which the consumer may be confused about grading, and how we might modify the current grading system to improve its utility to consumers.

We are now using information from the survey to develop options to present to the public for comment. We will make a substantial public information and participation effort, including hearings, to ensure that adequate information is widely distributed to elicit a broad range of substantive comment.

Following the hearings, FSQS will review the record and conduct an analysis on (1) whether to propose new regulations and (2) the best options to propose.

Funding and Technical Assistance

On January 24, 1980, USDA issued regulations governing reimbursement of qualified individuals and groups for the costs of participating in USDA rulemaking proceedings. Those regulations became effective 30 days later. (A "Handbook for Applicants" is also available through the department or agency public participation staff listed below.) Applicants may qualify for assistance if: they are an individual, or profit or nonprofit group, association, partnership, or corporation; they lack sufficient resources to participate effectively without financial assistance; their participation is likely to contribute to a full and fair determination of the issues; and they are from the area affected by the proposed action.

The head of the agency conducting the rulemaking will make the determination as to whether funds will be used for this purpose. An independent, department-level evaluation board will make the final decision on awarding funds to a particular applicant.

Those interested in applying for funding should contact the director of public participation or the public participation contact for the agency proposing the specific action.

Public Participation Documents

In addition to the "Handbook for Applicants" for the reimbursement regulations, described above, the department public participation staff will soon publish a manual for the public on how to participate in USDA decisionmaking.

Information Contact

For further information contact:
Elizabeth A. Webber, Director of Public Participation
Department of Agriculture
Room 119–A, Administration Building
Washington, D.C. 20250
(202) 447–2113

Agency Public Participation Contacts

Hal Ricker, Assistant to the Administrator
Agricultural Marketing Service
Department of Agriculture
Room 3068–S, South Building
Washington, D.C. 20250
(202) 447–8669

Ray Voelkel, Assistant to the Deputy Administrator for Commodity Operations
Agricultural Stabilization and Conservation Service
Department of Agriculture
Room 3755–S, South Building

Washington, D.C. 20250
(202) 447–7865

Nick Bedessem, Assistant to the Administrator
Animal and Plant Health Inspection Service
Department of Agriculture
Room 2139–S, South Building
Washington, D.C. 20250
(202) 447–2996

Bob Lake
Office of Information
Forest Service
Department of Agriculture
Room 3219–S, South Building
Washington, D.C. 20250
(202) 447–3760

Earle Gavett
Office of Energy
Department of Agriculture
Room 5167–S, South Building
Washington, D.C. 20250
(202) 447–7195

Barry Flamm
Office of Environmental Quality
Department of Agriculture
Room 412–A, Administration Building
Washington, D.C. 20250
(202) 447–3965

Mark Nestle, Director
Program Evaluation Staff
Farmers Home Administration
Department of Agriculture
5th Floor, Presidential Building
Beltsville, MD.
(301) 436–7740

Pete Cole, Secretary for the Corporation
Federal Crop Insurance Corporation
Department of Agriculture
Room 4088–S, South Building
Washington, D.C. 20250
(202) 447–6975

Don Leathem
Federal Grain Inspection Service
Department of Agriculture
Room 1127 Auditors Building
Washington, D.C. 20250
(202) 447–3910

William Payne, Deputy Chief, Program, Planning and Evaluation
Office of Equal Opportunity
Department of Agriculture
Room 4119, Auditors Building
Washington, D.C. 20250
(202) 447–7327

Harlan Severson, Director
Office of Information and Public Affairs
Rural Electrification Administration
Room 4043–S, South Building
Washington, D.C. 20250
(202) 447–5606

David Dyer
Science and Education Administration
Department of Agriculture
Room 307–A, Administration Building
Washington, D.C. 20250
(202) 447–5211

Christine Van Lenten, Agency Consumer Affairs and Public Participation Officer
Food and Nutrition Service
Department of Agriculture
Room 758, GHI Building
Washington, D.C. 20250
(202) 447–8982

Penny Gentilly, Deputy Director for Public Participation
Food Safety and Quality Service
Department of Agriculture
Room 1168–S, South Building
Washington, D.C. 20250
(202) 447–7804

Ida Cuthbertson
Soil and Conservation Service
Department of Agriculture
Room 6123–S, South Building
Washington, D.C. 20250
(202) 447–5810

Jeff Hudgins, Assistant to the Administrator
Foreign Agricultural Service
Department of Agriculture
Room 5065–S, South Building
Washington, D.C. 20250
(202) 447–7631

Department of Commerce (DOC)

Units That Issue Regulations

Bureau of the Census
Bureau of Economic Analysis
Economic Development Administration
International Trade Administration
Maritime Administration
Minority Business Development Agency
National Bureau of Standards
National Oceanic and Atmospheric Administration
National Telecommunications and Information Administration
Patent and Trademark Office

Functions

The principal mission of the Department is to foster, promote, and develop the foreign and domestic commerce of the United States. The activities of the components of the Department in furthering the mission are broad and varied in scope and cover such diverse areas as: patents, assistance to minority business and economically depressed areas, tourism, weather, ocean and atmospheric programs, standards development, promotion of domestic and international trade, the censuses, statistical and economic data and analyses, ship subsidies, and telecommunications policy.

Public Participation Summary

The departmental units each have different procedures for developing and promulgating regulations, including public notification and participation. These procedures were published in the **Federal Register** on January 9, 1979, as a Department Administrative Order (44 FR 2082). The Administrative Order, entitled "Issuing Departmental Regulations," implements Executive Order 12044, "Improving Government Regulations."

The Consumer Affairs Office (CAO), in conjunction with the Office of Regulatory Policy (ORP), coordinates consumer participation responsibilities throughout the department. The CAO and consumer contact persons in the operating units will be responsible for assuring that timely and meaningful consumer participation occurs throughout the development and review of the department's rules, policies, and programs.

Participation mechanisms and special features include:

—Notices of proposed and final rules, programs, and policies published in the **Federal Register.**
—Quarterly notices of upcoming rulemaking activities disseminated to consumer representatives and consumer media by CAO, and to other constituents through the Regional Representatives of the Secretary.
—Informal meetings and briefings arranged between Commerce officials and consumer leaders to discuss emerging or ongoing problems and issues, as well as policy and program developments.
—Funds made available whenever possible (see below).

Specific Unit Programs for Public Participation include:

• National Bureau of Standards (NBS)

The NBS Center for Consumer Product Technology, in conjunction with Underwriters Laboratories, the American Society for Testing and Materials, the National Fire Protection Association, and the American National Standards Institute, sponsors and maintains a Consumer Sounding Board network to ensure that consumer input on program activity is obtained. The Consumer Sounding Boards are composed of a demographic cross section of consumers convened for the purpose of providing standards-making organizations with direct consumer involvement in their programs. The Center's programs are reviewed annually be a panel appointed by the National Academy of Sciences. This panel is composed of individuals from industry, academia, government, and consumer interest groups. The Center has also contracted with consumer interest groups to review its program plans regarding major activities such as

the Department of Energy-supported "Energy Appliance Program" and the DOC "Consumer Product Information Labeling Program." The Center also works with the National Conference on Weights and Measures, which is composed of State and local government representatives who have responsibility for consumer issues. These representatives are able to provide input on consumer issues relevant to the mission of NBS and the Center. The Center will continue to seek consumer input to its program from all these sources in the future.

• National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS)

Through the availability of the Saltonstall-Kennedy Funds, NMFS conducts a grants program under its Fisheries Financial Assistance Program to further the use and development of U.S. fisheries. Proposals are encouraged in such areas as determining consumer attitudes toward seafood and seafood consumption patterns, studies to determine education and information materials needed for consumers and the best methods of disseminating them, and activites to educate consumers on the nutritional value, economy, handling and preparation of fish and fish products.

The Marine Fishery Advisory Committee (MAFAC), composed of approximately 25 representatives from industry, academia, and consumer groups, advises NMFS on fishery activities. The MAFAC Subcommittee on Consumer Affairs covers consumer related fishery activities.

Under the authority of the Fishery Management Conservation Act of 1976, eight Fishery Management Councils were established. The members of the Council are required by the Act to have fisheries expertise. The majority of the members are appointed by the Governors of the Coastal States. These appointments include consumer members. NMFS consumer affairs personnel are actively pursuing strengthened consumer representation on these Councils. In addition, NMFS is planning regional workshops to be held in conjunction with the Councils to encourage and expand consumer participation.

• National Telecommunications and Information Administration (NTIA)

NTIA is in the process of establishing an advisory committee that will offer advice on the Public Telecommunicaitons Facilites Program's (PTFP) grant applications and on the development of public telecommunications policy. The proposed advisory committee will have 20 members; a seat will be reserved for a representative of a public interest or consumer organization.

Funding and Technical Assistance

The department's General Counsel has decided that, where no statutes forbid establishment of a public participation funding program, Department funds may be used for such funding when the participation is found necessary and when lack of funding would preclude the participant from participating.

The department will be giving special attention to developing new procedures and funding sources to finance consumer participation in the department's regulatory proceedings.

Funds will be made available whenever possible to enable consumer representatives to give in-depth advice and assistance on major policy or program initiatives. (Recent examples include the Department's development of recommendations on the problem of product liability, where a series of Consumer Forums was funded; and a pilot project on voluntary consumer product information labeling, for which a national consumer organization was a consultant to the Department.) and to other groups interested in public telecommunications. Also, NTIA prepares informational materials explaining the process of obtaining matching grants for telecommunications facilities. This information is distributed to individuals, public interest groups, the trade press, publishers, journals, and other media.

NMFS plans to hold individual consultations and workshops for consumer interest groups to provide technical assistance in preparing proposals for cost-sharing funding under the Fisheries Financial Assistance Program.

Public Participation Documents

During FY 1981, ORP and CAO will develop general guidelines for consumer participation for use throughout the department.

Information Contact

Meredith Fernstrom, Director of Consumer Affairs
Department of Commerce, Room 5889
Washington, D.C. 20230
(202) 377–5001

Department of Energy (DOE)

Units That Issue Regulations

Board of Contract Appeals
Conservation and Solar Applications
Economic Regulatory Administration
Office of the Controller
Office of Equal Opportunity
Office of Minority Economic Impact
Resource Applications

Functions

The President established DOE in 1977 to consolidate the major energy programs scattered throughout the government into a unified agency that could provide a national energy policy. DOE has played a major role in developing regulatory initiatives for energy policy, including a program for solar energy, plans for gasoline rationing, a program for phased decontrol of crude oil, and a program for import reduction.

Public Participation Summary

DOE reponded to E.O. 12044 with an agency Order making certain public participation procedures mandatory. Recision of that DOE Order has been proposed; however, the provisions relating to public participation contained in the Department Order should remain unaffected. Some of these procedures include:

• Notification of interested parties, the Governor of each State, DOE regional representations, and appropriate Federal advisory committees;

• Distribution of appropriate notices or press releases describing the regulatory action to trade journals, newspapers, and newsletters read by interested parties;

• public hearings and conferences with interested groups and individuals (with adequate advance notification), where appropriate; and

• Provision for one or more public hearings, preceded by at least 14 days notification, for all significant regulations proposed.

In response to a later Executive Order, No. 12160, which provides for the enhancement and coordination of Federal consumer programs, DOE has drafted a plan and is in the process of implementing a departmentwide effort to institutionalize the provisions of that Order.

In addition, the Department conducts citizen participation workshops. It is the responsibility of each program area to conduct those workshops that pertain to their particular program area.

When the Department solicits public comments, it requires full, verbatim transcripts for all public hearings. These transcripts are used in all proceedings where citizens comment for the official record. Our Office of Consumer Affairs publishes public comments in some issues of the "The Energy Consumer."

The Office of Consumer Affairs has the primary responsibility for managing

and coordinating the public participation efforts of the Department. However, DOE program areas are directly accountable for regular and substantive public participation programs.

Funding and Technical Assistance

DOE is prohibited by Congress from providing funding for public participation. Therefore, no funding is available.

Public Participation Documents

The following document is available from the Office of Consumer Affairs: "The Energy Consumer."

Information Contact

The Office of Consumer Affairs maintains a mailing list for distribution. In addition, citizens with specific interests can have their names placed on specialized mailing lists. The Technical Information Center at Oak Ridge, Tennessee, also has a mailing list for its "Energy Meetings" bulletin. For more information contact:

Polly W. Craighill, Director
Consumer Impact Division
Office of Consumer Affairs
Department of Energy
Forrestal Bldg., Rm. 8G–087
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 252–5866

Hotline Numbers: For problems with getting gasoline or heating oil, or to report excessive dealer prices: (800) 424–9246. In the Washington, D.C. area (202) 653–3437.

For questions and comments on alcohol fuel technology: (800) 535–2840. In Louisiana: (800) 353–2870.

Department of Health, Education, and Welfare (HEW)

Units That Issue Regulations

Assistant Secretary for Education
Assistant Secretary for Human Development Services
Health Care Financing Administration
Office of Child Support Enforcement
Office of the Inspector General
Office of the Secretary
Social Security Administration
U.S. Public Health Service

Functions

HEW is the domestic funding agency for 300 programs that focus on assistance to the economically disadvantaged, social security, retirement and social service. The agency also regulates standards for food and drug safety and performs basic and applied research in health. The education activities of HEW will become part of the new Department of Education, when HEW becomes the Department of Health and Human Services (HHS).

Public Participation Summary

HEW frequently publishes an ANPRM to allow the earliest possible public participation in agency rule proposals. The department also frequently holds regional hearings and meetings to obtain public input in decisionmaking activities. These public meetings are held at times and places most convenient for those affected by the regulations. Accommodations are made to allow certain groups to participate in meetings that they might not be able to attend otherwise.

A pilot program of service desks will be opened in four regions to answer questions from manufacturers about Food and Drug Administration (FDA) regulations. The desks, located in East Orange, New Jersey; Chicago, Illinois; Atlanta, Georgia; and Santa Ana, California, will respond to questions dealing with problems such as how to fill out applications and other government forms, what regulations must be followed to market a new product, and how FDA regulations affect manufacturers' products or manfacturing processes.

Finally, in response to the President's specific concern about the impact of Federal regulations on small businesses, the Food and Drug Administration is attempting to give special assistance to small businesses in their attempt to decipher the various government regulations with which they must comply. The FDA will begin two programs to simplify regulations. FDA also will be appointing an official to the Commissioner's staff to "help assure a consistent agency-wide policy for small business."

Funding and Technical Assistance

HEW is currently developing a proposed regulation that will allow for compensation to the public for participation in the regulations development process. FDA published a final regulation on public participation funding in the October 12, 1979 **Federal Register.** The name and address of the FDA contact person is listed below under "Information Contact."

Public Participation Documents

None available at this time. However HEW's semiannual regulatory agenda provides important information that may lead to increased public participation. This document exceeds the requirements of EO 12044 by identifying not only "significant" regulations but all regulations under development or consideration at the department. In addition, program regulations are listed by the types of services provided and their effect upon organizations, institutions, and individuals. Over 400 regulations are presented in each agenda. The department's next agenda will be published on June 13, 1980.

Information Contact

The departmentwide contact person for public participation activities is:

Bill Wise, Assistant Secretary for Public Affairs
Department of Health, Education and Welfare
200 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 245–1850

For information on proposed regulations currently being drafted for compensation of citizen participation contact:

Glenn Kamber, Director
Regulations Management Unit
Department of Health, Education and Welfare
200 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 245–3161

For information on FDA public participation funding contact:

Alex Grant, Special Assistant to the Commissioner on Consumer Affairs
Food and Drug Administration
Room 1685, HF–7
5600 Fishers Lane
Rockville, Maryland 20857
(301) 443–5004

Department of Housing and Urban Development (HUD)

Units That Issue Regulations

Community Planning and Development (CPD)
Fair Housing and Equal Opportunity (FH&EO)
Government National Mortgage Association (GNMA)
Housing
Immediate Office of the Secretary
Neighborhoods, Voluntary Associations and Consumer Protection (NVACP)
New Community Development Corporation (NCDC)

Functions

HUD's national goal is to ensure that the basic rights of all consumers are considered, respected, and protected in all the agency's housing and community development activities. The agency hopes to achieve this goal through promoting viable communities, providing decent housing, achieving equal opportunity, and effectively coping with natural disasters.

Public Participation Summary

The Office of Citizen Participation, under the Assistant Secretary for NVACP, reviews the public participation requirements of key rules.

HUD has implemented several of the Administration's recommendations for extended public participation, including publishing ANPRMs, extending public comment periods to 60 days, holding public hearings on proposed regulatory changes, and announcing regulatory changes in publications oriented toward special interest groups. HUD's mailing list numbers about 78,000 individuals.

Funding and Technical Assistance

No funding is available at this time. We published an ANPRM on Funding Public Participation in rulemaking on March 4, 1980. Comments are being evaluated.

Public Participation Documents

24 CFR Parts 10 and 15. Part 10 is HUD's procedures for rulemaking that voluntarily adopt 5 U.S.C. 553 for public benefit programs, and provide for rulemaking petitions.

Part 15 discusses the availability of documents and the fees charged for search and reproduction of materials.

Information Contact

Father Geno Baroni, Assistant Secretary for Neighborhoods, Voluntary Associations, and Consumer Affairs
Department of Housing and Urban Development
451 7th Street, S.W., Room 4100,
Washington, D.C. 20410
(202) 755-0950

Department of the Interior (DOI)

Units That Issue Regulations

Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
Geological Survey
Heritage Conservation and Recreation Service
National Park Service
Office of Minerals Policy and Research Analysis
Office of Surface Mining and Enforcement
Office of Water Research and Technology

Functions

The functions of the Department of the Interior include:

- Management of lands and water resources, including access to publicly owned energy and other mineral resources;
- Regulation of energy and mineral development;
- Protection of fish and wildlife populations and their habitat;
- Protection and interpretation of historic, archaeological, and other cultural or recreation resources of national significance;
- Advocacy for American Indian and Alaska Native peoples for whom the Federal Government has a trust responsibility;
- Oversight of Federal programs delivered to the various Territories of the United States.

These responsibilities of the department are carried out through the day-to-day operations of its eleven major bureaus, services, or offices. These offices are grouped by related functions under four Assistant Secretaries—Land and Water Resources; Energy and Minerals; Fish, Wildlife and Parks; and Indian Affairs. The Office of Territories reports directly to the Secretary, and there is an Assistant Secretary for Policy, Budget and Administration—to whom the cross-cutting and coordinative staffs report.

The Department of the Interior acts as steward for the Nation's storehouse of natural resources. As such, the department's missions are carried out for all citizens, and any member of the public has a potential interest in the department's business.

Public Participation Summary

Because of the nature of Interior's business—for example, as a land management agency or as a regulator of the surface effects of mining—much of the public's concern with activities naturally arises locally or regionally rather than in Washington. For this reason, the Department of the Interior has established a policy that its managers at all levels must consider the needs of the public, and must make allowance for the fact that the public may have an interest in participating in the development and review of not only rules, policies, and programs, but program activities on the regional or local levels. For this reason, program managers and support staff at any level can become the "responsible official" for a public participation plan and its implementation which is integrated with the steps necessary to reach final decisions.

Rulemaking procedures are prescribed by the Administrative Procedure Act, EO 12044, and in part 318 of the Department Manual. These procedures call for early notice of intent to write regulations, not only in the **Federal Register**, but by press release, and where applicable, by mailings to groups and individuals, and other means.

For major policy, program, or other Secretarial level decisions, the department has specific procedures requiring input on options with department-wide review before presentation to the Secretary. Part 301 of the Departmental Manual prescribes the steps for Secretarial Issue Documents. These instructions include a requirement to display the kind and amount of public participation in the preparation of options for decision.

Every six months, the department publishes a semiannual agenda of regulations pending or planned, as do other Federal agencies.

A continuing source of information about Department activities is the public process in producing environmental impact statements. Widely publicized and discussed under a variety of agency auspices, the department initiates, monitors, or reviews hundreds of such statements annually. Public comments on a wide range of natural resource concerns are registered, and become built-in considerations for departmental managers.

Officials throughout the Department look for opportunities to improve the general level of public knowledge about significant authorities and activities of the department, with provision for recorded comment and feedback. Such activities include periodic publication of calendars of anticipated actions printed in the popular and official press; periodic open public meetings; periodic "open office" time; and other public involvement techniques which, being regularly scheduled, could lessen the need for the number of separate public participation plans or events.

The best point of access to the Department of the Interior for an individual person anywhere in the country is a public information officer for the bureau or office carrying out the activity of interest. If a person does not know which unit is responsible for his/her area of concern, the best beginning point of contact would be the Secretary's Public Affairs Office or the Department Coordinating Officer for Public Participation and Consumer Affairs. The consumer will be directed to the best source of information about his/her concern, including information about the procedures and responsible officials that govern the decisionmaking or activity about which he/she is concerned.

Funding and Technical Assistance

The Department's Bureaus and Offices have supplied technical assistance in their varied fields of

expertise. Traditional recipients have been State and local officials who shared administration responsibility for Department programs. But, for example, citizens or groups interested in reviewing or contributing to a specific element of their State's Comprehensive Outdoor Recreation Plan can obtain reports and technical information, and even visit sites as work schedules of knowledgeable personnel permit. On a similar basis, bureaus/offices can guide interested people to available information, and many units provide de facto technical assistance amounting to consultation on specific problems. It is important in this context to remember that the preparation of an environmental impact statement or other major reports, or a rulemaking decision may extend over several years.

If a citizen does not know who to contact, he/she should ask the closest Public Affairs Office of the Department. Such assistance can be provided at various levels of the agency. It usually occurs during interaction on agency programs through sharing of scientific data, answering procedural questions, assisting in preparation of application forms, etc. Bureaus and offices make every effort to provide appropriate technical assistance to public organizations and to the general public upon request, in accordance with existing laws, regulations, policies, and administrative procedures.

Certain laws provide for payment of attorney fees and expert witness fees for intervenors, for example Section 520 of the Surface Mining Control and Reclamation Act.

Public Participation Documents

Departmental Manual Chapter, "Public Participation in Decision-Making: (Part 301, Departmental Chapter 2, DM2), is available from the Office of the Assistant Secretary for Policy, Budget and Administration listed below.

Information Contact

Ms. Cecil Hoffman, Staff Assistant to the Assistant Secretary for Policy, Budget and Administration and Public Participation Coordination Officer
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240
(202) 343–5106
or
Harmon Kallman, Acting Director of Public Affairs
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240
(202) 343–6416

Department of Justice (DOJ)

Units That Issue Regulations

Antitrust Division
Bureau of Prisons
Civil Rights Division
Criminal Division
Drug Enforcement Administration
Federal Bureau of Investigation
Immigration and Naturalization Service
Office of the Attorney General
U.S. Parole Commission

Functions

The DOJ enforces criminal laws and laws against subversion; ensures healthy business competition; safeguards the consumer; and enforces drug, immigration and naturalization laws. The DOJ also plays a significant role in crime prevention, crime detection, and rehabilitation of offenders. In addition, the Department represents the United States in the Supreme Court and generally renders legal advice and opinions upon request to the President and heads of executive departments.

Public Participation Summary

Within the DOJ, none of the divisions or components that engage in regulatory activity operate under formalized public participation procedures.

As a law enforcement agency, the DOJ does not engage in much informal rulemaking activity and, therefore, has not centralized the function of providing information about public participation in such activity. However, pursuant to Attorney General Order No. 831–79, May 25, 1979, the Associate Attorney General and the Deputy Attorney General exercise oversight over components' regulatory agenda with administrative support from the Office of the Administrative Counsel, Justice Management Division.

Funding and Technical Assistance

The DOJ is not authorized to fund public participation activities.

Public Participation Documents

The DOJ's draft consumer plan was published at 44 CFR 71384 on December 10, 1979. The final plan is scheduled for publication in June 1980.

Information Contact

For referral to a knowledgeable official on the agency's semiannual regulatory agenda and any related public activity in the appropriate DOJ component contact:
William Snider, Administrative Counsel
Justice Management Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 633–3452

The Department maintains general public information mailing lists. Any person who wishes to have his or her name included may contact:
Sandy Smith
Office of Public Affairs
U.S. Department of Justice, Room 5114
Washington, D.C. 20530
(202) 633–2014

Department of Labor (DOL)

Units that Issue Regulations

Bureau of International Labor Affairs
Bureau of Labor Statistics
Employment and Training Administration
Employment Standards Administration
Labor-Management Service Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration

Functions

DOL is primarily concerned with the quality of work-life in America and with the worker/employer-job relationship, including working conditions, pay, job and pay discrimination, job training, collective bargaining, workers compensation, and unemployment insurance. In addition, DOL administers the Labor Management Reporting and Disclosure Act and works with the Internal Revenue Service to administer the Employee Retirement Income Security Act of 1974.

Public Participation Summary

DOL develops a public participation plan for each significant rule proposed. Each of the administrative units named above has designated a consumer representative to handle inquiries and complaints; and the Special Assistant to the Secretary for Consumer Affairs coordinates public participation for all the units and the outreach activities of DOL's regional offices.

The Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) use advisory committees set up on an ad hoc basis to determine the need for regulatory action, as well as the content of a needed regulation. Any member of the public may request an informal public hearing in connection with the development of the regulation. MSHA and OSHA also are authorized to implement temporary standards under action circumstances.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

For general information or referral to the consumer representative for any administrative unit name above, contact:

Judy Sorum, Special Assistant to the Secretary for Consumer Affairs
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
(202) 523–9184

Department of Transportation (DOT)

Units That Issue Regulations

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Office of the Secretary
Research and Special Programs Administration
St. Lawrence Seaway Development Corporation
U.S. Coast Guard
Urban Mass Transportation Administration

Functions

The Department of Transportation (DOT) fosters the development and maintenance of safe, effective transportation systems to move people and goods. Each administrative unit named above has separate activities to reach the public, depending upon the nature of ongoing proceedings. DOT's Office of Consumer Affairs coordinates the public participation activities of all the administrative units.

Public Participation Summary

In the past year, the department has taken a number of major steps to enhance its public participation programs. First, based on suggestions we received at the department's Conference on Transportation and the Consumer, held in May 1979, the department issued an ANPRM (44 FR 46971, August 9, 1979). The ANPRM solicited the public's comments to help the department review and evaluate citizen participation in the transportation planning and project development process. Second, the department along with other government agencies, published its "Draft Consumer Program" (44 FR 71370, December 10, 1979), which contained an extensive section on public participation in rulemaking and decisionmaking in policies and programs. In addition, the department is reviewing its experience with public hearings in rulemaking proceedings to improve them.

An appendix to the department's Semi-Annual Regulations Agenda contains information on how interested persons may include their names on an agency's mailing list to receive documents issued within the department. Other appendices list the locations and hours of operation of the department's public rules dockets and the addresses and phone numbers of persons who can provide general information on DOT's rulemaking process. Persons who want to be placed on a mailing list for future copies of the agenda should call or write the appropriate office listed below under "Information Contact."

The Office of Consumer Affairs publishes a newsletter of general public interest. To receive it, call or write this office, which is listed below under "Information Contact."

Funding and Technical Assistance

In the past, DOT operated a demonstration program in the National Highway Traffic Safety Administration (NHTSA) for certain rulemaking proceedings. The program provided financial assistance to individuals and groups who otherwise would have been unable to participate effectively in NHTSA proceedings. Recently, however, funding for the demonstration program was eliminated by the action taken by Congress on the department's FY 1980 appropriations.

Public Participation Documents

The "Transportation Consumer Newsletter" is available from DOT's Office of Consumer Affairs.

The "Department of Transportation Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), and the "Semi-Annual Regulations Agenda" are available from the Office of the General Counsel. (See "Information Contact" below.)

Information Contact

Contact the following office for information on any DOT activity:

Office of Consumer Affairs
Department of Transportation
400 Seventh Street, S.W., Room 9402
Washington, D.C. 20590
(202) 275–4166

Contact the following office for copies of DOT's "Regulatory Policies and Procedures" and "Semi-Annual Regulations Agenda:"

Office of Regulation and Enforcement
Office of the General Counsel, C–50
Department of Transportation
400 Seventh Street, S.W., Room 10421
Washington, D.C. 20590
(202) 426–4723

Department of the Treasury

Units That Issue Regulations

Bureau of Alcohol, Tobacco and Firearms
Bureau of Government Financial Operations
Bureau of Public Debt
Comptroller of the Currency
Internal Revenue Service
Office of Revenue Sharing
Office of the Secretary
U.S. Customs Service
U.S. Savings Bonds Division
U.S. Secret Service

Functions

The Department of the Treasury collects, disburses, and ensures the integrity of government revenues.

Public Participation Summary

The Department of the Treasury has the following unique public participation and outreach activities:

- Public speaking by Treasury officials on Treasury regulatory activities.
- Public hearings scheduled by IRS if even one party so requests. Public hearings held in cities outside of Washington by AT&F with evening hearing times available upon request.
- Developing "consumer forums," arranging informal meetings, or providing special briefings for consumers, and their representatives.

Funding and Technical Assistance

Economic data and reports are supplied to researchers, private and public sector officials, students and consumers at little or not cost to the recipients.

Public Participation Documents

- Agenda of pending regulations on a monthly basis by IRS. The Bureau of National Affairs reprints and circulates it to subscribers.
- Direct distribution of regulatory documents issued by the Comptroller of the Currency to all national banks.
- Publication of all Customs NPRMs and Final Rules in the Customs Bulletin which is mailed to any individual expressing an interest in Customs regulatory activities.
- Publication of the "Consumer Affairs Handbook," available from the Special Assistant to the Secretary (Consumer Affairs).
- No general materials available. For information on specific regulatory activities, write or call the Information Contact listed below.

Contact Person

Steven L. Skancke
Deputy Executive Secretary
Department of the Treasury
Room 3408, Main Treasury
Washington, D.C. 20220
(202) 566–2269

Individuals and interest groups interested in adding their names to the general public information mailing list may do so by writing to the agency's Deputy Executive Secretary listed above.

Environmental Protection Agency (EPA)

Units That Issue Regulations

Office of Air, Noise and Radiation
Office of Enforcement
Office of Planning and Management
Office of Research and Development
Office of Toxic Substances
Office of Water and Waste Management

Functions

The President created EPA in 1970 to administer environmental laws, conduct research and demonstration projects, establish and enforce standards, monitor pollution in the environment and assist State and local governments in their efforts to restore and protect the environment. EPA's regulatory responsibilities are in the areas of air, water, toxics, pesticides, and solid waste management programs.

Public Participation Summary

The agency develops an individual outreach plan for most proposed regulations. The agency develops a special contact list, publishes an ANPRM, provides informal open meetings and workshops to explore regulatory issues, and then develops a summary of public viewpoints and preferences for inclusion into the final decisionmaking process. EPA also provides feedback on the outcome of public involvement to all those who participated in the above.

There is no required format for submitting a rulemaking petition, and multiple copies of public comments are not required, except in special cases to expedite agency review of comments.

The Administrator's Special Assistant for Public Participation is developing a policy for increased public participation (see below, under "Public Participation Documents"), as well as a pilot program to provide compensation for participation in certain rulemaking activities. The Office of Public Awareness is developing a proposed consumer plan to provide for increased consumer participation in EPA activities.

Funding and Technical Assistance

EPA is developing a pilot program to compensate selected participants for their participation in six specific forthcoming rulemakings, including rules issued under the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act. The general qualifications for compensation provide that: (1) The participant would be unable to participate effectively without agency compensation; and (2) the participant could make a useful contribution to a full and fair assessment of the issues involved.

Those individuals and groups participating in rulemaking proceedings regarding the control of hazardous chemical substances and mixtures not only must meet the above two requirements but also must not have a direct economic interest in the outcome of the proceeding.

Public Participation Documents

EPA is soliciting public comments on the "Proposed Policy on Public Participation" (45 FR 28912), which sets forth EPA's plan for increasing public participation.

"Improving Environmental Regulations" (44 FR 30988), describes EPA's regulatory development procedures and responds to E.O. 12044.

EPA has published a document on public participation in a specific program, entitled "Public Participation in Programs under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act" (44 FR 10286). EPA has published numerous other free books and pamphlets on several significant regulations and on some of its programs. These publications are available from the Office of Public Awareness.

Information Contact

Sharon Francis, Special Assistant to the Administrator for Public Participation (A–100)
Environmental Protection Agency
401 M Street, S.W., Room 1227 West Tower
Washington, D.C. 20460
(202) 245–3066

To receive copies of agency publications call or write:

Joan Martin Nicholson, Director
Office of Public Awareness (A–107)
Environmental Protection Agency
401 M Street, S.W., Room 311 West Tower
Washington, D.C. 20460
(202) 755–0700

James Keys
Public Information Center (PM 215)
Environmental Protection Agency
401 M Street, S.W., Lobby West Tower
Washington, D.C. 20460
(202) 755–0707

To have your name included on the agency's mailing list call or write:

Carol Hummer
Constitutent Coordinator (A–107)
Environmental Protection Agency
401 M Street, S.W., West Tower
Washington, D.C. 20460
(202) 755–0710

The Office of Pesticides and Toxic Substances' Industry Assistance Office will provide information concerning the implementation of the Toxic Substances Control Act, call or write:

John Ritch
Industry Assistance Office (TS–795)
Environmental Protection Agency
401 M Street, S.W., East Tower
Washington, D.C. 20460
(202) 554–1404
(800) 424–9065

Equal Employment Opportunity Commission (EEOC)

Units That Issue Regulations

Field Services
Office of Policy Implementation
Systemic Programs

Each commissioner also may issue regulations with the approval of the majority of the full Commission.

Functions

EEOC's primary responsibility is to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. In addition, the agency recently assumed jurisdiction over the Equal Pay Act and the Age Discrimination in Employment Act.

Public Participation Summary

EEOC involves affected Federal agencies, State and local governments, business, labor unions, public interest organizations, civil rights groups, and various individuals early in the process of developing proposed regulations. The EEOC's outreach plan is a very

extensive one, and includes holding public conferences and hearings, sending press releases and notices to special interest publications, and publishing ANPRMs to allow public comments at the earliest rule development stage.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

Karen Danart, Deputy Director
Office of Policy Implementation
2401 E Street, N.W.
Washington, D.C. 20506
(202) 634–7060

General Services Administration (GSA)

Units That Issue Regulations

Automated Data and Telecommunications Service
Executive Committee on the Federal Register
Federal Property Resources Service
Federal Supply Service
Information Security and Oversight Office
National Archives and Records Service
Office of Acquisition Policy
Office of General Counsel
Office of Human Resources and Organization
Public Buildings Service
Transportation and Public Utilities Service

Functions

GSA is the Federal government's business manager. GSA's regulations establish other agencies' procedures on matters such as managing Federal property and records; constructing and operating buildings; obtaining and distributing supplies; using and disposing of property; managing transportation, traffic, and communications; stockpiling strategic materials; and managing the government's automatic data processing resources program. While GSA is not a major regulatory agency, when agencies apply GSA regulations, the rules do have an effect on the public, for example, the rule on smoking in public buildings.

Public Participation Summary

GSA's procedures are designed in the spirit of openness to gain effective public participation rather than to satisfy specific legal requirements. For each proposed regulation, we select methods of public notice and participation based on the subject of the proposed regulation and the interests of the groups and sectors that will be affected by it. For instance, we may publicize some proposals in industry and trade publications while regulations abour facilities for the handicapped may be made available in Braille and in recorded tape cassettes. In every case, the notice tells how to participate in GSA's view of a regulation and who to contact.

Funding and Technical Assistance

No funding is available for public participation in GSA's regulatory process. In some cases, GSA employees may be able to give technical assistance to the public concerning a proposed regulation.

Public Participation Documents

"Consumer Resource Handbook." The Handbook provides a directory of Federal agencies and includes a list of private consumer organizations involved in citizen participation and representation.

Federal Register, December 10, 1979 (Volume II). This **Federal Register** volume contains the proposed consumer programs of 30 Federal agencies. Each draft program contains that agency's plan to provide for public involvement in development of its rules. The Handbook and the **Federal Register** volume are available free from GSA Consumer Information Center, Boulder, CO 81009. Please mark "Free" on the envelope to speed your order.

GSA's Federal Information Centers provide a toll-free telephone point of contact in more than 85 cities for information and referral to all Federal government activities, including public participation opportunities. Federal Information Centers are listed under "U.S. Government" in the telephone directory white pages.

Information Contact

For general information about regulations being developed call or write:
Anthony Artigliere
Directives Management Branch
General Services Administration
18th & F Streets N.W.
Washington, D.C. 20405
(202) 566–0666

For information on public participation in general:
David F. Peterson
Director of Consumer Affairs
General Services Administration
18th & F Streets N.W., Room G–142
Washington, D.C. 20405
(202) 566–1794

Nonprofit consumer organizations can enter their names on a special mailing list by contacting:
Teresa Nasif
Consumer Information Center
General Services Administration
18th & F Streets N.W., Room G–142
Washington, D.C. 20405
(202) 566–1794

GSA Hotline for reporting fraud or violations:
(800) 424–5210
(202) 566–1780—Washington, D.C. metro area only.
Or write:
GSA Hotline
P.O. Box 28341
Washington, D.C. 20005

Dial-A-Reg: Call the following numbers in the city nearest you for information on selected documents scheduled for publication in the next day's Federal Register.
(202) 523–5022—Washington, D.C.
(312) 663–0884—Chicago, IL
(213) 688–6694—Los Angeles, CA

National Credit Union Administration (NCUA)

Units That Issue Regulations

All regulations are issued by the NCUA Board.

Functions

NCUA is responsible for chartering, regulating, and supervising Federal Credit Unions. The agency is also responsible for administering the National Credit Union Share Insurance Fund, which insures the share (savings) accounts of the members of all federally chartered credit unions and select State-chartered credit unions. The NCUA board also serves as the board of directors of the National Credit Union Administration Central Liquidity Facility, which is a mixed ownership government corporation created to provide funds to meet the liquidity needs of credit unions.

Public Participation Summary

NCUA relies upon published requests for written comments on proposed rules. Advance copies of proposed rules are regularly sent to those persons and associations that have expressed an interest in being placed on NCUA's regulatory mailing list. Send requests to the Office of Administration, at the same address as the Agency Contact.

Funding and Technical Assistance

No funding or technical assistance is available at this time.

Public Participation Documents

NCUA final report "In Response to Executive Order 12044: Improving

Government Regulations" 44 FR 17954, March 23, 1979.

Information Contact

Robert S. Monheit, Senior Attorney and Regulatory Development Coordinator
Office of General Counsel
National Credit Union Administration
1776 G Street, N.W.
Washington, D.C. 20456
(202) 357–1030

Small Business Administration (SBA)

Units That Issue Regulations

All regulations are issued under the signature of the agency Administrator.

Functions

The agency provides the small business community with financial assistance, management training and counseling, and help in getting a fair share of government contracts through over 100 offices in all parts of the nation. SBA also serves as small business' chief advocate in the Federal government, and administers the government's home, personal property, and business Disaster Loan Recovery Program.

Public Participation Summary

SBA does not favor the Administrative Procedure Act's exemption of regulations concerning grants, loans, and other forms of financial assistance from normal public participation procedures; notices on these matters also go out to the general public for comments. Therefore, the Agency has developed 13 CFR 101.9, which specifies that public participation will be encouraged in all SBA rulemaking to the maximum extent possible. In this regard, the Agency makes use of regional hearings on its regulatory proposals and solicits advice on a regular basis from advisory committees. Otherwise, the Agency's procedures are in keeping with the Administrative Procedure Act and the spirit of E.O. 12044.

Funding and Technical Assistance

None.

Public Participation Documents

SBA's regulations dealing with public participation in rulemaking can be found at 13 CFR 101.9. Copies may be obtained by calling or writing the Information Contact listed below.

Information Contact

For general information on the preparation of regulations and policy, the promulgation of rules, or public participation procedures contact:
George M. Grant, Jr., Associate General Counsel for Legislation
Small Business Administration
1441 L Street, N.W., Room 700
Washington, D.C. 20416
(202) 653–6662

United States International Trade Commission (USITC)

Units That Issue Regulations

The Office of the General Counsel at the Commission is responsible for recommending the adoption of regulations by the Commission, recommending rulemaking proceedings, and preparing notices for rulemaking proceedings.

Functions

The Commission is an independent agency created to provide the Congress and the Executive Branch with expert advice on matters related to U.S. foreign trade. In addition to the general advisory responsibilities, the Commission conducts many investigations related to the impact of imported products on the domestic markets of U.S. producers.

Public Participation Summary

The Office of the Secretary at the Commission is responsible for assisting interested persons with participation in Commission investigations, facilitating access to information gathered by the Commission, and providing general information concerning the agency. Much of the information developed by the Commission concerns the domestic markets for products. Accordingly, consumers, producers, and importers of the products subject to investigation often have an interest in Commission proceedings and publications.

Funding and Technical Assistance

Although no compensation is made available to the public for paraticipation in a Commission proceeding, assistance is available. Inquiries concerning assistance should be directed to the Office of the Secretary.

Public Participation Documents

"Summary of Statutory Provisions Related to Import Relief" (Publication No. 1057, April 1980) summarizes the statutory provisions for agency investigations of the impact of imports in domestic product markets and is available from the Office of the Secretary.

A brochure that generally describes the agency is also available from the Office of the Secretary.

Information Contact

Hal Sundstrom
Assistant Secretary and Public Information Officer
Office of the Secretary
U.S. International Trade Commission
701 E Street, NW.
Washington, D.C. 20536
(202) 523–0161

This agency has a general public mailing list. Address requests to be added to the mailing list to the Office of the Secretary.

Veterans Administration (VA)

Units That Issue Regulations

Department of Medicine and Surgery
Department of Veterans Benefits
Department of Memorial Affairs
Other units can on occasion issue internal regulations; that is, for adherence by the agency only.

Functions

The VA provides services to veterans and their dependents through a variety of programs including compensation, pension, education, vocational rehabilitation, insurance, home loans, burial, and health care and hospitalization.

Public Participation Summary

The VA works closely with community organizations and knowledgeable individuals involved in veterans' interests in reviewing its regulations and procedures to determine program responsiveness to public need. VA medical centers and regional offices provide many services and disseminate information at the local level, where public involvement is particularly visible.

Also, the VA sends copies of proposed regulations to the U.S. House and Senate Veterans Affairs Committees, to veterans' organizations, and other interested parties. The VA encourages the public to submit written comments on the agency's regulatory activities. These are no formal requirements for submitting these comments, and the comment period on all rulemaking proceedings is either 30, 60, or 90 days, depending on the significance of the regulation.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

Nancy C. McCoy
Assistant Director for Administrative Issues
Office of Management Services (61)
810 Vermont Avenue, N.W.

Washington, D.C. 20420
(202) 389–3770 or 2073

Civil Aeronautics Board (CAB)

Units That Issue Regulations:

None. CAB regulations are issued by the CAB itself.

Functions

The CAB is responsible for economic regulation of air transportation and for overseeing the transition to a deregulated air transportation system.

Public Participation Summary

Private and public interest groups that petition CAB for rulemaking must file an original and 19 copies of the petition with CAB's Docket Section. Respondents to the petition should also file an original and 19 copies. Individuals may file their comments as consumers without filing multiple copies.

Public files on agency proceedings may be examined at CAB in Room 711, 1825 Connecticut Avenue, N.W., Washington, D.C., during normal business hours Monday–Friday.

Funding and Technical Assistance

The CAB's public participation funding program was terminated by P.L. 96–131, 93 Stat. 1023, November 30, 1979. (See 45 FR 36035, April 17, 1980.)

Public Participation Documents

In May and November, the CAB publishes an agenda of significant regulations under development or review. The first agenda appeared at 44 FR 65104, November 9, 1979.

Information Contact:

For information on public participation:
Mark Schwimmer, Assistant Chief
Rules and Legislation Division
Office of the General Counsel
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428
(202) 673–5442
For consumer complaints:
Consumer Assistance Section
Bureau of Consumer Protection
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428
(202) 673–6047

Commodity Futures Trading Commission (CFTC)

Units That Issue Regulations

CFTC regulations are issued by the CFTC itself.

Functions

The CFTC is an independent regulatory agency that exercises rulemaking and enforcement powers over trading on 10 commodity exchanges offering futures contracts in a wide variety of commodities. The Commission's regulatory and enforcement programs are designed to prevent deliberate market distortions and manipulations, to ensure fair trade processes, to protect the financial integrity of the marketplace and the brokerage community, and to assure the rights of customers, while providing an additional forum for release of their legitimate grievances.

Public Participation Summary

The CFTC also administers a reparations procedure under which it can order a firm or person to pay damages to someone who proves damage by that person or firm caused by a violation of the Commodity Exchange Act, as amended, or of CFTC regulations. This procedure provides an alternative to arbitration or litigation for members of the public who believe they have been damaged by persons or companies registered with or required to be registered with the CFTC, including floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators, and associated persons.

Funding and Technical Assistance

None.

Public Participation Documents

CFTC 101: Reparations
CFTC 102: Economic Purposes of Futures Trading
CFTC 103: Farmers, Futures and Grain Prices

Information Contact

For information concerning public participation or being included on the agency's public information mailing list, call or write:
Randell Moore, Director
Office of Public Information
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581
(202) 254–8630
For publications requests contact:
Irwin B. Johnson
Division of Economics and Education
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581
(202) 254–5273

CFTC's Consumer Hotline provides information concerning firms or persons dealing in commodity futures or similar instruments, such as options and leverage. The toll-free phone numbers are:
(800) 424–9838
Alaska, Hawaii: (800) 424–9707
Metro Washington, D.C. area: (202) 254–7837

Consumer Product Safety Commission (CPSC)

Units That Issue Regulations

The Commission votes on and issues all regulations from the Agency.

Functions

CPSC issues and enforces mandatory product safety standards, helps industry develop voluntary safety standards, and bans unsafe products when safety standards are not feasible. It also monitors recalls of defective products, informs and educates consumers about product hazards, conducts research and develops test methods, collects and publishes injury and hazard data, and promotes uniform product regulations of governmental units.

Public Participation Summary

CPSC established an Office of Public Participation (OPP) in January 1977, primarily to administer a funding program for public participants in agency proceedings.

The CPSC "Public Calendar," published weekly, provides information on meetings, hearings, Commission agendas, and proposed and final rules and regulations. It can be used to find out when the Commission is soliciting funding applications for participation in a proceeding. **Federal Register** Notices or proceedings would also provide this information.

Funding and Technical Assistance

CPSC provides reimbursement to selected participants in agency proceedings where public comments are invited on matters involving the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. CPSC generally selects the proceedings in which there is opportunity for financial compensation of public participants.

Public Participation Documents

Information on the Commission's funding program and the Public Calendar are available from the Office of Public Participation or the Office of the Secretary.

Information Contact

Office of Public Participation

Consumer Product Safety Commission
1111 Eighteenth Street, N.W.
Washington, D.C. 20207
(202) 254–6241
or
Office of the Secretary
Same address as above
(202) 634–7700

For general information about the Commission's activities call toll-free: (800) 638–8326; Maryland residents only call: (800) 492–8363; Alaska, Hawaii, Virgin Islands and Puerto Rico: (800) 638–8333.

A teletype for the deaf is available from 8:30 a.m. to 5:00 p.m., Monday-Friday for those who call these numbers.

Federal Communications Commission (FCC)

Units That Issue Regulations

The FCC's seven-member Commission issues and approves all agency regulations.

Functions

The FCC regulates both interstate and U.S. foreign radio, television, wire, cable, and satellite communications.

Public Participation Summary

The FCC publishes a "Sunshine Agenda" prior to each open FCC meeting that provides brief summaries of each item scheduled for discussion.

The FCC's Consumer Assistance Office (CAO) conducts public participation workshops in various locations across the country. These sessions teach members of the public how to participate in FCC rulemaking proceedings.

CAO also publishes *Feedback*, a plain English, consumer-oriented summary of major FCC proposals, and *Actions Alert*, a weekly bulletin reminding consumers of major pending actions at the FCC.

Funding and Technical Assistance

The FCC is considering the creation of a program to fund public participation. At this time, the FCC does not have such a program.

Public Participation Documents

You can obtain the following documents on public participation as well as other publications about the agency from the FCC's Consumer Assistance Office free of charge.

"A Guide to Open Meetings"
"The Public and Broadcasting: A Procedure Manual"
"How FCC Rules are Made"
"FCC Information Seekers Guide"
"FCC Feedback"
"FCC Actions Alert"

Information Contact

Erika Ziebarth Jones, Acting Chief
Consumer Assistance Office
Federal Communications Commission
1919 M Street, N.W., Room 258
Washington, D.C. 20554
(202) 632–7000

Call the Consumer Assistance Office for information on receiving its mailing lists for Feedback and Actions Alert.

The CAO operates a special phone for the hearing impaired 8:00 A.M. to 5:30 P.M., Monday–Friday: (202) 632–6669

For a recorded list of FCC press releases telephone (202) 632–0002 (the recording is changed twice daily).

Federal Deposit Insurance Corporation (FDIC)

Units That Issue Regulations

FDIC's Board of Directors issues regulations for the agency.

Functions

FDIC administers a Federal insurance program for the deposits in banks belonging to the Federal Reserve System and in State banks and U.S. branches of foreign banks that apply and qualify for FDIC insurance. FDIC also regulates, at the Federal level, FDIC-insured State-chartered banks that are not members of the Federal Reserve System and State-licensed branches of foreign banks.

Public Participation Summary

Under Section 553 of the Administrative Procedure Act, FDIC is required to provide general notice of, and permit public participation in, its rulemaking activities, except for interpretative rules; or rules on FDIC organization, practice, or procedure; or when the notice and public participation are impracticable, unnecessary, or contrary to the public interest. Public participation generally occurs through the submission of written data, views, or arguments. However, the FDIC Board of Directors may on occasion authorize interested persons to present their views orally. Under FDIC rulemaking procedures, the public comment period for all published proposed rules is at least 60 days, unless for good cause, such as unnecessary delay or harm to the public interest, the FDIC Board of Directors determines that a shorter period is necessary. When FDIC does not provide public notice of, and the opportunity for public participation in, its rulemaking activities or when the agency does not provide a public comment period of at least 60 days, the FDIC Board of Directors will publish its reasons for not doing so in the **Federal Register** notice for the regulation.

Funding and Technical Assistance

Consideration is given on a case-by-case basis. Requests should be directed to the Executive Secretary listed below under "Information Contact."

Public Participation Documents

An FDIC Policy Statement, "Development and Review of FDIC Rules and Regulations," outlines procedures used by FDIC during the development and review of its regulations. Copies can be obtained from the Information Office listed below.

Information Contact

For information on public participation and on funding:
Hoyle L. Robinson, Executive Secretary
Office of the Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
(202) 389–4425

For publications requests:
Information Office
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
(202) 389–4221

Federal Election Commission (FEC)

Units That Issue Regulations

All regulations issued by the Federal Election Commission are approved by affirmative vote of at least four Commissioners. The Office of General Counsel (OGC) drafts regulations for Commission approval. The other functional divisions of the Commission such as Audit, Reports Analysis and Public Disclosure, may make recommendations on new regulations to OGC. No office of the Commission has authority to issue regulations without such approval.

Regulations promulgated under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431, et. seq.), and chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code) must be transmitted to Congress prior to final prescription. If neither House of Congress disapproves the proposed regulation within 30 legislative days after transmittal, it may be precribed by the Commission. (See, 2 U.S.C. § 438(a)(8), 26 U.S.C. §§ 9009(c), 9039(c).)

Functions

The Federal Election Commission administers, formulates policy, and seeks to obtain compliance with respect

to the Federal Election Campaign Act of 1971, as amended, and chapters 95 and 96 of the Internal Revenue Code of 1954. Its functions include administering the Federal campaign finance disclosure requirements, contribution and expenditure limitations prohibitions on certain contributions to Federal Candidates, and public financing of Presidential nominating conventions and elections.

Public Participation Summary

The Federal Election Commission has no statutory authority for special public participation programs. Regulations are issued under the Administrative Procedure Act and public comments are invited pursuant to ANPRMs and NPRMs published in the **Federal Register**. Information on pending regulatory activities is also published in the Commission's monthly newsletter, the FEC *Record*.

Funding and Technical Assistance

None.

Public Participation Documents

Information on pending regulatory activities, as well as pending advisory opinions, recent enforcement actions and litigation, is published in the Commission's monthly newsletter, the FEC *Record*. The *Record* is distributed free of charge by the Commission's Public Information Office (see Information Contact below).

Information Contact

Dr. Gary Greenhalgh, Assistant Staff Director for Public Information
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523–4068
Outside the Washington, D.C. metro area phone (800) 424–9530

Federal Energy Regulatory Commission (FERC)

Units That Issue Regulations

There are no administrative units within the Federal Energy Regulatory Commission that have the authority to issue regulations. The full Commission votes on and issues all FERC regulations.

Functions

FERC is an independent five-member Commission within the Department of Energy (DOE). As the successor to the former Federal Power Commission, FERC sets rates and charges for transporting and selling natural gas, for transmitting and selling electricity, and for licensing hydroelectric power projects. FERC also decides whether to exercise independent jurisdiction in many DOE regulatory policies.

Public Participation Summary

FERC often holds public hearings and informal public conferences in Washington, D.C., and other regions of the country on major rulemaking proposals. These hearings and conferences generally are presided over by a member of the Commission and are announced in the **Federal Register**.

Also, after a proposed rule appears in the **Federal Register** the public has 45 days in which to submit written comments on the proposal. The Commission requires 14 copies of written comments, but in special circumstances the Commission may waive that requirement.

Funding and Technical Assistance

In spite of the Commission's efforts to obtain compensation for public participation, the Congress wrote an absolute restriction on public participation funding into the FERC's FY 1980 appropriation bill.

Public Participation Documents

While the Commission does not have any publications specifically on public participation, it does maintain several mailing lists designed to disseminate widely free information on its activities and ongoing proceedings. These mailing services are as follows:

- Department of Energy Weekly Announcements—a weekly compilation of all news releases issued by FERC and DOE.
- RU Mailing List—all FERC orders in rulemaking dockets.
- NGPA Mailing List—Natural Gas Policy Act releases, notices, rulemakings.
- Mailing List for Consumer Organizations—Commission Announcement notices, etc., that are of interest to consumer organizations.
- Incremental Pricing Mailing List—Incremental Pricing, notices and rulemakings.

Lists of all publications and special reports issued by the FERC can also be obtained from the Division of Public Information within the Office of Congressional and Public Affairs. The Division of Public Information plans to issue in the near future a guide to public information available at the FERC.

Information Contact

For more information on FERC's public participation program call or write:

Office of the Secretary
Federal Energy Regulatory Commission
825 North Capitol Street N.E., Room 9310
Washington, D.C. 20426
(202) 357–8400
Office of Congressional and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426
(202) 357–8373

For further information on public participation funding at the FERC:

Kenneth S. Levine
Director, Office of Congressional and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426
(202) 357–8373

The FERC Division of Public Information within the Office of Congressional and Public Affairs also maintains a daily recorded message listing all orders and notices issued by the Commission. The message is changed at 10:00 a.m. and 3:00 p.m. each day; call (202) 357–8555.

Federal Home Loan Bank Board (FHLBB)

Units That Issue Regulations

Office of General Counsel, Regulations Division

Functions

The Federal Home Loan Bank Board is an independent regulatory agency headed by a three-member board of directors. Members are appointed by the President, with the advice and consent of the Senate, for four-year terms. The Chairman is designated by the President and is the chief executive officer of the Board.

The members of the Board comprise the Board of Directors of the Federal Home Loan Mortgage Corporation, which was created by Title III of the Emergency Home Finance Act of 1970 to develop a secondary market for mortgage loans. The Board also supervises the operations of the Federal Home Loan Banks, and directs the operations of the Federal Savings and Loan Insurance Corporation (FSLIC). The FSLIC insures the accounts of all federally chartered savings and loans, and of other building and loan, savings and loan, and homestead associations, and cooperative banks that are eligible for insurance and whose applications have been approved by FSLIC. Finally, the Board supervises and regulates all savings and loans and other similar

institutions doing business in Washington, D.C.

Public Participation Summary

After notice of a proposed amendment or rule is published in the **Federal Register**, interested persons may participate in the regulatory process by sending written data, views, or arguments to the Secretary to the Board. Members of the public may also petition the Board to issue, amend, or repeal any amendment or rule by sending a petition to the Secretary to the Board.

The Board generally does not hold hearings on proposed regulations or amendments. However, if hearings are held, they are open to the public. Similarly, the public may attend open Board meetings. Notice of these meetings is published in the **Federal Register** and posted in the lobby of the Board's headquarters at 1700 G Street, NW., Washington, D.C.

Funding and Technical Assistance

None

Public Participation Documents

Information on public participation in Board meetings, hearings, and other parts of the regulatory process, summarized above under the heading, "Public Participation summary," may be found in 12 CFR §§ 505b and 508. Further information on procedures, forms, and other aspects of the Board's operations is available to the public at the Board's headquarters and at the offices of the Federal Home Loan Banks.

Information Contact

Warren J. Dunn
Communications Office
Federal Home Loan Bank Board
1700 G Street, NW.
Washington, D.C. 20552
(202) 377–6677

Interested persons may write or phone the above office to be placed on a general public information mailing list to receive press and statistical releases. Other information published by the Board and available to the public, listed in 12 CFR 505.3, includes copies of the Board's Annual Report, the Federal Home Loan Bank Board Journal, as well as statutory and regulatory material relating to the Board's operations.

Federal Maritime Commission (FMC)

Units That Issue Regulations

There are no units within the Federal Maritime Commission that have authority to issue regulations. All regulations are issued by the Commission as a whole.

Functions

FMC is an independent regulatory agency primarily responsible for administering Federal statutes concerned with the regulation of ocean shipping in the U.S. foreign commerce and the U.S. domestic offshore commerce.

Public Participation Summary

Shippers and receivers of cargo in the U.S. ocean commerce are the FMC's real consumers. Because the general public is not usually directly concerned with ocean freight rates and practices, the Commission's public participation activities are somewhat limited. While interested parties may and do participate in the rulemaking proceedings, comments from the general public are rarely received. However, in addition to requesting written comments from the shipping public on proposed rules, the Commission, at times, conducts informal public discussions in various cities throughout the country to solicit comments on issues to be addressed in proposed rules. Comments obtained through such public discussions become part of the rulemaking record. FMC has a public reference room and a dockets room in Washington, D.C., where the public can review files on agreements, tariffs, and legal proceedings. The eight Commission field offices also have public reference areas. Call one of the persons listed under "Information Contact" for the field office nearest you if it is not listed in your telephone directory.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

Francis C. Hurney, Secretary
Federal Maritime Commission
1100 L Street, N.W., Room 11101
Washington, D.C. 20573
(202) 523–5725
or
Otto J. Kirse, Assistant Managing Director for Consumer Affairs
Federal Maritime Commission
1100 L Street, N.W., Room 12411
Washington, D.C. 20573
(202) 523–5800

Federal Mine Safety and Health Review Commission (FMSHRC)

Units That Issue Regulations

With the exception of certain administrative matters, the agency does not engage in the formal promulgation of regulations; the primary function of FMSHRC is to adjudicate.

Functions

Congress created FMSHRC as an independent agency to adjudicate disputes under the Mine Safety and Health Act of 1977.

Public Participation Summary

Section 105(c) of the Act (30 U.S.C. § 815(c)) contains a Congressional mandate for legal representation by the Federal government for miners and their representatives in private disputes brought before FMSHRC against mine operators because of alleged discrimination in safety and health matters. Congress also provided that when the Solicitor of the Department of Labor does not provide legal representation, a miner or representative who wins the dispute can recoup costs, including attorney fees, from the mine operator.

Funding and Technical Assistance

The provision by Congress for a miner or his representative to receive legal representation by the Federal government or to recoup costs can be found at Title 30, § 815(c) of the United States Code.

There is no additional provision or procedure for funding of public participation at this time.

Public Participation Documents

The Rules of Procedure for cases tried before FMSHRC are available from FMSHRC or can be found in Title 29, Part 2700 of the Code of Federal Regulations.

FMSHRC also is considering the publication of a pamphlet explaining how the Commission operates.

Information Contact

Executive Director
Federal Mine Safety and Health Review Commission
1730 K Street, N.W., Sixth Floor
Washington, D.C. 20006
(202) 653–5625

Federal Reserve System (FRS)

Units That Issue Regulations

Board of Governors of the Federal Reserve System.

Functions

The primary responsibility of the Federal Reserve System is the conduct of monetary policy which affects the availability of money and credit. It exercises supervisory and regulatory authority over member banks and all bank holding companies. It also acts as the fiscal agent for the U.S. Treasury

and has responsibility for implementing numerous consumer laws, such as Truth in Lending.

Public Participation Summary

Depending upon the nature of the proposed regulation and the interests of the affected sector, the Federal Reserve Board (FRB) utilizes a variety of outreach procedures, including publishing an ANPRM that may suggest specific issues on which comments should be focused. FRS may also choose to schedule an informal public hearing or directly solicit views from interested persons or groups.

The Board's Regulations B and Z, which implement the Equal Credit Opportunity and Truth in Lending Acts, provide for special public participation in matters related to the Acts. If the FRB receives a request for public comment on an official staff interpretation of these regulations before the effective date is suspended, the FRB will republish the proposed staff interpretation for public comment. Public participation is also invited through the Board's Consumer Advisory Council. The Council generally meets for a day and one-half four times a year and about ten new members each year are chosen from the public. The Council's agenda is published preceding each meeting. Written public comments on proposed topics and public attendance at meetings is encouraged.

Funding and Technical Assistance

None

Public Participation Documents

The Federal Reserve has prepared a special pamphlet entitled "Government in the Sunshine" that provides a guide to meetings of the Board of Governors. More formal information on Rules of Procedure, 12 CFR 262 and Rules Regarding Public Observation of Meetings, 12 CFR 261B is available through the Publications Office of the Board.

In the Consumer area, information on the Consumer Advisory Council can be found in Rules of Organization and procedure of the Consumer Advisory Council, 12 CFR 267.

Procedures for Issuing Official Staff Interpretations of Regulations B and Z, 12 CFR 202.1(d), 226.1(d) is available through the Publications Office.

Information Contact

Joseph R. Coyne, Assistant to the Board
Federal Reserve Board
Washington, D.C. 20551
(202) 452–3204

To include your name on the agency's general public information mailing list or to obtain copies of the public participation documents listed above call or write:

Publications
Federal Reserve Board
Washington, D.C. 20551
(202) 452–3244

Federal Trade Commission (FTC)

Units That Issue Regulations

Bureau of Consumer Protection
Bureau of Competition

Functions

The Commission's functions are aimed at promoting competition and fair and honest dealing in the economy. It seeks to remove market restrictions that drive up prices and limit the supply of goods and services. It also seeks to protect consumers by ensuring that commercial information available to consumers is accurate and complete.

Public Participation Summary

Section 18(h) of the FTC Act authorizes the Commission to reimburse persons who participate in its rulemaking proceedings for the costs of that participation if they could not otherwise afford to participate effectively, and if their participation is necessary in the proceeding. The program is administered in the Office of the General Counsel by the Special Assistant for Public Participation, with all funding determinations made by the General Counsel.

To date, nearly 70 groups and individuals representing citizens' and small business interests have been reimbursed for their costs of participating in FTC rulemaking proceedings. The program is intended to improve the rulemaking process by ensuring that all points of view are heard through effective presentations.

An important part of the public participation in the rulemaking program is an affirmative outreach effort. This includes two special features: first, workshops to explain the rulemaking procedures and how to participate effectively; second, seminars to small business and consumer interests that are likely to be concerned with particular rulemakings to inform them of the availability of public participation funding.

Funding and Technical Assistance

Interested persons, whether they represent a consumer or a small business point of view, can be reimbursed for their costs of participation in rulemaking proceedings if they meet the statutory criteria. The Special Assistant for Public Participation, listed under "Information Contact," provides assistance in the preparation of reimbursement applications and answers questions regarding the status of rulemaking proceedings. The Commission is unable to provide other assistance to participants.

Public Participation Documents

Staff Guidelines: "The Public Participation in Rulemaking Program: Rulemaking Proceedings and Reimbursement for Costs of Participation."

These Guidelines are intended to assist persons unfamiliar with FTC activities who are seeking reimbursement for their costs of participation in FTC rulemakings. Information is provided on the nature of FTC rulemaking proceedings, types of public participation possible at each stage of these proceedings, and the statutory standards for reimbursement. The Guidelines also explain the financial requirements for reimbursement recipients and include application forms with step-by-step instructions.

Information Contact

For information on general public participation and funding please call or write:

Bonnie Naradzay, Special Assistant for Public Participation
Office of the General Counsel
Federal Trade Commission
Washington, D.C. 20580
(202) 523–3796

Interstate Commerce Commission (ICC)

Units That Issue Regulations

All regulations are issued by the Commission. Staff units responsible for preparing regulations for the Commission's approval are:
Bureau of Accounts
Bureau of Operations
Bureau of Traffic
Office of Policy and Analysis
Office of Proceedings

Functions

The ICC was created in 1887. It regulates railroads, trucking companies, bus lines, freight forwarders, and water carriers. The Commission is entrusted with ensuring the "development, coordination and preservation of a transportation system that meets the transportation needs of the United States." In regulating the modes of transportation subject to its jurisdiction,

the Commission must carry out a transportation policy which has as its goals: (1) to recognize and preserve the inherent advantage of each mode of transportation; (2) to promote safe, adequate, economical, and efficient transportation; (3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers; (4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices; (5) to cooperate with each State and the officials of each State on transportation matters; and (6) to encourage fair wages and working conditions in the transportation industry.

Public Participation Summary

The Commission's Office of Special Counsel assists the Commission in determining the public interest in its proceedings. The Special Counsel contributes to the public interest record in Commission proceedings by intervening as a party and by conducting outreach activities to encourage and facilitate direct public participation. Complaints and suggestions from the public are used by the Special Counsel to formulate a position reflecting the public interest in a proceeding. The Commission sometimes holds informal hearings in cities across the Nation to solicit public comment either before opening a rulemaking proceeding or before taking final action in a rulemaking proceeding. Staff of the Special Counsel are available to assist the public in participating in these hearings.

Staff of the Small Business Assistance Office are also available to help small business interests present their viewpoints in Commission proceedings.

Funding and Technical Assistance

No funding is available, but, as discussed above, the Office of Special Counsel and the Small Business Assistance Office offer technical assistance in some Commission proceedings.

Public Participation Documents

"Informal Rulemaking Procedures," NPRM, 43 FR 27732, June 26, 1978; Notice of Final Rules, 44 FR 42558, July 19, 1979.

"Improving Commission Regulations," Notice of Proposed Policy Statement, 43 FR 27729, June 26, 1978; Notice of Final Policy Statement, 44 FR 42563, July 19, 1979.

Information Contact

For information on public interest issues in agency proceedings call or write:

Edward J. Schack, Special Counsel
Office of Special Counsel
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7411
or
Bernard Gaillard, Director
Small Business Assistance Office
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7597

To include your name on the agency's general public information list call or write:

Interstate Commerce Commission
Office of Communications
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7252

The Commission operates a toll-free consumer hotline: (800) 424–9312. Consumers may use the hotline if they have complaints about any carrier subject to the Commission's jurisdiction. The hotline is manned from 8:30 to 5:00 weekdays and is answered by a recording at other times. Callers can leave their name and number on the recording device, and a staff member will return their call.

To reach the Commission's Spanish-speaking coordinator call (202) 275–7574.

National Labor Relations Board (NLRB)

Units That Issue Regulations

The Board functions in a quasi-judicial manner in processing unfair labor practice charges and representation cases. Although serving as precedent and, in this sense, as guidelines to the labor-management community as a whole, the Board's decisions and orders, strictly speaking, are applicable only to the parties involved. Accordingly, because the NLRB does not normally use rulemaking procedures for the purpose of issuing rules and regulations, the NLRB has no regulatory units.

Functions

The NLRB has two basic functions. They are (1) to determine, through secret ballot elections, the free choice of employees whether or not they wish to be represented by a union for collective bargaining purposes; and (2) to prevent and remedy unfair labor practices by either employers or unions which adversely affect employees' rights to self-organization and collective bargaining.

Public Participation Summary

Although opportunities for public participation in NLRB decisions are normally limited, the Board has taken certain steps that it hopes will facilitate, to the extent possible, participation by the public in agency procedures:

(1) Public Information Program: Effective July 27, 1979, the Board's 33 Regional Offices inaugurated a new public information program designed to enhance the public's understanding of the scope and function of the National Labor Relations Act and the NLRB's role in administering it. The new program resulted from a study that indicated that improved planning and scheduling of information officer assignments, expanded training in the performance of such duties, and the assignment of more experienced Board agents to this function would enable members of the public with grievances which come under Board jurisdiction to receive the agency's assistance sooner than in the past, at the same time that those with grievances not covered by the Act would be directed to the appropriate government agency if any, for resolution of their complaints. The agency has launched a training program for information officers that, coupled with public information brochures and a change in the case assignment process, will give priority to the information officer program.

(2) Decentralization of the Administrative Law Judges' Division: In an attempt to expedite the processing of unfair labor practice charges, the Board has recently decentralized the Administrative Law Judges' Division (previously headquartered in Washington and San Francisco) by opening additional offices in New York City and Atlanta, Georgia.

Funding and Technical Assistance

The NLRB does not offer funding or technical assistance.

Public Participation Documents

"A Guide to Basic Law and Procedures Under the National Labor Relations Act". As a result of experience indicating that there is still a lack of basic information about the National Labor Relations Act, the NLRB has sought to meet this demand by setting forth in this pamphlet the basic law under the Act in a nontechnical way, so that those who may be affected by it, including the general public, can better understand what their rights and obligations are.

This guide is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at a charge of $2.20.

Information Contact

Thomas W. Miller, Jr., Director
Division of Information
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.,
Room 710
Washington, D.C. 20570
(202) 632–4950

The Division of Information also maintains several mailing lists that include the following: 1. Weekly Summary of NLRB Cases; 2. Monthly Election Reports; 3. New Releases. Write the above "Information Contact" if you wish to be placed on any of these lists.

Nuclear Regulatory Commission (NRC)

Units That Issue Regulations

Except as delegated to the Executive Director for Operations, the authority to issue regulations rests with the Commission.

Under 10 CFR 1.40(d) the Executive Director for Operations has been delegated authority to issue amendments to the Commission's regulations which are corrective, minor, or nonpolicy in nature, and do not substantially modify existing regulations. The Executive Director for Operations also may issue amendments to regulations in final form, if no significant adverse comments or questions have been received on the proposed rule change.

Under 10 CFR 1.40(o), the Executive Director has been delegated authority to deny petitions for rulemaking of a minor or nonpolicy nature, where the grounds for denial do not substantially modify an existing precedent.

Under 10 CFR 2.802(f), the Executive Director for Operations also has been delegated authority to return to a petitioner any proposed petition which is incomplete and does not meet the requirements of 10 CFR 2.802(c) dealing with the specificity of petitions for rulemaking.

Functions

The NRC was established by the Energy Reorganization Act of 1974, as amended, P.L. 93–438, 88 Stat. 1233 (42 U.S.C. §§ 5801 *et seq.*). This Act abolished the Atomic Energy Commission and, by § 201, transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954, as amended, P.L. 83–703, 68 Stat. 919 (42 U.S.C. §§ 2011 *et seq.*).

The NRC regulates civilian nuclear activities to protect the public health and safety, national security, and the quality of the environment, as well as to ensure that the public and private sectors obey the antitrust laws.

Public Participation Summary

NRC has taken steps to enhance both the accessibility and quality of public participation in its rulemaking activities. These steps include:

- Making available to the public, at the start of each Commission meeting, any staff papers discussed in open meetings, and placing copies of such papers in the Public Document Room;
- Publishing agenda of petitions for rulemaking and proposed rules and noticing the availability of the agenda in the **Federal Register;**
- Publishing quarterly a status summary report called the "Green Book" that lists, among other things, regulations under development by the Office of Standards Development;
- Publishing ANPRMs on major actions;
- Making available to the public, at the time the Commission considers a final rule, an analysis of comments on the proposed rule and a discussion of their resolution;
- Preparing and making available to the public a cost/benefit analysis or environmental impact statement on major rules; and
- Holding public hearings or meetings on rulemaking actions of particular interest and importance.

Funding and Technical Assistance

In NRC's budget request to Congress for FY 1981, NRC has included funds for public participation in its rulemaking process. The NRC also encourages prospective petitioners to meet with the staff prior to filing a petition for rulemaking. Those meetings can help expedite the rulemaking process, result in greater understanding of NRC's licensing requirements, or present alternatives to a petitioner for obtaining the petitioner's objectives.

Public Participation Documents.

The "NRC Manual" and other elements of the NRC's Management Directives System contain NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies of the Manual are available for public inspection and copying at the NRC Public Document Room and and at each of NRC's Regional Offices.

The NRC's Annual Report, for sale by the Superintendent of Documents, Government Printing Office, includes a section which discusses provisions in NRC regulations for formal participation by the public in rulemaking, licensing, and other proceedings.

The "Rules of Practice for Domestic Licensing Proceedings," 10 CFR Part 2, pertains to the conduct of Commission proceedings, including the opportunities for public participation.

NRC's procedures for public participation in agency rulemaking are set forth in Subpart H, Rule Making, of NRC's Rules of Practice (10 CFR Part 2).

Information Contact

For information concerning the status of proposed rules or petitions for rulemaking, to set up meetings with the NRC staff regarding proposed petitions, or for other information concerning NRC's rulemaking activities, call or write:

Ms. Betty L. Wagman, Acting Chief,
Rules and Procedures Branch
Division of Rules and Records
U.S. Nuclear Regulatory Commission,
Room 1713 MNBB
Washington, D.C. 20555
(301) 492–7086

Address rulemaking petitions to:
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Chief, Docketing & Service Section

Copies of all petitions are available for public review at:

NRC Public Document Room
1717 H Street, N.W.
Washington, D.C. 20555

Information concerning the agency's public information mailing list can be obtained from:

Mr. Steve Scott, Chief,
Documents Management Branch
Division of Technical Information and Document Control
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(301) 492–8585

On a trial basis, the NRC has established an automatic telephone answering service for current information concerning the scheduling of Commission meetings. The telephone number is (202) 634–1498. Further details on Commission meetings are available from the staff of the Office of the Secretary by telephoning (202) 634–1410 on weekdays between 8:15 a.m. and 5:00 p.m.

Occupational Safety and Health Review Commission (OSHRC)

Units That Issue Regulations

The Review Commission does not issue regulations, but does issue rules of procedure that govern its administrative proceedings.

Functions

The Review Commission is an independent quasi-judicial agency created by Congress to adjudicate contested enforcement actions arising under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651–678.

Public Participation Summary

No program.

Funding and Technical Assistance

None.

Public Participation Documents

"A Guide to Procedures of the Occupational Safety and Health Review Commission," (also available in Spanish), is a nontechnical explanation of procedures before the Commission.

"OSHRC: The Federal Job Safety and Health Court"

"Simplified Proceedings—An Experimental, Alternative Procedure to Resolve Simple Cases Before the Occupational Safety and Health Review Commission" is a brief explanation of the new simplified procedures.

These are available free from the Office of Information at the address below.

Information Contact

Public Information Officer
Occupational Safety and Health Review Commission
1825 K Street, N.W., Room 701
Washington, D.C. 20006
(202) 634–7948

Postal Rate Commission (PRC)

Units That Issue Regulations

The Commission as a whole issues all decisions, which are forwarded, in accordance with 39 U.S.C. § 3624, to the Governors of the Postal Service for final action. The Governors, under varying requirements, may approve, allow under protest, reject, or modify a Commission decision.

According to 39 U.S.C. § 3603, the Commission may change its rules of procedure without approval of the Governors of the Postal Service. The procedure for any changes must be in accordance with 5 U.S.C. chapters 5 and 7.

Functions

The Postal Rate Commission is an independent Federal regulatory agency composed of five Commissioners appointed by the President, with the advice and consent of the Senate. The Commission, acting upon requests from the U.S. Postal Service or on its own initiative, recommends, to the Governors of the Postal Service, changes in postal rates, mail classification, and services offered. The Commission also has appellate authority to review Postal Service determinations, and to close or consolidate post offices.

Public Participation Summary

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission. They are complementary to the Administrative Procedure Act.

PRC's Officer of the Commission (OOC) represents the interests of the general public in Commission proceedings. The agency's *ex parte* rule forbids the OOC and the staff assigned to that office from having any discussion with the Commission or its advisory staff on the issues in the proceedings. This assures no prejudgment exists when the Commission is deciding a case. The OOC is listed below under "Information Contact."

In addition to providing for participation by persons wishing to become parties or limited intervenors in Commission proceedings, the Commission's rules permit any person to file an informal statement of views with the Commission. These statements are open to public inspection (39 CFR § 3001.19b).

Funding and Technical Assistance

None

Public Participation Documents

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission in addition to the laws contained in the Administrative Procedure Act. These rules can be found at 39 CFR §§ 3001.1–3001.116.

Information Contact

Any person interested in participating in any Commission proceeding may contact:

David Harris, Secretary and Chief Administrative Officer
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, D.C. 20268
(202) 254–3880

General public interest issues can be discussed with:

Stephen Sharfman, Officer of the Commission
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, D.C. 20268
(202) 254–3840

Documents filed in the various cases are available from:

PRC Docket Room
2000 L Street, N.W., Room 500
Washington, D.C. 20268
(202) 254–3800

The Commission issues a free biweekly "Docket Summary" which lists and describes the significant documents that have been filed with or issued by the Commission. To be put on the mailing list, contact:

Dennis Watson, Public Information Officer
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, D.C. 20268
(202) 254–5614

Securities and Exchange Commission (SEC)

Units That Issue Regulations

All regulations are issued by the Commission as a whole. However, proposed regulations may be suggested to the Commission by any staff division or autonomous office. The principal staff units with direct responsibility for proposing regulations are:

Division of Corporate Finance
Division of Corporate Regulation
Division of Investment Management
Division of Market Regulation
Office of Chief Accountant

Functions

The Commission is responsible for overseeing the operations of the Nation's securities trading markets. It has direct responsibility for regulation of those engaged in trading securities or selling them to the public, such as stockbrokers, persons who trade securities on the floors of exchanges, investment advisers, mutual fund operators, and others. The Commission also administers the "full disclosure system" which assures that publicly owned companies disclose publicly all material information regarding their operations. In addition, the Commission has responsibilities relating to public utility holding companies and to bankruptcies of public corporations.

Public Participation Summary

The Commission's rulemaking process is open to public participation in accordance with the Administrative Procedure Act and, in addition, certain specific provisions of the Federal securities laws. Notable provisions are at 5 U.S.C. § 553 and 15 U.S.C. § 78s. In general, the Commission publishes

NPRMs in the **Federal Register**, the "SEC Docket" and the "SEC News Digest," and provides interested persons an opportunity to submit written data, views, and arguments regarding the proposed rules. Further, the Commission, in certain instances, mails copies of proposed rules directly to interested persons in order to encourage public participation in the comment process. Comments are kept in a public file that is available for reference at the Commission's public reference room at 1100 L Street, N.W., Washington, D.C. 20549.

Funding and Technical Assistance

None.

Public Participation Documents

A brochure, entitled "SEC Publications," lists other material published by the Commission, and is available from the Publications Section listed below.

Notice of rule proposals as well as rule adoptions, schedules of open Commission meetings, and many other announcements of interest to the public are published each day in the "SEC News Digest," which is also available by subscription from the Superintendent of Documents, at a cost of $100 per year.

In addition to publication in the **Federal Register**, all rule proposals issued by the Commission are published in the "SEC Docket," which is available by subscription at a cost of $79 per year from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Information Contact

Copies of specific rule proposals or corporate disclosure documents may be obtained by writing to:

Public Reference Section
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20509

General inquiries or questions about the availability of above-listed documents may be addressed to:

Office of Public Affairs
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549
(202) 272–2650 or (202) 523–5360

Comments on rule proposals should be directed to:

George Fitzsimmons
Secretary to the Commission
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

BILLING CODE 6560-24-M

APPENDIX III: STATUS OF REGULATIONS FROM NOVEMBER, 1979 EDITION

This appendix provides information about those regulations that appeared as entries in the November, 1979 edition of the Calendar of Federal Regulations but are not repeated in this May, 1980 edition. Many of the entries from last edition do repeat in this edition because the agencies are still developing those regulations; however, some entries do not repeat.

For example, a regulation which an agency was developing in November may have gone final, or the agency may have withdrawn it or taken some other action that made it inappropriate to include in this edition of the Calendar. This appendix notes the actions the agencies have taken on such regulations.

This appendix includes the page number on which the regulation appeared in the Federal Register edition of the November, 1979 Calendar to help the reader locate specific information.

We also note any significant word changes in the titles of the regulations to help the reader locate entries that have been retitled and appear as entries in both editions of the Calendar.

The appendix is organized alphabetically by agency, unit within the agency, and then by title of the regulation.

AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
USDA-FNS	Regulation by the Secretary of Agriculture of Foods Sold on School Premises in Competition with the National School Lunch Program and the School Breakfast Program	68263	Final Rule -- 45 FR 6758 1/29/80
DOC-MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World Wide Service; Essential Service Requirement	68338	Final Rule -- 5/80; exact citation not available at time of this publication

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOC-NOAA	Regulations Implementing a Preliminary Fishery Management Plan for Pacific Billfish and Oceanic Sharks under the Fishery Conservation Management Act of 1976, as Amended	68213	Final Rule -- 45 FR 14581 3/6/80
DOE-ERA	Incentives for Refinery Investment	68224	Change of Title for this Edition -- Incentives to Refine Lower Quality Crude Oil
DOE-ERA	Natural Gas Curtailment Priorities and Related Issues	68225	Change of Title for this Edition -- Natural Gas Curtailment Priorities for Interstate Pipelines
DOE-RA	Proposed Outer Continental Shelf (OCS) Bidding Systems Regulations	68228	Final Rule -- 45 FR 9536 2/12/80
DOI-FWS	Endangered Species Act, §4, Regulations for Listing Endangered and Threatened Wildlife and Plants	68230	Final Rule -- 45 FR 13010 2/27/80
DOI-HCRS	Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	68231	Final Rule issued for Eligibility (36 CFR Part 1228 Appendix A and B)
DOJ-BOP	Non-discrimination Towards Inmates	68310	Final Rule -- 45 FR 23366 4/4/80

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOJ-INS	Replacement of Alien Registration Receipt Cards -- Requirement for Single Fingerprint and Personal Appearance	68311	Final Rule -- 5/80; exact citation not available at time of this publication
DOJ-LEAA	Equal Service Program Guidelines	68312	Change of Title for this Edition -- Equal Service Evaluation Guidelines
DOL-ESA	Proposed Amendment to the Sex Discrimination Guidelines Governing Insurance and other Employee Benefit Plans	68313	Change of Title for this Edition -- Sex Discrimination Guidelines--Employee Benefits
DOL-OSHA	Chemical Warning Systems (Chemical Labeling)	68278	Change of Title for this Edition -- Chemical Substance Identification (Labeling)
DOL-OSHA	Safety and Health Regulations for Construction Activities in Tunnels and Shafts	68282	Change of Title for this Edition -- Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas
DOL-OSHA	Safety Standard for Walking and Working Surfaces in General Industry	68283	Change of Title for this Edition -- General Industry Standard for Walking and Working Surfaces, and Construction Safety Standard for Ladders and Scaffolding, and Floor and Wall Openings, and Stairways

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL-OSHA	Standard for Occupational Exposures to Hexavalent Chromium	68284	Change of Title for this Edition -- Standard for Occupational Exposure to Chromium
DOT-FHWA	Interstate Maintenance Guidelines	68341	Final Rule -- 45 FR 20791 3/31/80
DOT-NHTSA	Fuel Economy Standards for Model Years 1982-85 Light Trucks	68234	Change of Title for this Edition -- Fuel Economy Standards for Model Year 1983-85 Light Trucks
TREAS-ATF	Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages	68324	Final Rule -- 5/80; exact citation not available at time of this publication
TREAS-ATF	Revision of the Distilled Spirits Tax System	68325	Change of Title for this Edition -- Implementation of the Distilled Spirits Tax Revision Act of 1979
EPA-OANR	Environmental Standard for Inactive Uranium Mill Tailings	68290	Change of Title for this Edition -- Remedial Action Standards for Inactive Uranium Processing Sites
EPA-OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles	68235	Final Rule -- 45 FR 4136 1/21/80

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
EPA-OANR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Vehicles	68236	Change of Title for this Edition -- Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Truck and Heavy Duty Engines
EPA-OANR	Listing of Coke Oven Emissions as a Hazardous Air Pollutant and Development of Emission Limitations	68238	EPA is preparing a health risk assessment to determine if coke oven emissions should be listed as a hazardous air pollutant
EPA-OANR	National Emission Standards for Hazardous Air Pollutants -- Benzene	68239	Benzene has been listed as a hazardous air pollutant. The individual emission standards currently under development do not meet the agency's criteria for inclusion in the Calendar, and should not have been included in the previous Calendar
EPA-OANR	Noise Emission Standard for Newly Manufactured Motorcycles	68240	Final Rule -- May or June; exact citation not available at the time of this publication
EPA-OANR	Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors	68241	EPA does not expect to take further action on this rule until early 1982

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
EPA-OANR	Particulate Regulations for Light-Duty Diesel Vehicles	68242	Final Rule -- 45 FR 14496 3/5/80
EPA-OPTS	Rules and Notice Forms for Premanufacture Notification of New Chemical Substances	68294	Change of Title for this Edition -- Premanufacture Notification Requirements and Review Procedures
EPA-OPTS	Standards and Rules for Testing of Chemical Substances and Mixtures	68297	Change of Title for this Edition -- Test Rule for Chemical Substances and Mixtures -- Chloromethane and Chlorinated Benzenes
EPA-ORD	Fuels and Fuel Additives Registration	68250	Change of Title for this Edition -- Fuels and Fuel Additives; change of office within EPA from ORD to OANR-OMSAPC
EEOC	Recordkeeping Regulations, Extending the Length of Time Certain Records, Already Required to be Kept, Should be Kept	68316	Agency is reviewing and awaiting outcome of study on costs
NCUA	Organizing a Federal Credit Union	68259	Final Rule -- 45 FR 8280 2/7/80

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
FERC	Regulations Concerning Sales of Electric Power Between Qualifying Cogeneration and Small Power Production Facilities and Electric Utilities, and Exemption of such Facilities from Regulation Under §§201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)	68253	Final regulations under §201 of PURPA issued on March 13, 1980, at 45 FR 17959, 3/20/80 (Docket No. 79-54) Final regulations under §210 of PURPA issued on February 19, 1980, at 45 FR 12214, 2/25/80 (Docket No. RM79-55)
FERC	Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act	68256	The Phase II rule was transmitted by the Commission to Congress May 6, 1980. Pursuant to §202(c) of the NGPA, Congress can disapprove the rule by a one-House veto within 30 working days after its submission Congress has not taken final action on this rule at the time of this publication.
FERC	Valuation of Common Carrier Pipelines	68257	The Commission has decided that in lieu of a rulemaking proceeding, it will instead determine the issues representing the establishment of rates or charges for the transportation of oil by interstate pipelines and the valuation of any such pipeline on a case by case basis. The lead ratemaking cases presently before the Commission are the

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
			Williams Pipeline Company proceeding (Docket No. OR79-1) and the Trans Alaska Pipeline System (TAPS) proceeding (Docket No. OR78-1)
FHLBB	Monitoring Fair Lending Practices	68260	Final Regulations adopted by Board on 5/5/80
FHLBB	Proposed Amendments on Outside Borrowing	68261	Public Comment period closed; under consideration by Board
FHLBB	Washington, D.C.-Md.-Va. SMSA Branching	68261	"On Hold" pending release of the McFadden Study (See entry in 11/28/79 Calendar)
FMC	Amendment to Financial Reports by Common Carriers by Water in the Domestic Offshore Trades	68349	Final Rule -- 45 FR 3272 1/17/80
FMC	Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States	68351	Final Rule -- 45 FR 12792 2/27/80
FMC	Filing of Agreements by Common Carriers and other Persons Subject to the Shipping Act of 1916	68352	Withdrawn from active consideration by FMC
FMC	Surcharges Under Dual Rate Contracts on Less than Ninety Days' Notice	68353	Withdrawn from active consideration by FMC
FTC	Mobile Homes Sales and Service Trade Regulations Rule	68330	Change of Title for this Edition -- Proposed Trade Regulation Rule on Mobile Home Sales and Service

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AGENCY	TITLE OF REGULATION	FR 11/28/79 PAGE NO.	ACTIVITY SINCE LAST EDITION
FTC	Proposed Trade Regulation Rule (TRR) on Standards and Certification	68331	Please see note at beginning of FTC entries in Chapter 6, Trade Practices
FTC	Rulemaking on Children's Advertising	68334	Please see note at beginning of FTC entries in Chapter 6, Trade Practices
ICC	Western Coal Investigation -- Guidelines for Railroad Rate Structure	68357	None; removed from Calendar because it is an adjudicatory proceeding
NRC	Decommissioning and Site Reclamation of Uranium and Thorium Mills	68307	Deleted from Calendar because economic impact appears to be substantially less than $100 million per year
PRC	Postal Rate Commission Docket MC79-2, to consider a request of the USPS for the establishment of an Express Mail Metro Service Subclass	68358	Hearings completed; Commission decision to be issued soon
PRC	Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. §3623(b), to hear evidence on the preferential treatment, commonly referred to as "red tag" treatment, afforded certain time-value publications sent as second-class mail	68360	Change of Title for this Edition -- Postal Rate Commission Docket MC79-3 (Red Tag)

APPENDIX IV: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

This appendix lists publication dates for the semiannual regulatory agendas that agencies prepare in response to Executive Order 12044, Improving Government Regulations. It provides the dates of each agency's last published semiannual agenda and the FEDERAL REGISTER citation to enable the public to gain quick access to the list of all significant regulations the agency is considering or reviewing. The appendix also lists the date the agency expects to publish their next agenda.

All executive agencies, and those independent agencies that voluntarily choose to comply, publish these agendas. The agendas describe, at a minimum, the regulations they are considering, the need for and the legal basis of the action being taken, the status of the regulations previously listed on the agenda, and an agency contact.

The semiannual agendas list all regulations the agencies consider to be "significant." The Calendar describes only the most important of these significant regulations.

The Regulatory Council and the Office of Management and Budget are exploring the possibility of coordinating the publication dates of the Calendar of Federal Regulations and the semiannual agency agendas. Doing so would provide, twice a year, a comprehensive picture of regulations being developed by the agencies. We welcome your comments on this idea.

APPENDIX IV: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

Name of Agency	Publication Date of Last Agenda	Federal Register Citation	Publication Date of Next Agenda
Executive Agencies			
Administrative Conference of the U.S.	Not applicable	—	—
Department of Agriculture	November 15, 1979	44 FR 65862	May 15, 1980
Department of Commerce	September 18, 1979	44 FR 54166	May 28, 1980
Department of Energy	April 29, 1980	45 FR 28686	Unknown at this time
Department of Health, Education and Welfare	December 14, 1979	44 FR 72728	June 13, 1980
Department of Housing and Urban Development	February 5, 1980	45 FR 7978	August 1980
Department of Interior	January 31, 1980	45 FR 7106	July 31, 1980
Department of the Justice:			
Attorney General	February 1, 1980	45 FR 7268	July 31, 1980
Bureau of Prisons	March 6, 1980	45 FR 14596	July 31, 1980
Civil Rights Division	April 17, 1980	45 FR 26098	July 31, 1980
Justice Assistance, Research, and Statistics	January 31, 1980	45 FR 7113	July 31, 1980
Inimigration and Naturalization Service	February 1, 1980	45 FR 7265	July 31, 1980
Department of Labor	November 13, 1979	44 FR 65566	May 1980
Department of Transportation	February 28, 1980	45 FR 13312	August 25, 1980
Department of the Treasury:			
Alcohol, Tobacco and Firearms	February 15, 1980	45 FR 10367	August 1, 1980
Comptroller of the Currency	February 13, 1980	45 FR 9743	August 1, 1980
Customs Service	February 15, 1980	45 FR 10360	August 1, 1980
Environmental Protection Agency	March 14, 1980	45 FR 16832	June 16, 1980
Equal Employment Opportunity Commission	February 14, 1980	45 FR 9948	July 30, 1980
General Services Administration	November 30, 1979	44 FR 68869	May 30, 1980
National Credit Union Administration	December 19, 1979	44 FR 75180	June 30, 1980
Small Business Administration	February 4, 1980	45 FR 7553	August 1980
United States International Trade Commission	Not applicable	—	—
Veterans Administration	December 18, 1979	44 FR 74858	June 18, 1980
Independent Regulatory Agencies			
Civil Aeronautics Board	November 9, 1979	44 FR 65104	May 1980
Commodity Futures Trading Commission	January 23, 1979	44 FR 4752	Unknown at this time
Consumer Product Safety Commission	Not known at present	—	—
Federal Communications Commission	May 8, 1980	45 FR 30051	November 5, 1980
Federal Deposit Insurance Corporation	March 28, 1980	45 FR 20498	September 1980
Federal Election Commission	Not applicable	—	—
Federal Energy Regulatory Commission	Not applicable	—	—
Federal Home Loan Bank Board	May 12, 1980	45 FR 31119	October 1980
Federal Maritime Commission	Not applicable	—	—
Federal Mine Safety and Health Review Commission	Not applicable	—	—
Federal Reserve System	February 4, 1980	45 FR 7591	August 4, 1980
Federal Trade Commission	August 1, 1979	44 FR 45177	August 1, 1980
Interstate Commerce Commission	July 19, 1979	44 FR 42561	May 1980
National Labor Relations Board	Not applicable	—	—
Nuclear Regulatory Commission	Not applicable	—	—
Occupational Safety and Health Review Commission	Not applicable	—	—
Postal Rate Commission	Not applicable	—	—
Securities and Exchange Commission	September 10, 1979	44 FR 52810	June 1980

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

This appendix provides information about existing regulations the agencies are reviewing pursuant to their internal review procedures or to Executive Order 12044, Improving Government Regulations. All executive agencies, and those independent agencies that voluntarily choose to comply with E.O. 12044 must periodically review their existing regulations to determine whether the regulations are still achieving their intended goals effectively.

In some cases, Calendar entries describe regulatory actions that the agencies initiated as a result of this review process. Because these regulations appear in the text, this appendix does not list such actions.

The index is organized alphabetically by agency, by unit within the agency, and then by the title of the regulation.

For guidance on how to get further information on these regulations, contact the "Information Contact" in Appendix II: "Public Participation in the Federal Regulatory Process."

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
USDA-FmHA	Guaranteed Loan Programs - General	7 CFR 1980-A	7/81	12/81
USDA-FS	Timber Management Planning	36 CFR 221.3	10/80	4/81
USDA-FSQS	Standards and Labeling of Meat and Poultry Products	9 CFR Parts 312,316, 317, 319, and 381	9/79	7/80
DOC-ITA	Export Administration Regulations	15 CFR Parts 368-399	Ongoing	5/81
DOC-MARAD	Nation Shipping Authority (NSA) - Shipping Operations	32A CFR Chapter 18, Sub Chapter A. Review of 26 regulations in Parts 1801-1886	Spring 1980	Winter 1980

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOC-MARAD	Operating Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Carrying Grain to the USSR	46 CFR Part 294	Summer 1980	Spring 1981
DOC-MARAD	Operating Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Worldwide Service	46 CFR Part 252	Ongoing	Winter 1980
DOC-MARAD	Operating Differential Subsidy (ODS) Rates for Liner Vessels--New Part (Procedures now published in a manual. These will be revised and published in regulation form.)	---	Ongoing	Fall 1980
DOI	None at this time. Department is currently conducting a survey that will be available in June.	---	--	--
DOJ-CRD	Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs	28 CFR 42.401-415	1/80	5/80
DOL-ESA	Black Lung Benefits: Requirements for Coal Mine Operators Insurance	20 CFR 726	Ongoing	--
DOL-ESA	Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Compensation for Pneumoconioses	20 CFR 722	Ongoing	--
DOL-ESA	Labor Standards for Federal Service Contracts	29 CFR 4	Ongoing	--

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOL-ESA	Labor Standards Provisions, Davis-Bacon and Related Acts	29 CFR 1, 3, 5	Ongoing	--
DOL-ESA	Office of Federal Contract Compliance Programs	41 CFR 60-1, 60-2, 60-3, 60-4, 60-20, 60-30, 60-60, 60-250, 60-741	Ongoing	--
DOL-ETA	Extended Benefits for Unemployment Insurance Claimants	20 CFR 615	Ongoing	--
DOL-ETA	Labor Certification Process	20 CFR 656	Ongoing	--
DOL-ETA	Migrant and Seasonal Farm Workers	20 CFR 689	Ongoing	--
DOL-LMSA	Revision of Certain Annual Information Return/Reports	29 CFR 2520	Ongoing	--
DOL-MSHA	Civil Penalties	30 CFR 100	Ongoing	--
DOL-MSHA	Respirable Dust Standard for Surface Coal Mines	30 CFR 71	Ongoing	--
DOL-MSHA	Respirable Dust Standard for Underground Coal Mines	30 CFR 70	Ongoing	--
DOL-MSHA	Underground Coal Mine Safety Standards	30 CFR 75	Ongoing	--
DOL-OSHA	Conveyors	29 CFR 1910.186	Ongoing	--

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOL-OSHA	Electrical	29 CFR 1910 Subpart S	Ongoing	--
DOL-OSHA	Fire Protection	29 CFR 1910 Subpart L	Ongoing	--
DOL-OSHA	Laboratory Accreditation	29 CFR 1907	Ongoing	--
DOL-OSHA	MBOCA	29 CFR 1910.94 (a)	Ongoing	--
DOL-OSHA	Nickel Standard	29 CFR 1910.94 (a)	Ongoing	--
DOL-OSHA	Safety and Health Regulation for Marine Terminal Facilities	29 CFR 1918 Subparts M-S	Ongoing	--
DOL-OSHA	Shiprepairing, shipbuilding, shipbreaking	29 CFR 1915, 1916, 1917	Ongoing	--
DOL-OSHA	Tunnelling	29 CFR 1926	Ongoing	--
DOT-FAA	Light Transport Airplane - Airworthiness Review	49 CFR 571.213	Ongoing	5/80
DOT-NHTSA	Exterior Protection	49 CFR 471.215 and 49 CFR Part 581	Ongoing	8/80
DOT-NHTSA	Occupant Protection	49 CFR 571.208	Ongoing	Unknown
TREAS-ATF	Definition of "Engaged in the Business"	27 CFR 178	11/79	1/81

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
TREAS-ATF	Recodification of Explosive Regulations	27 CFR 181	1/80	12/80
TREAS-ATF	Recodification of Wine Regulations	27 CFR 240, 231, 170	5/79	7/81
TREAS-ATF	Records Requirement for Cigarette Distributors	27 CFR 296	1/80	5/80
TREAS-ATF	Sales of Firearms at Gun Shows	27 CFR 178	2/80	3/81
TREAS-OCC	Fiduciary Powers of National Banks and Collective Investment Funds	12 CFR 9	1/80	10/31/80
TREAS-OCC	Minimum Security Devices	12 CFR 21	5/80	12/31/80
TREAS-OCC	Securities Exchange Act Disclosure Rules	12 CFR 11	6/80	12/13/81
EEOC-OPI	Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	29 CFR 1602	4/80	6/80
NCUA	Insurance Activities of Federal Credit Unions	12 CFR 721.1	12/79	12/80
NCUA	Lending Policies of Federal Credit Unions	12 CFR 701.21-1 through 701. 21-6	12/79	7/81
SBA	Disaster Loans	13 CFR 123	5/80	9/80
CPSC	Safety Standard for Swimming Pool Slides	16 CFR 1207		thru FY81

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
CPSC	Standard for the Flammability of Mattresses (and mattress pads) (FF 4-72)	16 CFR 1632		thru FY81
FERC	Coinsurance of Service Under PURPA §206	18 CFR 294.101	4/1/80	10/80
FERC	Maximum Lawful Prices for Pipeline Distributor or Affiliate Production	18 CFR 270.203	12/1/78	6/9/80
FERC	First Sales, Resales, Btu Content, and Commingling Limitations	18 CFR 270.2	12/1/80	6/19/80
FHLBB	Forward Commitments	12 CFR 563.17-3	Ongoing	--
FHLBB	Futures Transactions	12 CFR 545.29	Ongoing	--
FMC	Temporary Tariff Filings	46 CFR 536	Ongoing	12/80
FRS	Regulation B--Equal Credit Opportunity	12 CFR 202	4/79	9/80
FRS	Regulation D--Reserves of Member Banks	12 CFR 204	5/80	8/80
FRS	Regulation F--Securities of State Members	12 CFR 206	12/79	8/80
FRS	Regulation G--Securities Credit by Persons Other than Banks, Brokers or Dealers	12 CFR 207	6/79	12/80
FRS	Regulation J--Collection of Checks and Other Items and Transfer of Funds	12 CFR 210	6/79	6/80

APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
FRS	Regulation K--International Banking Operations	12 CFR 211	3/80	7/80
FRS	Regulation T--Credit by Brokers and Dealers	12 CFR 220	6/79	12/80
FRS	Regulation U--Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks	12 CFR 221	6/79	12/80
FRS	Regulation X--Rules Governing Borrowers Who Obtain Securities Credit	12 CFR 221	6/79	12/80
FRS	Regulation Y--Bank Holding Companies	12 CFR 225	9/78	12/80
FRS	Regulation Z--Truth in Lending	12 CFR 226	9/79	1/81
FTC	Cooling Off Period for Door to Door Sales	16 CFR 429	11/79	1/81
FTC	Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR 436	11/79	6/81
FTC	Retail Food Store Advertising and Marketing Practices	16 CFR 424	1/77	9/80

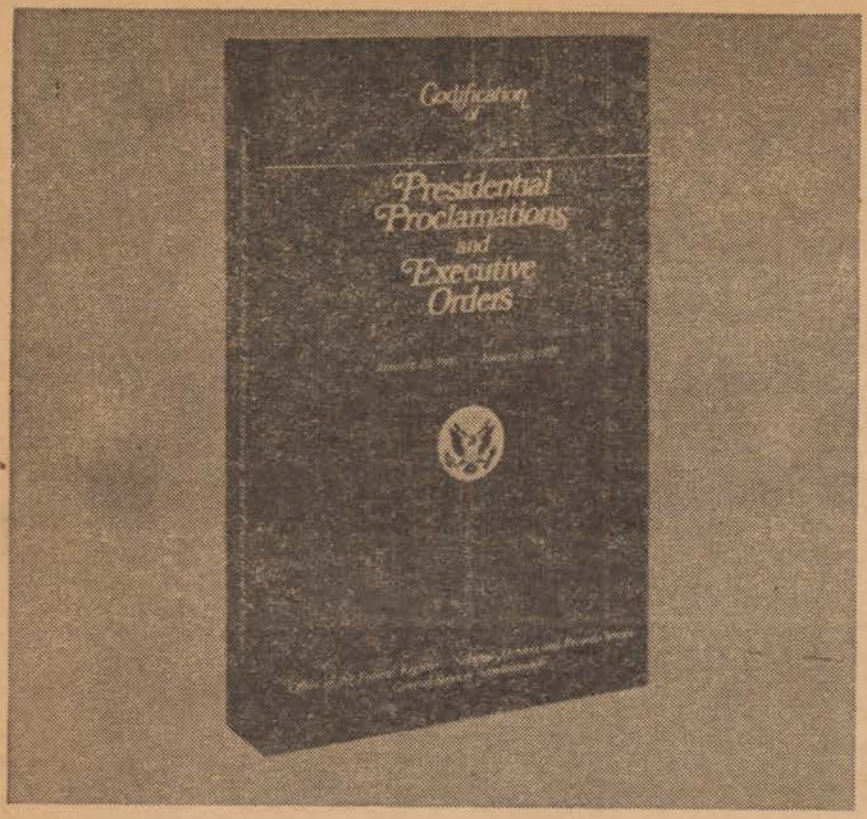
APPENDIX V: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ICC	Rules of Practice [Legislation is presently pending in Congress which would change significantly the Interstate Commerce Act. Assuming that final legislation is enacted sometime soon after 6/1/80, the Commission will be conducting a number of major rulemaking proceedings during the summer of 1980 which will result in the overhaul of regulations governing motor carrier entry and railroad and motor carrier ratemaking.]	49 CFR 1100	Fall	2/81
PRC	Rules Applicable to Requests for Changes in Rates or Fees: Failure to Comply	39 CFR 3001.56	2/13/80	6/80
SEC	Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933 and Guides for Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934	17 CFR 231.4936	12/79	6/80
SEC	Regulation S-X	17 CFR 219	1/80	6/80
SEC	Investment Advisers Act Study	17 CFR 275 et seq.	12/78	Currently Unkonwn
SEC	Disclosure Study -- Review of Disclosure Requirements Under the Securities Act of 1933 and Investment Company Act of 1940	17 CFR 270 et seq.	8/79	Currently Unknown

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