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Friday
August 8, 1980

Highlights

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Highlights

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

Protection of Privacy in Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document revises the Office of Personnel Management's regulations implementing the Privacy Act. It reflects changes the Office has made to the numerical designations of its Privacy Act systems of records and has no impact on agencies or the public.

EFFECTIVE DATE: August 8, 1980.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Work Force Records Management Branch, Agency Compliance and Evaluation. (202) 254–9778.

SUPPLEMENTARY INFORMATION: The Office published revised 5 CFR Part 297 in the **Federal Register** of November 9, 1979, (44 FR 65031). Those regulations contain, at § 297.304, the title of the system of records and a description of the records to be exempt, where the Office is claiming an exemption under the Privacy Act. When the Office adopted its various Privacy Act systems of records there occurred several changes to the numerical designation of the system notices. Therefore, changes to those numerical designation in the Office's regulations are necessary so that the regulations will be fully consistent with the system notices.

The changes to the regulations have no impact on agencies or the public and are considered, under E.O. 12044, "non-significant" in character and scope. Further, under provisions of 5 U.S.C. 553(d)(3), the Director, Office of Personnel Management, finds good cause exists to waive the 30-day notice requirement in rulemaking. Thus, these changes are effective immediately.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

§ 297.304 [Amended]

Accordingly 5 CFR 297.304(b) is amended as follows:

(1) The introductory text of § 297.304(b)(1) is revised to read as follows:

* * * * *

(b) * * *

(1) Administrative Law Judge Applicant Records (OPM/CENTRAL–6).

* * * * *

(2) The introductory text of § 297.304(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) Litigation and Claims Records (OPM/CENTRAL–7).

* * * * *

(3) The introductory text of § 297.304(b)(3) is revised to read as follows:

* * * * *

(b) * * *

(3) Privacy Act/Freedom of Information Case Records (OPM/CENTRAL–8).

* * * * *

(4) The introductory text of § 297.304(b)(4) is revised to read as follows:

* * * * *

(b) * * *

(4) Personnel Investigations Records (OPM/CENTRAL–9).

* * * * *

(5) The introductory text of § 297.304(b)(5) is revised to read as follows:

* * * * *

(b) * * *

(5) Presidential Management Intern Program Records (OPM/CENTRAL–11).

(1) The introductory text of § 297.304(b)(1) is revised to read as follows:

* * * * *

(Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a))

[FR Doc. 80–23974 Filed 8–7–80; 8:45 am]

BILLING CODE 6325–01–M

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 706

Anti-Inflationary Pay and Price Standards; Questions and Answers on Procedures

AGENCY: Council on Wage and Price Stability.

ACTION: Questions and Answers on Procedural Rules.

SUMMARY: The third year of the voluntary pay and price standards is scheduled to begin on October 1, 1980. However, the third program year for some compliance units will begin before that date. To assist these units in planning their operations, the Council is publishing a Question and Answer which allows such compliance units to extrapolate the second-year pay and price standards into their third program year.

In addition, the Council is issuing a Question and Answer advising providers of medical and dental insurance receiving between $100 and $250 million in premiums from such insurance to file a report of inflation trend factors with the Council by September 1, 1980.

DATES: These Questions and Answers are effective August 8, 1980. Written comments may be submitted by September 8, 1980.

ADDRESS: Written comments should be submitted to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Office of Price Monitoring

Energy, Chemicals, and Rubber—Larry Forest: (202) 456–7747.
Health, Insurance, Regulated Industries, and Services—Arthur Corazzini: (202) 456–7730.
Construction and Construction Materials—Joseph Lackey: (202) 456–7156.
Food, Agriculture, and Trade—Stephen Hiemstra; (202) 456–7740.
Metals, Machinery, and Equipment—Eugene Roberts: (202) 456–7784.
Exceptions—Walter Leibowitz/David Wagner: (202) 456–7733.

Office of Pay Monitoring

Lucretia Tanner: (202) 456–7103.

Homer Jack: (202) 456–7180.
Richard Mullins: (202) 456–7180.

Office of General Counsel

Price Matters—Renee Fox or Ed Finklea: (202) 456–6286
Pay Matters—Daniel Duff: (202) 456–6210; Jane Campana: (202) 456–6210

SUPPLEMENTARY INFORMATION: On July 11, 1980, the Council published an *Issues Paper* soliciting comments on the design of the third year of the pay and price standards. (45 FR 47052). The third year of the pay and price standards for most compliance units will begin on or after October 1, 1980. However, the Council is aware that the third program year for some compliance units begins before October 1, 1980. In order to assist these compliance units, the Council is allowing them to assume, for compliance purposes, that the second-year standards will be extrapolated into the third program year. This assumption may be used only by compliance units whose third program year begins before October 1, 1980.

The second Question and Answer clarifies that, consistent with the lowering of the general reporting threshold in § 706.22 to cover companies in the $100 million to $250 million annual sales range (45 FR 18365; March 21, 1980), providers of medical and dental insurance having annual premiums from such insurance in that range should file a report of inflation trend factors with the Council by September 1, 1980. Medical and dental insurance providers having $250 million or more in premiums from such insurance were previously requested to file such reports (45 FR 14840; March 7, 1980).

Issued in Washington, D.C., August 5, 1980.

W. Kip Viscusi,

Deputy Director, Council on Wage and Price Stability.

Accordingly, the Council has adopted the following Questions and Answers, which will be added to 6 CFR Part 706 Section III, as A.4, and B.26 respectively:

III. Procedures

A. General Provisions

Q.4 If a compliance unit's third program year begins before October 1, 1980, what should it assume for purposes of complying with the pay and price standards?

A. Such a compliance unit should extrapolate the second-year pay and price standards into its third program year. If differences between the second-year and third-year standards cause such a compliance unit to be out of compliance, it will be given a reasonable period to bring itself into compliance with the third-year standards. If, however, the unit can demonstrate that a good-faith reliance on the continuation of the second-year standards makes a conforming change unduly burdensome, appropriate adjustments to the applicable limitation may be made.

B. Reports and Notifications

Q.26 Should providers of medical and dental insurance that received $100 million or more but less than $250 million in premiums for such insurance during calendar-year 1979 report their inflation trend factors for the 1980 program year to the Council?

A. Yes. This report should be submitted by September 1, 1980.

[FR Doc. 80–23988 Filed 8–7–80; 8:45 am]
BILLING CODE 3175–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[Amdt. No. 18]

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final regulation amends Part 245 to allow Puerto Rico and the Virgin Islands to conduct statistical surveys every three years to establish percentages of students eligible for free and reduced price meals and free milk. These percentages will be applied for a period of three years against the total monthly counts of meals/milk served to determine monthly claims for Special Assistance payments.

EFFECTIVE DATE: July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–9065. A Final Impact Statement has been prepared and is available on request from the address identified above.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This emergency 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". Robert Greenstein, Administrator, Food and Nutrition Service, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action and because it affects only two State agencies and has been developed as a result of their request. It simply revises and extends the time frame of a present procedure that was previously subjected to public comment. In addition, the new provision of Pub. L. 95–166, "Special Assistance", for which this alteration is a basis is currently an interim regulation printed on June 8, 1979 at 44 FR 33048 upon which public comments have been taken. It is expected that any changes which may occur in the Special Assistance interim regulation resulting from comments will not substantially impact on this regulation. Both provisions are designed to reduce paperwork.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.** Comments will continue to be invited until October 6, 1980 and this emergency final action will be scheduled for review.

Interim Regulatory Provision

The National School Lunch Act and the Child Nutrition Act of 1966 provide that children in schools participating in the National School Lunch and School Breakfast Programs shall be served meals free or at a reduced price if their family size and income is at or below levels established annually by the Secretary of Agriculture. In addition to the general financial assistance which USDA provides for all meals served to children, schools receive special Federal financial assistance for each meal served free or at a reduced price to eligible children. 7 CFR Part 245 establishes procedures for determining a child's eligibility for free or reduced price meals. The School Food Authority determines eligibility on the basis of an application executed by the child's family, stating family size and income. The School Food Authority may claim special assistance reimbursement only for meals served to children determined to be eligibile for free or reduced price meals on the basis of the application.

In Puerto Rico and the Virgin Islands, all children in schools under the State agencies' jurisdiction are served meals

without charge, and the costs of meals/milk served free to children that would not qualify for such benefits because their family size and income data exceeded the Secretary's Income Guidelines would be borne by funds from sources within the State. Therefore, all children receive free benefits and thus are not directly affected by eligibility determinations.

Eligibility must be established only to determine the amount of special assistance (Section 11) reimbursement to be claimed by the School Food Authority.

In 1976, in response to requests by these two State agencies, the Department proposed that annual statistical surveys, rather than individual applications, be permitted in the Virgin Islands and Puerto Rico to determine the numbers of needy children in these States. The State agency would use the percentage of free, reduced price and non-needy children resulting from this survey rather than meal counts by need category, to withdraw special assistance funds from its Letter of Credit.

The Department received only three public comments on the proposed rule, which was published December 14, 1976 (41 FR 54493). Because no significant opposition was voiced in the comments, the rule was published in final form on April 22, 1977 (42 FR 20810) as Amendment 11 to 7 CFR Part 245.

Subsequently, Section 9 of Pub. L. 95–166, enacted on November 10, 1977, provided that schools serving all meals without charge may, at their option, establish a child's eligibility once every three years rather than once a year as required previously. On the basis of this statutory change, Puerto Rico and the Virgin Islands requested permission to conduct their statistical survey once every three years, rather than once a year.

The Department believes that this procedure agrees with the intent of Pub. L. 95–166 to reduce State, Federal and local paperwork and expense, and provides satisfactory accountability for Federal funds. The annual survey conducted over the last three years in Puerto Rico and the Virgin Islands show only minor variations from year to year in eligibility percentages; the percent of children in the paid category has varied only one to two percent. Therefore, the Department believes that use of a triennial survey would not substantially affect Federal expenditures, will not adversely affect operations, and will have the impact of reducing program paperwork.

Accordingly, § 245.4 is revised to read as follows:

§ 245.4 Exceptions for Puerto Rico and the Virgin Islands.

Because the State agencies of Puerto Rico and the Virgin Islands provide free meals and milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria. Instead, such State agencies may use a statistical survey to determine the number of children eligible for free or reduced price meals and milk on which a percentage factor for the withdrawal of special cash assistance funds will be developed subject to the following conditions:

(a) State agencies shall conduct a statistical survey once every three years in accordance with the standards provided by FNS;

(b) State agencies shall submit the survey design to FNS for approval before proceeding with the survey;

(c) State agencies shall conduct the survey and develop the factor for withdrawal between July 1 and December 31 of the first school year of the three year period;

(d) State agencies shall submit the results of the survey and the factor for fund withdrawal to FNS for approval before any reimbursement may be received under that factor;

(e) State agencies shall keep all material relating to the conduct of the survey and determination of the factor for fund withdrawal in accordance with the record retention requirements in § 210.8(e)(14) of this chapter;

(f) Until the results of the triennial statistical survey are available, the factor for fund withdrawal will be based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority and school shall comply with all the applicable provisions of this Part and Parts 210, 215 and 220 of this chapter.

(Catalog of Federal Domestic Assistance Number 10.555)

(Sec. 9, Pub. L. 95–166, 91 Stat 1336 (42 U.S.C. 1759a).

Dated: August 1, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80–23745 Filed 8–7–80; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 264]

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 August 10–16, 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: August 10, 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 8, 1980. 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 August 5, 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 easier.

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.

§ 910.564 Lemon Regulation 264.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 10, 1980, through August 16, 1980, is established at 250,000 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: August 6, 1980

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-24185 Filed 8-7-80; 1:42 pm]

BILLING CODE 3410-02-M

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7 CFR Part 926

[Tokay Grape Regulation 16]

Tokay Grapes Grown in San Joaquin County, Calif.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh shipments of Tokay grapes grown in San Joaquin County, California, to meet the specification of the U.S. No. 1 Table Grape grade, and the containers to be marked with the Federal-State lot stamp number. These requirements are necessary to assure shipments of satisfactory quality Tokay grapes in the interest of producers and consumers.

EFFECTIVE DATE: August 14, 1980, through September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

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." This regulation is issued under the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Industry Committee, established under the order, and upon other available information. It is hereby found that this regulation will tend to effectuate the declared policy of the act.

The committee estimates that 1980 production of Tokay grapes will be about 119,140 tons, and fresh shipments are estimated at 17,250 tons. The grade and container marking requirements are necessary to prevent the shipment of fresh Tokay grapes of a lesser quality than specified and to provide ample supplies of good quality fruit in the interest of producers and consumers. The requirements are that such grapes meet the grade and size specifications of U.S. No. 1 Tables Grapes and that at least 30 percent, by count, of the berries in the lower 25 percent, by count, of each bunch shall show characteristic color. The requirement for more even distribution of color is included to assure the availability to consumers of Tokay grapes of satisfactory quality. Each container of such grapes must bear a Federal-State Inspection Service lot stamp number in plain letters and figures on one outside end. Compliance with the container marking requirement will verify inspection, thus assuring compliance with the quality requirements specified herein.

This action was recommended at a public meeting at which all present could state their views. 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 it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemarking, and postpone the effective date until 30 days after publication thereof 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. A notice will be published as soon as possible in the Federal Register providing further opportunity for public comment on the regulation and a proposal to extend its effective time for the balance of the shipping season.

Therefore, § 926.317 is added to read as follows: (§ 926.317 expires September 30, 1980, and will not be published in the annual Code of Federal Regulations).

§ 926.317 Tokay Grape Regulation 16.

(a) During the period August 14, 1980, through September 30, 1980, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table Grapes and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definition.* As used herein, the terms "handler," "ship," and "production area" shall have the same meaning as when used in the amended marketing agreement and order; "U.S. No. 1 Table Grapes" and "characteristic color" shall have the same meaning as when used in the United States Standards for Tokay Grapes (7 CFR 2851.880–912).

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

Dated: August 5, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-23986 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the county of Orange in Florida to the list of Modified Certified Brucellosis Areas and deletes such county from the list of Certified Brucellosis-Free Areas. It has been determined that this county qualifies only to be designated as a Modified Certified Brucellosis Area. The effect of this action will provide for more restrictions on cattle and bison

moved interstate from this area. These amendments also add the county of Hernando in Florida to the list of Modified Certified Brucellosis Areas and delete such county from the list of Noncertified Areas because it has been determined that this county now qualifies as a Modified Certified Brucellosis Area. The effect of this action will provide for less restrictions on cattle and bison moved interstate from this area.

EFFECTIVE DATE: August 8, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8713.

SUPPLEMENTARY INFORMATION: A complete list of brucellosis areas was published in the **Federal Register** (45 FR 44253–44256) effective July 1, 1980. These amendments add the county of Orange in Florida to the list of Modified Certified Brucellosis Areas in § 78.21 and delete this county from the list of Certified Brucellosis Free Areas in § 78.20, because it has been determined that this county now comes within the definition of a Modified Certified Brucellosis Area contained in § 78.1(m) of the regulations. These amendments add the county of Hernando in Florida to the list of Modified Certified Brucellosis Areas in § 78.21 and delete such county from the list of Noncertified Areas in § 78.22 because it has been determined that such county now qualifies as a Modified Certified Brucellosis Area. This list is updated monthly and reflects actions taken under criteria for designating areas according to brucellosis status.

Accordingly, Part 78, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

§ 78.20 [Amended]

1. In § 78.20, paragraph (b) is amended by deleting: *Florida.* Orange.

§ 78.21 [Amended]

2. In § 78.21, paragraph (b) is amended by adding: *Florida.* Hernando, Orange.

§ 78.22 [Amended]

3. In § 78.22, paragraph (b) is amended by deleting: *Florida.* Hernando.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b, 134f, 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25)

The amendment designating areas as Modified Certified Brucellosis Areas imposes restrictions presently not imposed on cattle and bison moved from that area in interstate commerce. The restrictions are necessary in order to prevent the spread of brucellosis from such area.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Paul Becton, Director, National Brucellosis Eradication Program, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 31st day of July 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80–23634 Filed 8–7–80; 8:45 am]

BILLING CODE 3410–34–M

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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 the entry of horses, except horses from or that have transited countries where African horsesickness exists, into the United States at any port designated by the U.S. Customs Service as an international port or airport when a quarantine facility has been provided by the importer or his agent and has been approved in advance by the Deputy Administrator. This action is taken in response to requests made by importers who prefer to have their horses enter the United States as close to their final destination as possible in order to minimize stress and interruption in training schedules. This action provides procedures whereby horses may enter the United States at additional international ports and airports.

EFFECTIVE DATE: September 8, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, MD 20782 (301) 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, 6505 Belcrest Road, Hyattsville, Maryland 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 "significant."

There was published in the **Federal Register,** on August 4, 1978 (43 FR 34490–34493), a proposal to amend the regulations to permit the entry of horses, except horses from or that have transited countries where African horsesickness exists, into the United States at any port designated by the United States Customs Service as an international port or airport when a quarantine facility has been provided by the importer or his agent and has been approved in advance by the Deputy Administrator.

The document provided a comment period to expire August 19, 1978, which comment period was later extended to expire October 10, 1978, (43 FR 40037 dated September 8, 1978).

A total of 45 comments were received, 23 of which opposed the proposal, 20 were favorable, and 2 did not pertain to the proposal. Of the 20 comments generally in favor of the proposal, 2 suggested that the Department clarify the provision that the owner, importer or shipping agent be responsible for the financial requirements. The Department believes that proposed § 92.11(d)(2) clearly states that the cost of the facility and all maintenance and operation costs of the facility shall be borne by the importer. Therefore, these comments are not being adopted.

One comment suggested that the costs be borne by the Federal Government. As stated in the proposal, the Department does not have the funds to operate or maintain such additional quarantine facilities. Therefore, this comment is not being adopted.

Two comments recommended a user fee for the facility. The proposal required that the cost and all maintenance and operation costs of the facility be borne by the importer. The Department believes that this constitutes adequate protection against added costs to the Department created

by additional quarantine facilities which may be approved pursuant to this final rule and serves the purpose of a user fee. Therefore, these comments are not being adopted.

The remaining favorable comments endorsed the proposal without specific suggestions.

Of the 23 comments opposing the proposal, most contained more than one objection. Sixteen comments opposed the proposal on the grounds that the use of additional quarantine facilities would increase the threat of disease and some of these specifically stated that the release of horses during quarantine for exercise or training or any other reason constitutes an unwarranted risk of the spread of disease.

In light of these comments, the Department is amending the proposal to minimize the threat of the introduction of disease which may result from the use of additional quarantine facilities approved pursuant to this final rule. Specifically, proposed § 92.11(d)(3)(iv)(B)(*1*) and (*2*) would have permitted the temporary release of horses for training or exercise from the approved quarantine facility. Because of the additional risk of the spread of disease caused by the release of horses from the facility, this final rule deletes the provisions in proposed § 92.11(d)(3)(iv)(B)(*1*) and (*2*) which would have permitted such release. It should be noted however, that horses may be exercised inside a quarantine facility. Further, this final rule redesignates the paragraphs in proposed § 92.11(d)(3)(iii) and adds a new paragraph, § 92.11(d)(3)(iii)(B) to require that all feed and bedding used for horses in approved quarantine facilities shall originate from an area not under quarantine because of cattle fever ticks. The areas which are under quarantine for cattle fever ticks are set forth in Title 9, Code of Federal Regulations, sections 72.3 and 72.5. This final rule also requires that the feed and bedding be stored in the approved quarantine facility. The Department believes that these requirements will reduce the risk of spread of disease since cattle fever ticks are the vectors of various diseases. The requirement that the feed and bedding be stored in the facility is necessary to ensure that the feed and bedding does not become infested with such ticks prior to being moved into the approved quarantine facility.

Ten comments opposed the proposal because the additional quarantine facilities would require services from the Department and would constitute a strain on the Department's personnel. The Department agrees with these comments and has amended proposed § 92.11(d)(2) to make approval of any additional quarantine facility or use thereof contingent upon a determination by the Deputy Administrator that adequate personnel are available to provide services required by the facility.

Six comments opposed the proposal because of the cost of equipment which would be required to dispose of reactor animals and animal carcasses. Past experience at import facilities indicates that the percentage of animals that react to tests administered by the Department is very low and there are very few animals that die in animal import facilities. Therefore, equipment for disposal of such animals or animal carcasses will not be needed very often. Further, commercial facilities may be used where they are available.

Six comments opposed the proposal because of the additional costs in transporting horses to their destination prior to their being revealed as affected with disease. Although there may be significant additional costs associated with moving horses to additional quarantine facilities located at their destination, the risk that a horse may be found affected with disease is one that an importer must bear. This final rule does not require that an importer move horses to additional quarantine facilities near destination. Such an importer may use available space at quarantine facilities provided by the Department or at the port of entry. In either case, anyone who presents an animal for entry bears the risk that such animal may be affected with disease and denied entry.

Six comments opposed the proposal because of the difficulties in managing such approved quarantine facilities. These comments indicate that it would be difficult to find personnel trained in quarantine procedures to provide adequate security. The Department has had many years of experience managing import quarantine facilities and concludes that such difficulties are not likely to occur. No special detailed training of such personnel will be required. In this regard, it must be noted that the facility will be under the general supervision of a Veterinary Services veterinarian. The Department has found security to present no problems under this arrangement. These comments also indicated that it would be difficult to ensure that persons in contact with horses inside the facility do not come into contact with horses outside the facility. The Department agrees that this requirement may be difficult to enforce. However, this requirement is necessary to minimize the risk of disease spread.

One comment opposed the proposal because it would be more difficult for the Department to keep records regarding the location of imported horses because of the increased number of quarantine stations. The Department disagrees with this comment and does not anticipate any difficulty in this regard based on its experience.

Two comments opposed the proposal because no procedures were provided for denial of approval. The Department disagrees with these comments. Proposed § 92.11(d)(2) provides circumstances under which the approval of a quarantine facility could be refused or withdrawn by the Deputy Administrator. The proposal also requires that an operator of a facility be informed of the reasons for the withdrawal of approval or refusal to grant approval and the proposal further provides an operator with an opportunity to present his view thereon. If there is a conflict as to a material fact a hearing shall be held to resolve such conflict.

One comment opposed the proposal and indicated a need for State approval of a facility. The Department disagrees with this comment. The Secretary of Agriculture is responsible for regulating the movement of animals into the United States in order to protect the livestock and poultry of the United States from communicable diseases. Therefore, the Department believes it should retain control over the approval of facilities for the importation of horses at other than USDA operated facilities.

The last sentence of the summary of the proposed rule stated, "This action would provide procedures whereby horses may be entered into the United States at additional ports and airports where no facilities or quarantine services are currently provided."

This statement may have been interpreted to mean that the provisions of the proposed rule would apply only in locations where no USDA quarantine services or facilities now exist. This interpretation is incorrect in that the proposal was intended to provide for approval of additional quarantine facilities which meet the requirements for special approval at any location. The sentence has been modified to avoid the possibility of this misunderstanding.

Other changes have been made to clarify the standards required for an approved quarantine facility.

Proposed § 92.11(d)(3)(i) would have required importers or their agents to arrange for inspection and quarantine services with Veterinary Services, Import-Export Staff, 6505 Belcrest Road, Hyattsville, Maryland 20782, no less than 7 days before the date of entry of the horses into the quarantine facility. Because inspection and quarantine

services at approved quarantine facilities will be provided by personnel assigned in the various States, § 92.11(d)(3)(i) of this final rule has been amended to provide that inspection and quarantine services shall be arranged by the importer or his agent with the Veterinarian in Charge, Animal and Plant Health Inspection Service, USDA, in the State in which the quarantine facility is located. Additionally, a footnote 7a is added to § 92.11(d)(3)(i) to provide importers or their agents with information on how to obtain the name and address of the Veterinarian in Charge for each State.

Proposed § 92.11(d)(3)(ii)(A) would have required that the quarantine facility be sufficiently isolated to prevent quarantined horses from having direct of indirect contact with other animals. The Department has concluded that the proposed language did not clearly describe this isolation requirement. Therefore, this final rule amends that section to require that the facility be located and constructed to prevent quarantined horses from having physical contact with animals outside the facility.

Proposed § 92.11(d)(ii)(B)(*1*) would have required that the facility be constructed so that it provides protection against adverse environmental conditions and can be cleaned and disinfected in a manner satisfactory to the supervising veterinarian. This final rule deletes the requirement that the facility be constructed to provide protection against adverse environmental conditions. The purpose of this rule is to prevent the spread of disease from imported horses. The proposed requirement that the facility protect against adverse environmental conditions would not further the fulfillment of this purpose. This section is further clarified to require that the facility be constructed only with materials that can withstand repeated cleaning and disinfection in accordance with 9 CFR 71.7 and 71.10. All walls, floors and ceilings must be constructed of solid, impervious material or be screened in accordance with § 92.11(d)(3)(ii)(B)(*2*). The Department believes that this more specific requirement will ensure uniformity of interpretation and application in that it indicates the types of materials to be used in the construction of the facility.

Proposed § 92.11(d)(3)(ii)(B)(*3*) which would have required that the facility have adequate means to feed and water horses while in the quarantine facility is deleted. The Department believes this proposed requirement would not significantly enhance the prevention of the spread of disease. Therefore, it has been deleted.

Proposed § 92.11(d)(3)(iii)(A) would have required that the inporter arrange for a supply of water adequate to meet all watering and cleaning needs. The reference to watering needs is deleated since it constitutes a humane handling provision and is not related to prevention of the spread of disease. The remainder of this paragraph is amended to require that an importer arrange for a supply of water adequate to clean and disinfect the facility in accordance with 9 CFR 71.7 and 71.10. This amendment was made to give importers more guidance as to the quantity of water which must be made available.

Proposed § 92.11(d)(3)(iii)(B) would have required that the importer arrange for the disposal of animal carcasses, manure, bedding, waste, and other related materials in a manner approved by the supervising veterinarian. This final rule renumbers this standard as § 92.11(d)(3)(iii)(C) and amends this standard for removal of wastes to require that upon death or destruction of any horse, the importer shall arrange for disposal of the animal carcass by incineration. Disposal of all other waste removed from the facility during the time the horses are in quarantine or from horses which are refused entry into the United States shall be either by incineration or in a public sewer system which meets all applicable environmental quality control standards. Following completion of the quarantine period and the release of the horses into the United States, all waste may be removed from the quarantine facility without further restriction because the horses were found free of communicable disease. The Department believes that this amendment provides a more reasonable requirement and will clarify the arrangements which must be made for disposal of animal carcasses and other waste.

Proposed § 92.11(d)(3)(iii)(C) is renumbered § 92.11(d)(3)(iii)(D) and proposed § 92.11(d)(3)(iii)(D) is renumbered § 92.11(d)(3)(iii)(E).

Additionally, certain amendments have been added to the regulations in 9 CFR Part 92 since the proposed rule was published. This necessitates amendments of certain provisions of the proposal.

Section 92.3(a) which, among other things, lists ports through which animals may be entered has been revised. This final rule therefore amends the proposed § 92.3(a) to use the language presently in that section.

When the proposal was published, § 92.3 contained paragraphs (a)–(f). Presently, § 92.3 contains paragraphs (a)–(g). In the proposal, paragraph (f) would have been redesignated paragraph (g) and a new paragraph (f) would have been added. In this final rule, paragraph (g) is redesignated as paragraph (h) and the added paragraph is designated as paragraph (g) rather than (f). Section 92.3(g) refers to countries where African horsesickness is declared to exist. This final rule adds a new footnote 4a after such reference to inform the reader that lists of such countries may be obtained from the Deputy Administrator, Veterinary Services.

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

1. In § 92.3, paragraph (a) up to the colon is amended to read:

§ 92.3 Ports designated for the importation of animals.

(a) *Air and ocean ports.* The following ports are hereby designated as having inspection and quarantine facilities necessary for quarantine stations and all animals shall be entered through said stations, except as provided in paragraphs (b), (c), (d), (e), and (g) of this section and paragraph (d) of § 92.11 or § 92.24: * * *

* * * * *

2. In § 92.3, paragraph (g) is redesignated paragraph (h) and a new paragraph (g) and a reference to footnote 4a are added to read:

(g) *Additional ports for horses.* In addition to other ports designated for the importation of animals in this section, horses from any part of the world, except horses from or which have transited any country in which African horsesickness is declared to exist,[4a] may be entered into the United States at any port designated as an international port or airport by the U.S. Customs Service provided that applicable provisions of §§ 92.8(a), 92.11(d), 92.17, and 92.2(i) are met.

3. A new footnote 4a referenced in § 92.3(g) is added to read:

[4a] Information as to the countries where African horsesickness is declared to exist may be obtained from the Deputy Administrator, Veterinary Services.

4. In § 92.11(d), the subparagraph following the title is designated subparagraph (1), and new subparagraphs (2) and (3) and a reference to footnote 7a are added to read:

§ 92.11 Quarantine requirements.

* * * * *

(d) *Horses.* (1) * * *

(2) *Special provisions.* Horses presented for entry into the United

States at any additional port for horses as provided in § 92.3(g) of this part shall be quarantined in facilities provided by the importer and approved by the Deputy Administrator, Veterinary Services. Requests for approval and plans for proposed facilities shall be submitted no less than 15 days before the proposed date of entry of horses into the quarantine facility to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782. Before the facility is approved, an inspection of the facility shall be made by a Veterinary Medical Officer of Veterinary Services, to determine whether it complies with the standards set forth in paragraph (d)(3) of this section: *Provided, However,* that approval of any quarantine facility and use of such facility shall be contingent upon a determination made by the Deputy Administrator that adequate personnel are available to provide services required by the facility. Approval of any facility may be refused and approval of any approved quarantine facility may be withdrawn at any time by the Deputy Administrator, Veterinary Services, upon his determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility shall be informed of the reasons for the proposed action by the Deputy Administrator and afforded an opportunity to present his views thereon. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. The cost of the facility and all maintenance and operation costs of such facility shall be borne by the importer.

(3) *Standards and handling procedures for approved quarantine facilities at additional ports for horses.* To qualify for designation as an approved quarantine facility at an additional port for horses, the facility shall be maintained and operated in accordance with the following standards:

(i) *Supervision of the facility.* The facility shall be under the general supervision of a Veterinary Services veterinarian. Inspection and quarantine services shall be arranged by the importer of his agent with the Veterinarian in Charge, Veterinary Services, APHIS, USDA, for the State in which the approved facility is located [7a], no less than 7 days before the proposed date of entry of the horses into the quarantine facility.

(ii) *Physical requirements for facility.*—(A) *Location.* The facility shall be located and constructed to prevent horses from having physical contact with animals outside the facility.

(B) *Construction.*

(*1*) The facility shall be constructed only with materials that can withstand repeated cleaning and disinfection in accordance with §§ 71.7 and 71.10 of Subchapter C of this Title. (All walls, floors and ceilings shall be constructed of solid impervious material or be screened as provided in paragraph (d)(3)(ii)(B)(*2*) of this section.)

(*2*) Doors, windows, and other openings of the facility shall be provided with double screens which will prevent insects from entering the facility.

(iii) *Sanitation and security.*

(A) The importer shall arrange for a supply of water adequate to clean and disinfect the facility in accordance with §§ 71.7 and 71.10 of Subchapter C of this Title.

(B) All feed and bedding used for horses in approved quarantine facilities shall originate from an area not under quarantine because of cattle fever ticks (see §§ 72.3 and 72.5 of Subchapter C of this Title) and shall be stored within the facility.

(C) Upon the death or destruction of any horse, the importer shall arrange for the disposal of the animal carcass by incineration. Disposal of all other waste removed from the facility during the time horses are in quarantine or from horses which are refused entry into the United States shall be either by incineration or in a public sewer system which meets all applicable environmental quality control standards. Following completion of the quarantine period and the release of the horses into the United States all waste may be removed from the quarantine facility without further restriction.

(D) The facility shall be maintained and operated in accordance with any additional requirements the Deputy Administrator, Veterinary Services, deems appropriate to prevent the dissemination of any communicable disease.

(E) The facility shall comply with all applicable local, State and Federal requirements for environmental quality.

(iv) *Operational procedures.*—(A) *Personnel.* (*1*) Access to the facility shall be granted only to persons working at the facility or to persons specifically granted such access by the supervising Veterinary Services veterinarian. (*2*) The importer shall provide attendants for the care and feeding of horses while in the quarantine facility. (*3*) Persons working in the quarantine facility shall not come in contact with any horses outside the quarantine facility during the quarantine period for any horses in such quarantine facility.

(B) *Handling of horses in quarantine.* Horses offered for importation into the United States which are quarantined in an approved quarantine facility at an additional port for horses shall be handled in accordance with the provisions § 92.11(d)(1) while in quarantine.

5. A new footnote 7a referenced in § 92.11(d)(3)(i) is added to read:

[7a] The name and address of the Veterinarian in Charge of any State are available from the Deputy Administrator, Veterinary Services, APHIS, USDA, 6505 Belcrest Road, Hyattsville, Maryland 20782.

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

Done at Washington, D.C., this 6th day August 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80-24002 Filed 8-6-80; 9:46 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9073]

Ford Motor Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has issued a modifying order changing some of the order provisions in an order to cease and desist issued against a Detroit, Mich. manufacturer of motor vehicles March 29, 1979, 93 F.T.C. 402, 44 FR 25630. In an effort to ensure evenhandedness in requirements in similar cases issued against competitors, the Commission is modifying the order provisions to meet those in a provisionally accepted order against General Motors Corporation. The Commission has eliminated the references to the State of Louisiana in paragraphs I.J and II.F; redefined the meaning of "allowable expenses" in paragraph I.L; and removed the requirement that respondent submit summary reports of certain required audits to the agency. The order now requires simply the preparation and maintenance of such audit summary reports.

DATES: Decision issued March 29, 1979. Modifying order issued July 3, 1980.*

FOR FURTHER INFORMATION CONTACT: Bruce D. Carter, Seattle Regional Office, 10R, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: In the Matter of Ford Motor Company, Ford Motor Credit Company, and Francis Ford, Inc., corporations. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, appearing at 44 FR 25630, remain unchanged.

(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 Order Reopening and Modifying Consent Order, including further order requiring report of compliance therewith, is as follows:

Order Reopening and Modifying Consent Order

On March 29, 1979, the Commission issued a Decision and Order against respondents Ford Motor Company and Ford Motor Credit Company,[1] in connection with the extension and enforcement of motor vehicle retail credit obligations and the disposition of repossessed motor vehicles. There is now before the Commission a Request by the Ford respondents (filed May 30, 1980, and amended June 10, 1980) for reopening and modification of that Order pursuant to § 2.51 of the Commission's rules of practice, 16 CFR 2.51.

The Order required Ford to establish and provide to all dealers, as part of the Ford Manual of Dealer Accounting Procedure (binding on all Ford dealers), a system for determining repossession surpluses and for accounting for such surpluses and for any deficiencies sought on repossessed vehicles. It required also that Ford conduct a series of field audits to verify whether its dealers are in fact adhering to that system.

Order Paragraph I.J defines "disposition" of a repossessed vehicle to include its sale or lease, but not transactions subsequent to judicial sales in Louisiana.[2] In accordance with the latter aspect, Paragraph II.F limits the coverage of the repossession accounting system as follows:

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales in Louisiana.

The Order further provides, in Paragraph I.L, that the following expenses, among others, may be deducted as "allowable" in dealers' determination of surpluses and of deficiencies upon which collection is attempted:

* * * * *

7. sales commissions paid for actual participation in the sale of the particular vehicle, computed at a rate no higher than for a similar, nonrepossessed vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

* * * * *

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning and resale of the vehicle.

As to the Ford-conducted audits, Paragraph IV.H requires that "[w]ithin sixty days after completion of each audit of a dealership * * * Ford shall:

1. Submit to the Federal Trade Commission a summary report of the audit for that dealership, containing * * * (seven specified categories of information and/or documentation)."

The current Ford Request relies on various manifestations of Commission policy in favor of even-handed treatment of similarly situated business entities. As amended, the Request asks that Paragraphs I.J, II.F, I.L and IV.H.1 of the March 1979 Order be modified to "conform" in certain respects to a consent order agreement with General Motors Corporation, et al., accepted subject to public comment on March 5, 1980 (Docket 9074, 45 FR 14870, March 7, 1980). Specifically, Ford seeks elimination of the "in Louisiana" limitation from Paragraphs I.J and II.F; clarification that expenses incident to any proper disposition (i.e., a sale *or* lease, rather than just a sale) may be deducted as "allowable" in determining the amount of any surplus or deficiency; and provision that these expenses may include costs of certain fringe benefits incurred in connection with payment of sales commissions, certain other necessary photocopying and communication expenses, and amounts paid specifically to insure the repossessed vehicle while in the dealer's possession.

Because the audit process incorporated in the *General Motors* consent order requires preparation and maintenance of a summary report of each dealership audit (*GM* ¶¶ IV.A.3 and IV.B) but not their automatic submittal to the Commission, Ford asks that Paragraph IV.H.1 be modified to require only preparation and not routine submission (to the Commission) of its individual dealership audit reports. Ford notes that such reports would still be available for review by Commission representatives upon request, under the general-recordkeeping provision of the Order (paragraph VIII.A). In addition, Ford undertakes to submit two statistical reports to the Commission during the conduct of each sample audit, to provide Commission staff with interim overviews while the audit process is still ongoing.

The Commission's staff concurs in all of the modifications proposed in Ford's Request, as amended.[3] However, with the exception of the changes to Paragraph I.L the staff does not agree with Ford's contention that the modifications are within the scope of Paragraph VII.B (which confers upon Ford a right to have any provision conformed, as necessary and appropriate, to a corresponding provision of any final order in Docket Nos. 9072–74 which prescribes a less restrictive standard on certain enumerated subjects). Because the Commission has decided to grant all aspects of Ford's amended Request,[4] as an exercise of sound discretion—in the interest of prompt evenhandedness rather than contingent on finality of the *General Motors* order—it is unnecessary to make a determination as to whether the requested modifications of Paragraphs I.J, II.F and IV.H.1 fall within the scope and operation of Paragraph VII.B.

Therefore, the Commission being of the opinion that the public interest will

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* Copies of the Order Reopening and Modifying Consent Order filed with the original document.

[1] 93 F.T.C. 402. The Order was modified on February 16, 1980, at the behest of the Ford respondents and without objection by the Commission's staff, in a single subparagraph unaffected by the Request discussed herein.

[2] The full text of Paragraph I.J is as follows: J. "Disposition" or "dispose" refers to a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the financing institution, the dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed vehicle. Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

[3] The Commission notes that no comments were filed on these aspects of the *General Motors* consent order during its sixty days on the public record, and that none have been filed on Ford's Request.

[4] In implementation of its proposed modifications to Paragraph I.L, Ford has sumitted detailed revisions of certain portions of its Manual of Dealer Accounting Procedure. Pending staff review of these materials, the Commission expresses no view at this time as to their compliance with the modified provisions.

be served by modifying the Order as requested, at this time,

It is ordered, That Docket 9073 be, and it hereby is, reopened for the limited purpose of effecting the following changes.

It is further ordered, That Paragraphs I.J and II.F of the Order be modified by eliminating references to Louisiana, so that the last sentence of Paragraph I.J will read:

Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale.

and Paragraph II.F will read:

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales.

It is further ordered, That paragraph I.L of the Order be modified in its preamble and in certain indicated subparagraphs, and by addition of a new subparagraph 11, to read as follows:

L. "Allowable expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for disposition and disposing of the vehicle, and not otherwise reimbursed to the dealership. They are limited to the following charges (if allowable under applicable state law):

* * * * *

5. Labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance of the vehicle in preparation for disposition, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance or warranty recovery;

6. Amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the vehicle in preparation for disposition;

7. Cost of sales commissions paid for actual participation in the disposition of the particular vehicle, computed at a rate no higher than for the sale or lease, as applicable, of a similar, nonrepossessed vehicle in similar circumstances, but excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing, or insurance;

* * * * *

10. Expenses paid to others for communication (including telephone calls, postage, and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning, or disposition of the vehicle; and

11. Amounts paid to insure the particular vehicle while holding it.

It is further ordered, That Paragraph IV.H.1 of the Order be modified to eliminate the following language:

1. Submit to the Federal Trade Commission a summary report of the audit for that dealership, containing * * *

and substitute therefor the following:

1. Prepare a summary report of the audit for that dealership, containing * * *

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-24011 Filed 8-7-80; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2586]

C. Itoh & Co. (America), Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has issued an order modifying a previous order to cease-and-desist issued October 22, 1974 against a New York City importer and distributor of fabrics (84 F.T.C. 1187, 40 FR 6482). The Commission has modified the order by limiting the bond provision to recycled wool products only. The order previously required posting of a bond on all wool products imported.

DATES: Decision issued October 22, 1974. Modifying order issued July 7, 1980.*

FOR FURTHER INFORMATION CONTACT: FTC/P, Albert H. Kramer, Washington, D.C. (202) 523-3727.

SUPPLEMENTARY INFORMATION: In the Matter of C. Itoh & Co. (America), Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, appearing at 40 FR 6482, remain unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; Secs. 2-5, 54 Stat. 1128-1130; (15 U.S.C. 45, 68))

The Order Modifying Cease and Desist Order is as follows:

Order Modifying Cease and Desist Order

In its request filed on April 30, 1980, the respondent petitioned the Commission, pursuant to § 2.51 of its rules of practice, to reopen the proceedings and modify the order of October 22, 1974, entered in Docket Number C-2586. Respondent asks that the second *"it is further ordered"* paragraph be deleted from the order. The paragraph in question reads as follows:

It is further ordered, That respondent, C. Itoh & Co. (America), Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from importing or participating in the importation of wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

In support of its request, the respondent has advanced a number of considerations intended to show changed conditions of fact since the order was issued and to show that the public interest will best be served by granting its request. It states that it has ensured that its imported wool products are correctly labeled by investigating the reputations of its overseas suppliers and purchasing only from those with an established record of exercising proper care and diligence in determining the fiber content of their merchandise and labeling it properly. As the result of its self-policing, it states that there have been no complaints with regard to the labeling of any of its importations of wool products in the five and one-half years that the order has been in effect. The respondent advised Commission staff, by letter dated May 5, 1980, that it is no longer importing the reprocessed or reused wool products which gave rise to the complaint and is now importing wool and wool blend products.[1] It states further, that due to the high costs of the premiums charged by sureties on the bond, it can no longer hope to profitably continue to sell wool products. It cites as a competitive disadvantage the fact that many of its competitors are not subject to the bonding requirement and that bonds have not appeared in recent Commission orders under the Wool Products Labeling Act of 1939.

By letter dated May 28, 1980, the respondent advised staff that it will

* Copies of the Order Modifying Cease and Desist Order filed with the original document.

[1] The Wool Products Labeling Act of 1939 has been amended to substitute the word "recycled" for the words "reprocessed" and "reused" (Pub. Law 96-242, 94 Stat. 344, May 5, 1980, eff. July 4, 1980).

agree to a modification of the order to limit the bonding requirement to the wool products that gave rise to the complaint, recycled wool products. If the respondent resumes importing such products, the bond will be applicable. It will not, however, be required to continue to bear the financial burden of paying premiums to sureties on the wool and wool blend products that it is now importing.

Having considered the request, the Commission has concluded that the order should be modified to limit the bond provision to recycled wool products and that the modification will safeguard the public interest. Therefore,

It is ordered, That the second *"it is further ordered"* paragraph of the order, set forth above, be replaced by the following new paragraph:

It is further ordered, That respondent, C. Itoh & Co. (America), Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from importing or participating in the importation of recycled wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said recycled wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

It is further ordered, That the foregoing modification shall become effective upon service of this order.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-24010 Filed 8-7-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM79-54; Order No. 70-B]

Small Power Production and Cogeneration Facilities—Qualifying Status; Order Granting in Part and Denying in Part Rehearing of Order No. 70 and Amending Regulations

August 4, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting in Part and Denying in Part Rehearing of Order No. 70 and Amending Regulations.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby adopts an order granting in part and denying in part rehearing of Order No. 70 and amending regulations. The Order amends two sections of the Commission's rules involving small power production. The order includes a new definition of "electric utility holding company," and amends §§ 292.206 and 292.207 by deleting the word "public" and inserting in lieu thereof the word "electric."

EFFECTIVE DATE: August 4, 1980.

FOR FURTHER INFORMATION CONTACT:

Adam Wenner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8371, or

Glenn Berger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8364.

On April 14, 1980, Elizabethtown Gas Company (Elizabethtown) and Southern California Gas Company (SCGC) applied for rehearing and clarification of Order No. 70, issued by the Federal Energy Regulatory Commission (Commission) on March 13, 1980.[1] Order No. 70 prescribes rules pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) under which small power production and cogeneration facilities can obtain "qualifying" status, and thus become eligible for the rates and exemptions set forth in the Commission's rules implementing section 210 of PURPA.[2]

Elizabethtown and SCGC contend that § 292.206(b) of the Commission's rules erroneously exclude from qualifying status facilities owned by gas public utility holding companies, despite the fact that they are not engaged in the generation or sale of electricity. Elizabethtown stated that PURPA does not prohibit a gas distribution utility from owning a qualifying facility.

Sections 17(C)(ii) and 18(B)(ii) of the Federal Power Act as amended by PURPA require the Commission to limit qualifying status to facilities "owned by persons not primarily engaged in the generation or sale of electric power." Section 292.206(b) of the Commission's rules prohibits public utility holding companies from owning more than 50 percent of the equity interest of a qualifying facility.

On May 15, 1980 the Commission issued an "Order Granting in Part and Denying in Part Rehearing of Order Nos. 69 and 70, and Amending Regulations."[3] The Commission stated in that order that it did not intend to prohibit companies without any electric utility interests from owning qualifying facilities, but believed it appropriate to consult with the Securities and Exchange Commission (SEC) before changing Order No. 70 in this respect.

The Commission's Office of the General Counsel has consulted with the SEC's Division of Corporate Regulation. That Division stated that permitting gas holding companies to own qualifying facilities would be consistent with the SEC's regulation of holding companies.[4] Accordingly, the Commission will amend its rules to permit gas utility holding companies to own qualifying facilities. This change is accomplished by substituting the words "electric utility holding company" for the words "public utility holding company" in §§ 292.206(b) and 292.207(b)(2)(v) of the Commission's rules, and adding a definition of "electric utility holding company" to § 292.202. An electric utility holding company is defined as any holding company which owns one or more electric utilities, as those terms are defined in the Public Utility Holding Company Act of 1935.

The Commission recognizes that certain companies which are not "primarily engaged in the generation or sale of electric power" may nevertheless be classified as "electric utilities" or "electric utility holding companies." The result of such classification is to prevent cogeneration or small power production facilities of which such companies own more than 50 percent of the equity from being qualifying facilities. Included in this category are companies which derive most of their income from non-utility operations, but which, as a result of selling some electric energy, are classified as "electric utilities" under section 3(22) of the Federal Power Act; and public utility holding companies which are exempt by rule or order issued by the Securities and Exchange Commission pursuant to sections 3(a)(3), 3(a)(4), and 3(a)(5) of the Public Utility Holding Company Act of 1935.

The Commission intends to exercise its authority to amend its rules so as to permit, in appropriate circumstances, ownership of qualifying facilities by some or all of these types of companies. Until it completes its analysis of the issues involved in making those changes, the Commission believes it

[1] 45 FR 17959 (March 20, 1980).

[2] Order No. 69, 45 FR 12214 (February 25, 1980).

[3] 45 FR 33958 (May 21, 1980).

[4] Letter of June 6, 1980, from Aaron Levy, Director, Division of Corporate Regulation, SEC, in response to letter of May 14, 1980, from Robert Nordhaus, General Counsel, FERC.

appropriate to amend its rules so as to permit ownership of a qualifying facility by public utility holding companies, such as Elizabethtown and SCGC, which have no electric utility company subsidiaries.

On June 13, the American Paper Institute, Inc. (API) filed a Petition for Rehearing or Modification of the Commission's May 15, 1980, Rehearing order. The petition noted that the Order on Rehearing amended Order No. 70 by amending § 292.204. That section required that the primary energy source of a qualifying small power production facility be biomass, waste, renewable resources, or any combination thereof, and that more than 50 percent of the total energy input must be from these energy sources. Section 292.204(b)(2) limits the use of oil, natural gas and coal to 25 percent of the total energy input of a qualifying facility during any calendar year period.

In the rehearing order, the Commission stated that it was aware of virtually no eligible fuels which are neither oil, natural gas, nor coal, and yet are not biomass, waste or renewable resources. As a result, the Commission changed the requirement that 50 percent of a facility's energy input be from biomass, waste, or renewable resources to 75 percent.

In its petition, API states that use of the 50 percent figure was intended to permit the use of "synfuel, low Btu gas or similar types of emerging energy resources."

The Commission has reviewed the statutory and policy bases involved in this issue, and has determined that it is appropriate to retain the 75 percent requirement adopted in the rehearing order of May 15, 1980.

"Primary energy source" is defined in section 201 of PURPA as fuel or fuels used for the generation of electric energy. The term does not include fuel used for startup, testing, flame stabilization, and control uses, or fuel used during forced outages or emergencies.

The statutory intent is to divide fuel use by small power production facilities into two categories—(1) fuel used as an acceptable primary energy source, and (2) all other fuel. The Statement of Managers indicates a recognition that the second category involves the use of "oil or natural gas *or other nonrenewable fuel,* in combination with eligible primary energy sources." (emphasis supplied) It reflects an intent to include all nonrenewable fuels in the same category as oil and natural gas.[5]

The Commission notes that neither synthetic fuel nor low Btu gas is a renewable fuel. Low Btu gas is not a waste product; it is produced from the incomplete combustion of coal for use as boiler fuel. These fuels are properly included within the 25 percent oil, natural gas and nonrenewable fuels limit set forth in § 292.204(b)(2). Accordingly, the Commission does not accept the contentions of API, and denies the petition.

The Commission notes that on May 19, 1980, Elizabethtown filed a Petition for Review of Order No. 70 and of the Commission's Order on Rehearing of Orders Nos. 69 and 70 in the United States Court of Appeals for the District of Columbia Circuit. On June 30, 1980, the Commission filed with the court the Certificate of Record in Lieu of Record. Under section 313(b) of the Federal Power Act that Court has exclusive jurisdiction to modify those orders. Accordingly, this order is issued subject to the Court's permission.

The Commission orders that: (A) The applications for rehearing and clarification of Order No. 70 filed by Elizabethtown Gas Company and Southern California Gas Company are granted with respect to § 292.206 of the Commission's rules.

(B) Sections 292.202, 292.206(b) and 292.207(b) are amended as set forth below effective August 4, 1980.

(C) The Petition for Rehearing or Modification filed by the American Paper Institute, Inc., on June 13, 1980, is denied.

(Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et. seq.;* Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et. seq.;* Federal Power Act, as amended, 16 U.S.C. 792 *et seq.;* Department of Energy Organization Act, 42 U.S.C. 7101 *et. seq.;* E. O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission amends Part 292 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective August 4, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 292.202 is amended by adding a new paragraph (n) to read as follows:

§ 292.202 Definitions.

* * * * *

(n) "Electric utility holding company" means a holding company as defined in section 2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(7) which owns one or more electric utility companies, as defined in section 2(a)(3) of that Act, 15 U.S.C. 79b(a)(3).

§§ 292.206 and 292.207 [Amended]

2. Section 292.206 is amended in paragraph (b), and § 292.207 is amended in paragraph (b)(2)(v), by deleting the word "public" and inserting in lieu thereof the word "electric."

[FR Doc. 80-24105 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[5] Conference Report on H.R. 4018, Public Utility Regulatory Policies Act of 1978, H. Rep. No. 1750, 89, 95th Cong., 2nd Sess. [1978].

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

Electric Golf Cars From Poland Revocation of Dumping Findings; Antidumping Duties

AGENCY: U.S. Department of Commerce.

ACTION: Revocation of Dumping Finding.

SUMMARY: This notice is to inform the public that the U.S. International Trade Commission published in the **Federal Register** of June 11, 1980 their determination that, due to changed circumstances, an industry in the United States would not be threatened with material injury if the dumping finding concerning electric golf cars from Poland were revoked. As a result, the Department of Commerce is revoking the finding of dumping applicable to electric golf cars from Poland.

The table in Section 353, Annex I of the Commerce Regulations is amended to reflect this revocation.

EFFECTIVE DATE: June 11, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Kane, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–4273.

SUPPLEMENTARY INFORMATION: On November 18, 1975, a finding of dumping with respect to electric golf cars from Poland was published in the **Federal Register** (40 Fed. Reg. 53383). On August 6, 1979, the exclusive importer, Melex, USA, petitioned the United States International Trade Commission to investigate whether their injury determination in that case was still valid in light of changed circumstances. Pursuant to Section 751(b) of the Tariff Act of 1930 (the Act), the Commission conducted a review of their determination of injury, and, on May 20, 1980, determined that, due to changed

circumstances, a U.S. industry would no longer be threatened with material injury if the finding of dumping regarding electric golf cars from Poland were revoked. The Commission published their determination in the **Federal Register** on June 11, 1980 (45 Fed. Reg. 39581). Therefore, the Department of Commerce, as administering authority, revokes the antidumping duty finding with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after June 11, 1980. The Department will instruct Customs offices to proceed with liquidation of all such entries of the subject merchandise without regard to antidumping duties. Unappraised entries of electric golf cars from Poland, made prior to June 11, 1980, remain unaffected by this notice, and continue to be subject to appraisement under the antidumping duty finding.

PART 353, ANNEX I [Amended]

Part 353, Annex I, Commerce Regulations (19 C.F.R. 353, Annex I), is amended by deleting from the column headed "Merchandise" the words "Electric Golf Cars", from the column headed "Country" the word "Poland", and from the column headed "T.D." reference to Treasury Decision "75-288".

This revocation is in accordance with section 751(c) of the Act.

(93 Stat. 176, 19 U.S.C. 1675(c))

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

August 5, 1980.

[FR Doc. 80-24046 Filed 8-7-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Piperazine-Carbon Disulfide Complex Boluses and Suspension and Piperazine-Carbon Disulfide Complex With Phenothiazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify two previously approved new animal drug applications (NADA's). The NADA's, sponsored by the Upjohn Co., provide for use of an anthelmintic drug in treating horses and ponies. Codification of the previously approved NADA's reflects the conditions of use deemed effective in the National Academy of Sciences/National Research Council (NAS/NRC) evaluation. In addition, the regulations are amended to reflect the approval of a supplemental NADA providing revised directions for use for a similar product.

EFFECTIVE DATE: August 8, 1980.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of a NADA for a bolus (11-590) and a suspension (11-299), containing piperazine-carbon disulfide complex, and a suspension (33-149) containing piperazine-carbon disulfide complex with phenothiazine. The applications were originally approved October 6, 1958, January 22, 1958, and January 13, 1966, respectively.

NADA's 11-299 and 11-590 were subject of an NAS/NRC review published in the **Federal Register** of December 11, 1968 (33 FR 18408). The NAS/NRC review concluded, and the agency concurred, that piperazine-carbon disulfide complex is an effective anthelmintic, but that more information was needed to provide evidence that the bolus disintegrates readily in the animal's stomach. The NAS/NRC notice required submission of supplemental NADA's revising the labeling by limiting claims and presenting conditions of use substantially as published in the notice.

The Upjohn Co. responded by submitting supplemental NADA's that revised the products' labeling and provided the requested disintegration information. The supplements were approved on May 28, 1970 (bolus) and October 23, 1969 (suspension) bringing the applications into compliance with the NAS/NRC review. At that time, the approved conditions of use of the products were not codified. This document amends the regulations to codify the previously approved conditions of use. The conditions are indicated by footnote in the regulation. Approval of NADA's for similar products bearing the same conditions of use does not require effectiveness data as specified by § 514.1(b)(8) (ii) and (iii) or § 514.111(a)(5)(ii)(*a*)(*4*) of the animal drug regulations (21 CFR 514.1(b)(8) (ii) and (iii) or 514.111(a)(5)(ii)(*a*)(*4*)). Approval of NADA's for similar products may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs, available in the office of the Hearing Clerk (HFA-305), FDA. This action, codification of previously approved NADA's 11-299 and 11-590, does not require reevaluation of the safety or effectiveness data in the parent evaluation.

Amending the regulations to reflect approval of supplemental NADA 33-149 providing revised directions for use (that is, deletion of pinworm claim and use of 1 percent acidic rinse solution) requires a summary of safety and effectiveness data and information concerning this change. Under the Bureau's supplemental approval policy (December 23, 1977; 42 FR 64367), approval of this action does not require reevaluation of the safety and effectiveness data in the parent application. In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2) (21 CFR 514.11(e)(2)), a summary of safety and effectiveness data and information submitted to support approval of supplemental NADA 33-149 may be seen in the office of the Hearing Clerk (HFA-305), Rm. 4-62, FDA, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by redesignating existing § 520.1802 as § 520.1802c and revising it, and by adding new §§ 520.1802, 520.1802a, and 520.1802b, to read as follows:

§ 520.1802 Piperazine-carbon disulfide complex oral dosage forms.

§ 520.1802a Piperazine-carbon disulfide complex suspension.

(a) *Specifications.* Each fluid ounce of suspension contains 7.5 grams of piperazine-carbon disulfide complex. The piperazine-carbon disulfide complex contains equimolar parts of piperazine and carbon disulfide (1 gram contains 530 mgs of piperazine and 470 mgs of carbon disulfide).

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Horses and ponies*—(1) *Amount.* One fluid ounce per 100 pounds of body weight.[1]

(2) *Indications for use.* For removing ascarids (large roundworms, *Parascaris equorum*), bots (*Gastrophilus* spp.), small strongyles, large strongyles

[1] These conditions are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(*Strongyles* spp.), and pinworms (*Oxyuris equi*).[1]

(3) *Limitations.* Administer by stomach tube or dose syringe after withholding feed overnight or for 8 to 10 hours. Provide water as usual. Resume regular feeding 4 to 6 hours after treatment. Treatment of debilitated or anemic animals is contraindicated. Do not administer to animals that are or were recently affected with colic, diarrhea, or infected with a serious infectious disease. As with most anthelmintics, drastic cathartics and other gastrointestinal irritants should not be administered in conjunction with this drug. Animals in poor condition or heavily parasitized should be given one half the recommended dose and treated again in 2 or 3 weeks. Federal law restricts this drug to use by or on the order of a licensed veterinarian.[1]

520.1802b Piperazine-carbon disulfide complex boluses.

(a) *Specifications.* Each bolus contains 20 grams of piperazine-carbon disulfide complex.

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Horses and ponies*—(1) *Amount.* For removal of ascarids and small strongyles, 1 bolus (20 grams) per 500 pounds body weight; removal of large strongyles, pinworms, and bots, 1 bolus per 250 pounds body weight.[1]

(2) *Indications for use.* For removing ascarids (large roundworms, *Parascaris equorum*), large strongyles (*Strongylus* spp.) bots (*Gastrophilus* spp.), small strongyles, and pinworms (*Oxyuris equi*).[1]

(3) *Limitations.* Withhold feed overnight or for 8 to 10 hours. Give water just before and/or after treatment. Resume regular feeding 4 to 6 hours after treatment. Treatment of debilitated or anemic animals is contraindicated. Do not administer to animals that are or were recently affected with colic, diarrhea, or infected with a serious infectious disease. As with most anthelmintics, drastic cathartics or other gastrointestinal irritants should not be administered in conjunction with this drug. Animals in poor condition or heavily parasitized should be given one half the recommended dose and treated again in 2 or 3 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.[1]

§ 520.1802c Piperazine-carbon disulfide complex with phenothiazine suspension.

(a) *Specifications.* Each fluid ounce contains 5 grams of piperazine-carbon disulfide complex and 0.83 gram of phenothiazine.

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Horses and ponies*—(1) *Amount.* One fluid ounce per 100 pounds of body weight.

(2) *Indications for use.* For removing ascarids (large roundworms, *Parascaris equorum*), bots (*Gastrophilus* spp.), small strongyles, and large strongyles (*Strongylus* spp.).

(3) *Limitations.* See § 520.1802a(c)(3).

Effective date. August 8, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 30, 1980.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-23628 Filed 8-7-80; 8:45 am]

BILLING CODE 4110-03-M

[1] See footnote, p. 52781.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[T.D. 7714; EE-18-78]

Income Tax; Individual Retirement Arrangements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations

SUMMARY: This document provides final regulations relating to individual retirement arrangements (IRA's—individual retirement accounts, individual retirement annuities or retirement bonds). Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law, and affect individuals who maintain IRA's and institutions which sponsor IRA's.

DATE: The regulations are generally effective for taxable years beginning after December 31, 1974.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1975, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 219, 402, 403 and 408 of the Internal Revenue Code of 1954 (40 FR 7661). A new part, containing regulations under Code sections 4973 and 4974 (26 CFR Part 54), was also proposed. A correction notice was published in the Federal Register on March 5, 1975 (40 FR 10187). A supplemental notice was published on November 19, 1975 (40 FR 53593). A notice which withdrew and reproposed part of the notice of February 21, 1975 was published in the Federal Register on March 23, 1979 (44 FR 17754). The amendments were proposed to conform the regulations to section 2002 of the Employee Retirement Income Security Act of 1974 (88 Stat. 958). These final regulations, in general, do not reflect changes and additions made to the tax law by the Tax Reform Act of 1976 (90 Stat. 1520), the Revenue Act of 1978 (92 Stat. 2763), and the Act of October 14, 1978 (P.L. 95-458, 92 Stat. 1255). Thus, these final regulations do not deal with the extension of the period for making individual retirement plan contributions under sections 219(c)(3) and 220(c)(4), the deduction of excess contributions in a subsequent year for which there is an unused limitation under sections 219(c)(5) and 220(c)(6), the additional period to rectify certain excess contributions under section 408(d)(5), and the allowance of rollovers on a more frequent basis under section 408(d)(3)(B).

Due to numerous statutory changes made to sections 402 and 4973 since the publication of the first notice, proposed regulations under those sections have been withdrawn and will be reproposed at a later date.

Special Effective Date for Rollovers

If an individual engages in a transaction described in section 408(d)(3)(A)(i) (relating to rollover contributions) on or before April 15, 1976, the first such transaction by the individual on or before April 15, 1976, will not be taken into account for purposes of applying the three year limitation rule of section 408(d)(3)(B) in effect for taxable years beginning before January 1, 1978.

Temporary Regulations Superseded

Section 11.408(a)(2)-1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by § 1.408-2(b)(2).

Drafting Information

The principal author of this regulation was William D. Gibbs of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing

the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly—1. The following sections of the proposed regulations are withdrawn: (a) Section 1.219 as set forth in paragraph 3 of the February 21, 1975, notice of proposed rulemaking.

(b) Section 1.402(a)(5) as set forth in paragrph 4 of the February 21, 1975, notice of proposed rulemaking.

(c) Section 1.402(a)–3 as set forth in paragraph 5 of the February 21, 1975, notice of proposed rulemaking.

(d) Section 1.403(a)(4) as set forth in paragraph 6 of the February 21, 1975, notice of proposed rulemaking.

(e) Section 1.403(a)–3 as set forth in paragraph 7 of the February 21, 1975, notice of proposed rulemaking.

(f) Section 1.408 as set forth in paragraph 8 of the February 21, 1975, notice of proposed rulemaking.

(g) Section 1.409 as set forth in paragraph 8 of the February 21, 1975, notice of proposed rulemaking.

(h) Sections 54.4973, 54.4973–1 and 54. 4974 as set forth in paragraph 9 of the February 21, 1975, notice of proposed rulemaking.

2. The amendments to 26 CFR, Parts 1 and 54, are hereby adopted, subject to the changes indicated below.

Income Tax Regulations (26 CFR Part 1)

Paragraph 1. Paragraphs (a) and (b) of § 1.219–1, as set forth in paragraph 3 of the appendix to the February 21, 1975, notice of proposed rulemaking, are revised to read as follows:

§ 1.219–1 Deduction for retirement savings.

(a) *In general.* Subject to the limitations and restrictions of paragraph (b) and the special rules of paragraph (c)(3) of this section, there shall be allowed a deduction under section 62 from gross income of amounts paid for the taxable year of an individual on behalf of such individual to an individual retirement account described in section 408(a), for an individual retirement annuity described in section 408(b), or for a retirement bond described in section 409. The deduction described in the preceding sentence shall be allowed only to the individual on whose behalf such individual retirement account, individual retirement annuity, or retirement bond is maintained. The first sentence of this paragraph shall apply only in the case of a contribution of cash. A contribution of property other than cash is not allowable as a deduction under this section. In the case of a retirement bond, a deduction will not be allowed if the bond is redeemed within 12 months of its issue date.

(b) *Limitations and restrictions*—(1) *Maximum deduction.* The amount allowable as a deduction under section 219(a) to an individual for any taxable year cannot exceed an amount equal to 15 percent of the compensation includible in the gross income of the individual for such taxable year, or $1,500, whichever is less.

(2) *Restrictions*—(i) *Individuals covered by certain other plans.* No deduction is allowable under section 219(a) to an individual for the taxable year if for any part of such year—

(A) He was an active participant in—

(1) A plan described in section 401 (a) which includes a trust exempt from tax under section 501 (a),

(2) An annuity plan described in section 403 (a),

(3) A qualified bond purchase plan described in section 405 (a), or

(4) A retirement plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or

(B) Amounts were contributed by his employer for an annuity contract described in section 403 (b) (whether or not the individual's rights in such contract are nonforfeitable).

(ii) *Contributions after age 70½.* No deduction is allowable under section 219 (a) to an individual for the taxable year of the individual, if he has attained the age of 70½ before the close of such taxable year.

(iii) *Rollover contributions.* No deduction is allowable under section 219 for any taxable year of an individual with respect to a rollover contribution described in section 402 (a) (5), 402 (a) (7), 403 (a) (4), 403 (b) (8), 408 (d) (3), or 409 (b) (3) (C).

(3) *Amounts contributed under endowment contracts.* (i) For any taxable year, no deduction is allowable under section 219 (a) for amounts paid under an endowment contract described in § 1.408–3 (e) which is allocable under subdivision (ii) of this subparagraph to the cost of life insurance.

(ii) For any taxable year, the cost of current life insurance protection under an endowment contract described in paragraph (b) (3) (i) of this section is the product of the net premium cost, as determined by the Commissioner, and the excess, if any, of the death benefit payable under the contract during the policy year beginning in the taxable year over the cash value of the contract at the end of such policy year.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, an individual who is otherwise entitled to the maximum deduction allowed under section 219, purchases, at age 20, an endowment contract described in § 1.408–3 (e) which provides for the payment of an annuity of $100 per month, at age 65, with a minimum death benefit of $10,000, and an annual premium of $220. The cash value at the end of the first policy year is 0. The net premium cost, as determined by the Commissioner, for A's age is $1.61 per thousand dollars of life insurance protection. The cost of current life insurance protection is $16.10 ($1.61×10). A's maximum deduction under section 219 with respect to amounts paid under the endowment contract for the taxable year in which the first policy year begins is $203.90 ($220−$16.10).

Example (2). Assume the same facts as in example (1), except that the cash value at the end of the second policy year is $200 and the net premium cost is $1.67 per thousand for A's age. The cost of current life insurance protection is $16.37 ($1.67×9.8). A's maximum deduction under section 219 with respect to amounts paid under the endowment contract for the taxable year in which the second policy year begins is $203.63 ($220−$16.37).

* * * * *

Par. 2. Paragraph (c)(1) of § 1.219–1, as set forth in paragraph 1 of the March 23, 1979, notice of proposed rulemaking is revised to read as follows:

§ 1.219–1 Deduction for Retirement Savings

* * * * *

(c) *Definitions and special rules*—(1) *Compensation.* For purposes of this section, the term "compensation" means wages, salaries, professional fees, or other amounts derived from or received for personal service actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in section 401 (c) (2), but does not include amounts derived from or received as earnings or profits from property (including, but not limited to, interest and dividends) or amounts not includible in gross income.

* * * * *

Par. 3. Paragraphs (c) and (f) of § 1.219–2, as set forth in paragraph 2 of the March 23, 1979, notice of proposed rulemaking, are revised to read as follows:

§ 1.219–2 Definition of Active Participant

* * * * *

(c) *Money purchase plan.* An individual is an active participant in a money purchase plan if under the terms of the plan employer contributions must be allocated to the individual's account with respect to the plan year ending with or within the individual's taxable year. This rule applies even if an individual is not employed at any time during the individual's taxable year.

* * * * *

(f) *Certain individuals not active participants.* For purposes of this section, an individual is not an active participant under a plan for any taxable year of such individual for which such individual elects, pursuant to the plan, not to participate in such plan.

* * * * *

Par. 4. Paragraph (d)(4) of § 1.408–1 is redesignated as paragraph (d)(4) of § 1.408–6, which appears below. The remainder of § 1.408–1, as set forth in paragraph 8 in the appendix to the February 21, 1975, notice of proposed rulemaking, is revised to read as follows:

§ 1.408–1 General Rules

(a) *In general.* Section 408 prescribes rules relating to individual retirement accounts and individual retirement annuities. In addition to the rules set forth in §§ 1.408–2 and 1.408–3, relating respectively to individual retirement accounts and individual retirement annuities, the rules set forth in this section shall also apply.

(b) *Exemption from tax.* The individual retirement account or individual retirement annuity is exempt from all taxes under subtitle A of the Code other than the taxes imposed under section 511, relating to tax on unrelated business income of charitable, etc., organizations.

(c) *Sanctions*—(1) *Excess contributions.* If an individual retirement account or individual retirement annuity accepts and retains excess contributions, the individual on whose behalf the account is established or who is the owner of the annuity will be subject to the excise tax imposed by section 4973.

(2) *Prohibited transactions by owner or beneficiary of individual retirement account*—(i) Under section 408(e)(2), if, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or the individual's beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. In any case in which any individual retirement account ceases to be an individual retirement account by reason of the preceding sentence as of the first day of any taxable year, section 408(d)(1) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day). The preceding sentence applies even though part of the fair market value of the individual retirement account as of the first day of the taxable year is attributable to excess contributions which may be returned tax-free under section 408(d)(4) or 408(d)(5).

(ii) If the trust with which the individual engages in any transaction described in subdivision (i) of this subparagraph is established by an employer or employee association under section 408(c), only the employee who engages in the prohibited transaction is subject to disqualification of his separate account.

(3) *Prohibited transaction by person other than owner or beneficiary of account.* If any person other than the individual on whose behalf an individual retirement account is established or the individual's beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such person shall be subject to the taxes imposed by section 4975.

(4) *Pledging account as security.* Under section 408(e)(4), if, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) *Borrowing on annuity contract.* Under section 408(e)(3), if during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. See § 1.408–3(c).

(6) *Premature distributions.* If a distribution (whether a deemed distribution or an actual distribution) is made from an individual retirement account, or individual retirement annuity, to the individual for whose benefit the account was established, or who is the owner of the annuity, before the individual attains age 59½ (unless the individual has become disabled within the meaning of section 72(m)(7)), the tax under Chapter 1 of the Code for the taxable year in which such distribution is received is increased under section 408 (f)(1) or (f)(2). The increase equals 10 percent of the amount of the distribution which is includible in gross income for the taxable year. Except in the case of the credits allowable under section 31, 39, or 42, no credit can be used to offset the increased tax described in this subparagraph. See, however, § 1.408–4(c)(3).

(d) *Limitation on contributions and benefits.* An individual retirement account or individual retirement annuity is subject to the limitation on contributions and benefits imposed by section 415 for years beginning after December 31, 1975.

(e) *Community property laws.* Section 408 shall be applied without regard to any community property laws.

Par. 5. Section 1.408–2, as set forth in paragraph 8 of the appendix to the February 21, 1975, notice of proposed rulemaking and the November 19, 1975, supplemental notice is revised to read as follows:

§ *1.408–2 Individual Retirement Accounts*

(a) *In general.* An individual retirement account must be a trust or a custodial account (see paragraph (d) of this section). It must satisfy the requirements of paragraph (b) of this section in order to qualify as an individual retirement account. It may be established and maintained by an individual, by an employer for the benefit of his employees (see paragraph (c) of this section), or by an employee association for the benefit of its members (see paragraph (c) of this section).

(b) *Requirements.* An individual retirement account must be a trust created or organized in the United States (as defined in section 7701(a)(9)) for the exclusive benefit of an individual or his beneficiaries. Such trust must be maintained at all times as a domestic trust in the United States. The instrument creating the trust must be in writing and the following requirements must be satisfied.

(1) *Amount of acceptable contributions.* Except in the case of a contribution to a simplified employee pension described in section 408(k) and a rollover contribution described in section 408(d)(3), 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8) or 409(b)(3)(C), the trust instrument must provide that contributions may not be accepted by the trustee for the taxable year in excess of $1,500 on behalf of any individual for whom the trust is maintained. An individual retirement account maintained as a simplified employee pension may provide for the receipt of up to $7,500 for a calendar year.

(2) *Trustee.* (i) The trustee must be a bank (as defined in section 401(d)(1) and the regulations thereunder) or another person who demonstrates, in the manner described in paragraph (b)(2)(ii) of this section, to the satisfaction of the Commissioner, that the manner in which the trust will be administered will be consistent with the requirements of section 408 and this section.

(ii) A person may demonstrate to the satisfaction of the Commissioner that the manner in which he will administer the trust will be consistent with the requirements of section 408 only upon the filing of a written application to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224. Such application must meet the applicable requirements of the regulations under section 401(d)(1), relating to nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.

(iii) Section 11.408(a)(2)–1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this subparagraph (2).

(3) *Life insurance contracts.* No part of the trust funds may be invested in life insurance contracts. An individual retirement account may invest in annuity contracts which provide, in the case of death prior to the time distributions commence, for a payment equal to the sum of the premiums paid or, if greater, the cash value of the contract.

(4) *Nonforfeitability.* The interest of any individual on whose behalf the trust is maintained in the balance of his account must be nonforfeitable.

(5) *Prohibition against commingling.* (i) The assets of the trust must not be commingled with other property except in a common trust fund or common investment fund.

(ii) For purposes of this subparagraph, the term "common investment fund" means a group trust created for the purpose of providing a satisfactory diversification of investments or a reduction of administrative expenses for the individual participating trusts, and which group trust satisfies the requirements of section 408(c) (except that it need not be established by an employer or an association of employees) and the requirements of section 401(a) in the case of a group trust in which one of the individual participating trusts is an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iii) For purposes of this subparagraph, the term "individual participating trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or a trust which satisfies the requirements of section 408(a) provided that in the case of such an employees' trust, such trust would be permitted to participate in such a group trust if all of the other individual participating trusts were employees' trusts described in section 401(a) which are exempt from tax under section 501(a).

(6) *Distribution of interest.* (i) The trust instrument must provide that the entire interest of the individual for whose benefit the trust is maintained must be distributed to him in accordance with paragraph (b)(6)(ii) or (iii) of this section.

(ii) Unless the provisions of paragraph (b)(6)(iii) of this section apply, the entire interest of the individual must be actually distributed to him not later than the close of his taxable year in which he attains age 70½.

(iii) In lieu of distributing the individual's entire interest as provided in paragraph (b)(6)(ii) of this section, the interest may be distributed commencing not later than the taxable year described in such paragraph (b)

(6) (ii). In such case, the trust must expressly provide that the entire interest of the individual will be distributed to the individual and the individual's beneficiaries, in a manner which satisfies the requirements of paragraph (b) (6) (v) of this section, over any of the following periods (or any combination thereof)—

(A) The life of the individual,

(B) The lives of the individual and spouse,

(C) A period certain not extending beyond the life expectancy of the individual, or

(D) A period certain not extending beyond the joint life and last survivor expectancy of the individual and spouse.

(iv) The life expectancy of the individual or the joint life and last survivor expectancy of the individual and spouse cannot exceed the period computed by use of the expected return multiples in § 1.72–9, or, in the case of payments under a contract issued by an insurance company, the period computed by use of the mortality tables of such company.

(v) If an individual's entire interest is to be distributed over a period described in paragraph (b) (6) (iii) of this section, beginning in the year the individual attains 70½ the amount to be distributed each year must be not less than the lesser of the balance of the individual's entire interest or an amount equal to the quotient obtained by dividing the entire interest of the individual in the trust at the beginning of such year (including amounts not in the individual retirement account at the beginning of the year because they have been withdrawn for the purpose of making a rollover contribution to another individual retirement plan) by the life expectancy of the individual (or the joint life and last survivor expectancy of the individual and spouse (whichever is applicable)), determined in either case as of the date the individual attains age 70 in accordance with paragraph (b) (6) (iv) of this section, reduced by one for each taxable year commencing after the individual's attainment of age 70½. An annuity or endowment contract issued by an insurance company which provides for non-increasing payments over one of the periods described in paragraph (b) (6) (iii) of this section beginning not later than the close of the taxable year in which the individual attains age 70½ satisfies this provision. However, no distribution need be made in any year, or a lesser amount may be distributed, if beginning with the year the individual attains age 70½ the aggregate amounts distributed by the end of any year are at least equal to the aggregate of the minimum amounts required by this subdivision to have been distributed by the end of such year.

(vi) If an individual's entire interest is distributed in the form of an annuity contract, then the requirements of section 408 (a) (6) are satisfied if the distribution of such contract takes place before the close of the taxable year described in subdivision (ii) of this subparagraph, and if the individual's interest will be paid over a period described in subdivision (iii) of this subparagraph and at a rate which satisfies the requirements of subdivision (v) of this subparagraph.

(vii) In determining whether paragraph (b) (6) (v) of this section is satisfied, all individual retirement plans maintained for an individual's benefit (except those under which he is a beneficiary described in section 408 (a) (7)) at the close of the taxable year in which he reaches age 70½ must be aggregated. Thus, the total payments which such individual receives in any taxable year must be at least equal to the amount he would have been required to receive had all the plans been one plan at the close of the taxable year in which he attained age 70½.

(7) *Distribution upon death.* (i) The trust instrument must provide that if the individual for whose benefit the trust is maintained dies before the entire interest in the trust has been distributed to him, or if distribution has been commenced as provided in paragraph (b) (6) of this section to the surviving spouse and such spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) must, within 5 years after the individual's death (or the death of the surviving spouse) be distributed or applied to the purchase of an immediate annuity for this beneficiary or beneficiaries (or the beneficiary or beneficiaries of the surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity contract will be immediately distributed to such beneficiary or beneficiaries. A contract described in the preceding sentence is not includible in gross income upon distribution. Section 1.408–4 (e) provides rules applicable to the taxation of such contracts. The first sentence of this paragrpah (b) (7) shall have no application if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (b) (6) (iii) (C) or (D) of this section.

(ii) Each such beneficiary (or beneficiary of a surviving spouse) may elect to treat the entire interest in the trust (or the remaining part of such interest if distribution thereof has commenced) as an account subject to the distribution requirements of section 408 (a) (6) and paragraph (b) (6) of this section instead of those of section 408 (a) (7) and paragraph (b) (7) of this section. Such an election will be deemed to have been made if such beneficiary treats the account in accordance with the requirements of section 408 (a) (6) and paragraph (b) (6) of this section. An election will be considered to have been made by such beneficiary if either of the following occurs: (A) any amounts in the account (including any amounts that have been rolled over, in accordance with the requirements of section 408 (d) (3) (A) (i), into an individual retirement account, individual retiremenet annuity, or retirmenet bond for the benefit of such individual) have not been distributed within the appropriate time period required by section 408 (a) (7) and paragraph (b) (7) of this section; or (B) any additional amounts are contributed to the account (or to the account, annuity, or bond to which the beneficiary has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 408 (a) (6) and paragraph (b) (6) of this section.

(8) *Definition of beneficiaries.* The term "beneficiaries" on whose behalf an individual retirement account is established includes (except where the context indicates otherwise) the estate of the individual, dependents of the individual, and any person designated by the individual to share in the benefits of the account after the death of the individual.

(c) *Accounts established by employers and certain association of employees*—(1) *In general.* A trust created or organized in the United States (as defined in section 7701 (a) (9)) by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees for the exclusive benefit of its members or their beneficiaries, is treated as an individual retirement account if the requirements of paragraphs (c) (2) and (c) (3) of this section are satisfied under the written governing instrument creating the trust. A trust described in the preceding sentence is for the exclusive benefit of employees or member even though it may maintain an account for former employees or members and employees who are temporarily on leve.

(2) *General requirements.* The trust must satisfy the requirements of paragraphs (b) (1) through (7) of this section.

(3) *Special requirement.* There must be a separate accounting for the interest of each employee or member.

(4) *Definitions*—(i) *Separate accounting.* For puposes of paragraph (c) (3) of this section, the term "separate accounting" means that separate records must be maintained with respect to the interest of each individual for whose benefit the trust is maintained. The assets of the trust may be held in a common trust fund, common investment fund, or common fund for the account of all individuals who have an interest in the trust.

(ii) *Employee association.* For purposes of this paragraph and section 408 (c), the term "employee association" means any organization composed of two or more employees, including, but not limited to, an employee association described in section 501 (c) (4). Such association may include employees within the meaning of section 401 (c) (1). There must be, however, some nexus between the employees (*e.g.*, employees of same employer, employees in the same industry, etc.) in order to qualify as an employee association described in this subdivision (ii).

(d) *Custodial accounts.* For purposes of this section and section 408(a), a custodial account is treated as a trust described in section 408(a) if such account satisfies the requirements of section 408(a) except that it is not a trust and if the assets of such account are held by a bank (as defined in section 401(d)(1) and the regulations thereunder) or such other person who satisfies the requirements of paragraph (b)(2)(ii) of this section. For purposes of this chapter, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account will be treated as the trustee thereof.

Par. 6. Section 1.408–3, as set forth in paragraph 8 of the appendix to the February 21, 1975, notice of proposed

rulemaking, is revised to read as follows:

§ 1.408–3 Individual retirement annuities.

(a) *In general.* An individual retirement annuity is an annuity contract or endowment contract (described in paragraph (e)(1) of this section) issued by an insurance company which is qualified to do business under the law of the jurisdiction in which the contract is sold and which satisfies the requirements of paragraph (b) of this section. A participation certificate is a group contract issued by an insurance company described in this paragraph will be treated as an individual retirement annuity if the contract satisfies the requirement of paragraph (b) of this section; the certificate of participation sets forth the requirements of paragraph (1) through (5) of section 408(b); the contract provides for a separate accounting of the benefit allocable to each participant-owner; and the group contract is for the exclusive benefit of the participant owners and their beneficiaries. For purposes of this title, a participant-owner of a group contract described in this paragraph shall be treated as the owner of an individual retirement annuity. A contract will not be treated as other than an individual retirement annuity merely because it provides for waiver of premium on disability. An individual retirement annuity contract which satisfies the requirements of section 408(b) need not be purchased under a trust if the requirements of paragraph (b) of this section are satisfied. An individual retirement endowment contract may not be held under a trust which satisfies the requirements of section 408(a). Distribution of the contract is not a taxable event. Distributions under the contract are includible in gross income in accordance with the provisions of § 1.408–4 (e).

(b) *Requirements*—(1) *Transferability.* The annuity or the endowment contract must not be transferable by the owner. an annuity or endowment contract is transferable if the owner can transfer any portion of his interest in the contract to any person other than the issuer thereof. Accordingly, such a contract is transferable if the owner can sell, assign discount, or pledge as collateral for a loan or as security for the performance of an obligation or for any other purpose his interest in the contract to any person other than the issuer thereof. On the other hand, a contract is not to be considered transferable merely because the contract contains: a provision permitting the individual to designate a beneficiary to receive the proceeds in the event of his death, a provision permitting the individual to elect a joint and survivior annuity, or other similar provisions.

(2) *Annual premium.* Except in the case of a contribution to a simplified employee pension described in section 408(k), the annual premium on behalf of any individual for the annuity or the endowment contract cannot exceed $1,500. Any refund of premiums must be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) *Distribution.* The entire interest of the owner must be distributed to him in the same manner and over the same period as described in § 1.408–2 (b) (6).

(4) *Distribution upon death.* If the owner dies before the entire interest has been distributed to him, or if distribution has commenced to the surviving spouse, the remaining interest must be distributed in the same manner, over the same period, and to the same beneficiaries as described in § 1.408–2 (b) (7).

(5) *Nonforfeitability.* The entire interest of the owner in the annuity or endowment contract must be nonforfeitable.

(6) *Flexible premium.* (Reserved)

(c) *Disqualification.* If during any taxable year the owner of an annuity borrows any money under the annuity or endowment contract or by use of such contract (including, but not limited to, pledging the contract as security for any loan), such contract will cease to be an individual retirement annuity as of the first day of such taxable year, and will not be an individual retirement annuity at any time thereafter. If an annuity or endowment contract which constitutes an individual retirement annuity is disqualified as a result of the preceding sentence, an amount equal to the fair market value of the contract as of the first day of the taxable year of the owner in which such contract is disqualified is deemed to be distributed to the owner. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day. The preceding sentence applies even though part of the fair market value of the individual retirement annuity as of the first day of the taxable year is attributable to excess contributions which may be returned tax-free under section 408 (d) (4) or 408 (d) (5).

(d) *Premature distribution tax on deemed distribution.* If the individual has not attained age 59½ before the beginning of the year in which the disqualification described in paragraph (c) of this section occurs, see section 408 (f) (2) for additional tax on premature distributions.

(e) *Endowment contracts*—(1) *Additional requirements for endowment contracts.* No contract providing life insurance protection issued by a company described in paragraph (a) of this section shall be treated as an endowment contract for purposes of this section if—

(i) Such contract matures later than the taxable year in which the individual in whose name the contract is purchased attains the age of 70½;

(ii) Such contract is not for the exclusive benefit of such individual or his beneficiaries;

(iii) Premiums under the contract may increase over the term of the contract;

(iv) When all premiums are paid when due, the cash value of such contract at maturity is less than the death benefit payable under the contract at any time before maturity;

(v) The death benefit does not, at some time before maturity, exceed the greater of the cash value or the sum of premiums paid under the contract;

(vi) Such contract does not provide for a cash value;

(vii) Such contract provides that the life insurance element of such contract may increase over the term of such contract, unless such increase is merely because such contract provides for the purchase of additional benefits;

(viii) Such contract provides insurance other than life insurance and waiver of premiums upon disability; or

(ix) Such contract is issued after November 6, 1978.

(2) *Treatment of proceeds under endowment contract upon death of individual.* In the case of the payment of a death benefit under an endowment contract upon the death of the individual in whose name the contract is purchased, the portion of such payment which is equal to the cash value immediately before the death of such individual is not excludable from gross income under section 101(a) and is treated as a distribution from an individual retirement annuity. The remaining portion, if any, of such payment constitutes current life insurance protection and is excludable under section 101(a). If a death benefit is paid under an endowment contract at a date or dates later than the death of the individual, section 101(d) is applicable only to the portion of the benefit which is attributable to the amount excludable under section 101(a).

Par. 7. There are inserted after § 1.408–3 the following new sections.

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

(a) *General rule*—(1) *Inclusion in income.* Except as otherwise provided in this section, any amount actually paid or distributed or deemed paid or distributed from an individual retirement account or individual retirement annuity shall be included in the gross income of the payee or distributee for the taxable year in which the payment or distribution is received.

(2) *Zero basis.* Notwithstanding section 1015(d) or any other provision of the Code, the basis (or investment in the contract) of any person in such an account or annuity is zero. For purposes of this section, an assignment of an individual's rights under an individual retirement account or an individual retirement annuity shall, except as provided in § 1.408–4(g) (relating to transfer incident to divorce), be deemed a distribution to such individual from such account or annuity of the amount assigned.

(b) *Rollover contribution*—(1) *To individual retirement arrangement.* Paragraph (a)(1) of this section shall not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit the account was established or who is the owner of the annuity if the entire amount received (including the same amount of money and any other property) is paid into an individual retirement account, annuity (other than an endowment contract), or bond created for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

(2) *To qualified plan.* Paragraph (a)(1) of this section does not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit

the account was established or who is the owner of the annuity if—

(i) No amount in the account or no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or a rollover contribution from an annuity plan described in section 403(a) and the earnings on such sums, and

(ii) The entire amount received (including the same amount of money and any other property) represents the entire amount in the account and is paid into another such trust or plan (for the benefit of such individual) not later than the 60th day after the day on which the payment or distribution is received.

This subparagraph does not apply if any portion of the rollover contribution described in paragraph (b)(2)(i) of this section is attributable to an employees' trust forming part of a plan or an annuity under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

(3) *To section 403(b) contract.* [Reserved]

(4) *Frequency limitation.* (i) For taxable years beginning on or before December 31, 1977, paragraph (b)(1) of this section does not apply to any amount received by an individual from an individual retirement account, annuity or bond if at any time during the 3-year period ending on the day of receipt, the individual received any other amount from an individual retirement account, annuity or bond which was not includible in his gross income because of the application of paragraph (b)(1) of this section.

(ii) [Reserved]

(c) *Excess contributions returned before due date of return*—(1) *Excess contribution.* For purposes of this paragraph, excess contributions are the excess of the amounts contributed to an individual retirement account or paid for an individual retirement annuity during the taxable year over the amount allowable as a deduction under section 219 or 220 for the taxable year.

(2) *General rule.* (i) Paragraph (a)(1) of this section does not apply to the distribution of any excess contribution paid during a taxable year to an account or annuity if: the distribution is received on or before the date prescribed by law (including extensions) for filing the individual's return for such taxable year; no deduction is allowed under section 219 or section 220 with respect to the excess contribution; and the distribution is accompanied by the amount of net income attributable to the excess contribution as of the date of the distribution as determined under subdivision (ii).

(ii) The amount of net income attributable to the excess contributions is an amount which bears the same ratio to the net income earned by the account during the computation period as the excess contribution bears to the sum of the balance of the account as of the first day of the taxable year in which the excess contribution is made and the total contribution made for such taxable year. For purposes of this paragraph, the term "computation period" means the period beginning on the first day of the taxable year in which the excess contribution is made and ending on the date of the distribution from the account.

(iii) For purposes of paragraph (c)(2)(ii), the net income earned by the account during the computation period is the fair market value of the balance of the account immediately after the distribution increased by the amount of distributions from the account during the computation period, and reduced (but not below zero) by the sum of: (A) the fair market value of the balance of the account as of the first day of the taxable year in which the excess contribution is made and (B) the contributions to the account made during the computation period.

(3) *Time of inclusion.* (i) For taxable years beginning before January 1, 1977, the amount of net income determined under subparagraph (2) is includible in the gross income of the individual for the taxable year in which it is received. The amount of net income thus distributed is subject to the tax imposed by section 408(f)(1) for the year includible in gross income.

(ii) [Reserved]

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. On January 1, 1975, A, age 55, who is a calendar-year taxpayer, contributes $1,500 to an individual retirement account established for his benefit. For 1975, A is entitled to a deduction of $1,400 under section 219. For 1975, A does not claim as deductions any other items listed in section z62. A's gross income for 1975 is $9,334. On April 1, 1976, $107 is distributed to A from his individual retirement account. As of such date, the balance of the account is $1,498 [$1,605 − $107]. There were no other distributions from the account as of such date. The net amount of income earned by the account is $105 [$1,498 + $107 − (0 + $1,500)]. The net income attributable to the excess contribution is $7. [$105 × ($100/$1,500)]. A's adjusted gross income for 1975 is his gross income for 1975 ($9,334) reduced by the amount allowable to A as a deduction under section 219 ($1,400), or $7,934. A will include the $7 of the $107 distributed on April 1, 1976, in his gross income for 1976. Further, A will pay an additional income tax of $.70 for 1976 under section 408 (f)(1).

(d) *Deemed distribution*—(1) *General rule.* In any case in which an individual retirement account ceases to be an individual retirement account by reason of the application of section 408(e)(2), paragraph (a)(1) of this section shall apply as if there were a distribution on the first day of the taxable year in which such account ceases to be an individual retirement account of an amount equal to the fair market value on such day of all of the assets in the account on such day. In the case of a deemed distribution from an individual retirement annuity, see § 1.408–3 (d).

(2) *Using account as security.* In any case in which an individual for whose benefit an individual retirement account is established uses, directly or indirectly, all or any portion of the account as security for a loan, paragraph (a)(1) of this section shall apply as if there were distributed on the first day of the taxable year in which the loan was made an amount equal to that portion of the account used as security for such loan.

(e) *Distribution of annuity contracts.* Paragraph (a)(1) of this section does not apply to any annuity contract which is distributed from an individual retirement account and which satisfies the requirements of paragraphs (b) (1), (3), (4) and (5) of section 408. Amounts distributed under such contracts will be taxable to the distributee under section 72. For purposes of applying section 72 to a distribution from such a contract, the investment in such contract is zero.

(f) *Treatment of assets distributed from an individual retirement account for the purchase of an endowment contract.* Under section 408(e)(5), if all, or any portion, of the assets of an individual retirement account are used to purchase an endowment contract described in § 1.408–3(e) for the benefit of the individual for whose benefit the account is established—

(1) The excess, if any, of the total amount of assets used to purchase such contract over the portion of the assets attributable to life insurance protection shall be treated as a rollover contribution described in section 408(d)(3), and

(2) The portion of the assets attributable to life insurance protection shall be treated as a distribution described in paragraph (a)(1) of this section, except that the provisions of section 408(f) shall not apply to such amount.

(g) *Transfer incident to divorce*—(1) *General rule.* The transfer of an individual's interest, in whole or in part, in an individual retirement account, individual retirement annuity, or a retirement bond, to his former spouse under a valid divorce decree or a written instrument incident to such divorce shall not be considered to be a distribution from such an account or annuity to such individual or his former spouse; nor shall it be considered a taxable transfer by such individual to his former spouse notwithstanding any other provision of Subtitle A of the Code.

(2) *Spousal account.* The interest described in this paragraph (g) which is transferred to the former spouse shall be treated as an individual retirement account of such spouse if the interest is an individual retirement account; an individual retirement annuity of such spouse if such interest is an individual retirement annuity; and a retirement bond of such spouse if such interest is a retirement bond.

§ 1.408–5 Annual reports by trustees or issuers.

(a) *In general.* The trustee of an individual retirement account or the issuer of an individual retirement annuity shall make annual calendar year reports concerning the status of the account or annuity. The report shall contain the information required in paragraph (b) and be furnished or filed in the manner and time specified in paragraph (c).

(b) *Information required to be included in the annual reports.* The annual calendar year report shall contain the following information for transactions occurring during the calendar year—

(1) The amount of contributions;

(2) The amount of distributions;

(3) In the case of an endowment contract, the amount of the premium paid allocable to the cost of life insurance;

(4) The name and address of the trustee or issuer; and

(5) Such other information as the Commissioner may require.

(c) *Manner and time for filing.* (1) The annual report shall be furnished to the individual on whose behalf the account is established or in whose name the annuity is purchased (or the beneficiary of the individual or owner). The report shall be furnished on or before the 30th day of June following the calendar year for which the report is required.

(2) The Commissioner may require the annual report to be filed with the Service at the time the Commissioner specifies.

(d) *Penalties.* Section 6693 prescribes penalties for failure to file the annual report.

(e) *Effective date.* This section shall apply to reports for calendar years after 1978.

(f) *Reports for years prior to 1979.* For years prior to 1979, a trustee or issuer shall make reports in the time and manner as the Commissioner requires.

Par. 8. There is inserted after § 1.408–5 a new section, and paragraph (d)(4) (x) and (xi) of this new section as redesignated by paragraph 4 of this Treasury decision is revised. The new section reads as follows:

§ 1.408–6 Disclosure statements for individual retirement arrangements.

(a) *In general*—(1) *General rule.* Trustees and issuers of individual retirement accounts and annuities are, under the authority of section 408(i), required to provide disclosure statements. This section sets forth these requirements.

(2) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Requirements.* (1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) *Disclosure statements.* * * *

(x) This section shall be effective for disclosure statements and copies of governing instruments mailed, or delivered without mailing, after February 14, 1977.

(xi) This section does not reflect the amendments made by section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734) relating to retirement savings for certain married individuals.

Par. 9. There is added after § 1.408–6 the following new section:

§ 1.408–7 Reports on distributions from individual retirement plans.

(a) *Requirement of report.* The trustee of an individual retirement account or the issuer of an individual retirement annuity who makes a distribution during any calendar year to an individual from such account or under such annuity shall make a report on Form W–2P (in the case of distributions that are not total distributions) or Form 1099R (in the case of total distributions), and their related transmittal forms, for such year. The return must show the name and address of the person to whom the distribution was made, the aggregate amount of such distribution, and such other information as is required by the forms.

(b) *Amount subject to this section.* The amounts subject to reporting under paragraph (a) include all amounts distributed or made available to which section 408(d) applies.

(c) *Time and place for filing.* The report required under this section for any calendar year shall be filed after the close of that year and on or before February 28 of the following year with the appropriate Internal Revenue Service Center.

(d) *Statement to recipients.* (1) Each trustee or issuer required to file Form 1099R or Form W–2P under this section shall furnish to the person whose identifying number is (or should be) shown on the forms a copy of the form.

(2) Each statement required by this paragraph to be furnished to recipients shall be furnished to such person after November 30 of the year of the distribution and on or before January 31 of the following year.

(e) *Effective date.* This section is effective for calendar years beginning after December 31, 1977.

Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 18, 1980.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new section is added immediately after § 1.218–0:

§ 1.219–1 Deduction for retirement savings.

(a) *In general.* Subject to the limitations and restrictions of paragraph (b) and the special rules of paragraph (c)(3) of this section, there shall be allowed a deduction under section 62 from gross income of amounts paid for the taxable year of an individual on behalf of such individual to an individual retirement account described in section 408(a), for an individual retirement annuity described in section 408(b), or for a retirement bond described in section 409. The deduction described in the preceding sentence shall be allowed only to the individual on whose behalf such individual retirement account, individual retirement annuity, or retirement bond is maintained. The first sentence of this paragraph shall apply only in the case of a contribution of cash. A contribution of property other than cash is not allowable as a deduction under this section. In the case of a retirement bond, a deduction will not be allowed if the bond is redeemed within 12 months of its issue date.

(b) *Limitations and restrictions*—(1) *Maximum deduction.* The amount allowable as a deduction under section 219(a) to an individual for any taxable year cannot exceed an amount equal to 15 percent of the compensation includible in the gross income of the individual for such taxable year, or $1,500, whichever is less.

(2) *Restrictions*—(i) *Individuals covered by certain other plans.* No deduction is allowable under section 219(a) to an individual for the taxable year if for any part of such year—

(A) He was an active participant in—

(*1*) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(*2*) An annuity plan described in section 403(a),

(*3*) A qualified bond purchase plan described in section 405(a), or

(*4*) A retirement plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or

(B) Amounts were contributed by his employer for an annuity contract described in section 403(b) (whether or not the individual's rights in such contract are nonforfeitable).

(ii) *Contributions after age 70½.* No deduction is allowable under section 219 (a) to an individual for the taxable year of the individual, if he has attained the age of 70½ before the close of such taxable year.

(iii) *Rollover contributions.* No deduction is allowable under section 219 for any taxable year of an individual with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), or 409(b)(3)(C).

(3) *Amounts contributed under endowment contracts.* (i) For any taxable year, no deduction is allowable under section 219(a) for amounts paid under an endowment contract described in § 1.408–3(e) which is allocable under subdivision (ii) of this subparagraph to the cost of life insurance.

(ii) For any taxable year, the cost of current life insurance protection under an endowment contract described in paragraph (b)(3)(i) of this section is the product of the net premium cost, as determined by the Commissioner, and the excess, if any, of the death benefit payable under the contract during the policy year beginning in the taxable year over the cash value of the contract at the end of such policy year.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, an individual who is otherwise entitled to the maximum deduction allowed under section 219, purchases, at age 20, an endowment contract described in § 1.408–3(e) which provides for the payment of an annuity of $100 per month, at age 65, with a minimum death benefit of $10,000, and

an annual premium of $220. The cash value at the end of the first policy year is 0. The net premium cost, as determined by the Commissioner, for A's age is $1.61 per thousand dollars of life insurance protection. The cost of current life insurance protection is $16.10 ($1.61 × 10). A's maximum deduction under section 219 with respect to amounts paid under the endowment contract for the taxable year in which the first policy year begins is $203.90 ($220 − $16.10).

Example (2). Assume the same facts as in example (1), except that the cash value at the end of the second policy year is $200 and the net premium cost is $1.67 per thousand for A's age. The cost of current life insurance protection is $16.37 ($1.67 × 9.8). A's maximum deduction under section 219 with respect to amounts paid under the endowment contract for the taxable year in which the second policy year begins is $203.63 ($220 − $16.37).

(c) *Definitions and special rules*— (1) *Compensation.* For purposes of this section, the term "compensation" means wages, salaries, professional fees, or other amounts derived from or received for personal service actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in section 401 (c) (2), but does not include amounts derived from or received as earnings or profits from property (including, but not limited to, interest and dividends) or amounts not includible in gross income.

(2) *Active participant.* For the definition of active participant, see § 1.219–2.

(3) *Special rules.* (i) The maximum deduction allowable under section 219(b)(1) is computed separately for each individual. Thus, if a husband and wife each has compensation of $10,000 for the taxable year and they are each otherwise eligible to contribute to an individual retirement account and they file a joint return, then the maximum amount allowable as a deduction under section 219 is $3,000, the sum of the individual maximums of $1,500. However, if, for example, the husband has compensation of $20,000, the wife has no compensation, each is otherwise eligible to contribute to an individual retirement account for the taxable year, and they file a joint return, the maximum amount allowable as a deduction under section 219 is $1,500.

(ii) Section 219 is to be applied without regard to any community property laws. Thus, if, for example, a husband and wife, who are otherwise eligible to contribute to an individual retirement account, live in a community property jurisdiction and the husband alone has compensation of $20,000 for the taxable year, then the maximum amount allowable as a deduction under section 219 is $1,500.

(4) *Employer contributions.* For purposes of this chapter, any amount paid by an employer to an individual retirement account or for an individual retirement annuity or retirement bond constitutes the payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income, whether or not a deduction for such payment is allowable under section 219 to such employee after the application of section 219(b). Thus, an employer will be entitled to a deduction for compensation paid to an employee for amounts the employer contributes on the employee's behalf to an individual retirement account, for an individual retirement annuity, or for a retirement bond if such deduction is otherwise allowable under section 162.

§ 1.2192–2 Definition of active participant.

(a) *In general.* This section defines the term "active participant" for individuals who participate in retirement plans described in section 219(b)(2). Any individual who is an active participant in such a plan is not allowed a deduction under section 219(a) for contributions to an individual retirement account.

(b) *Defined benefit plans*— (1) *In general.* Except as provided in subparagraphs (2), (3) and (4) of this paragraph, an individual is an active participant in a defined benefit plan if for any portion of the plan year ending with or within such individual's taxable year he is not excluded under the eligibility provisions of the plan. An individual is not an active participant in a particular taxable year merely because the individual meets the plan's eligibility requirements during a plan year beginning in that particular taxable year but ending in a later taxable year of the individual. However, for purposes of this section, an individual is deemed not to satisfy the eligibility provisions for a particular plan year if his compensation is less than the minimum amount of compensation needed under the plan to accrue a benefit. For example, assume a plan is integrated with Social Security and only those individuals whose compensation exceeds a certain amount accrue benefits under the plan. An individual whose compensation for the plan year ending with or within his taxable year is less than the amount necessary under the plan to accrue a benefit is not an active participant in such plan.

(2) *Rules for plans maintained by more than one employer.* In the case of a defined benefit plan described in section 413(a) and funded at least in part by service-related contributions, *e.g.*, so many cents-per-hour, an individual is an active participant if an employer is contributing or is required to contribute to the plan an amount based on that individual's service taken into account for the plan year ending with or within the individual's taxable year. The general rule in paragraph (b)(1) of this section applies in the case of plans described in section 413(a) and funded only on some non-service-related unit, *e.g.*, so many cents-per-ton of coal.

(3) *Plans in which accruals for all participants have ceased.* In the case of a defined benefit plan in which accruals for all participants have ceased, an individual in such a plan is not an active participant. However, any benefit that may vary with future compensation of an individual provides additional accruals. For example, a plan in which future benefit accruals have ceased, but the actual benefit depends upon final average compensation will not be considered as one in which accruals have ceased.

(4) *No accruals after specified age.* An individual in a defined benefit plan who accrues no additional benefits in a plan year ending with or within such individual's taxable year by reason of attaining a specified age is not an active participant by reason of his participation in that plan.

(c) *Money purchase plan.* An individual is an active participant in a money purchase plan if under the terms of the plan employer contributions must be allocated to the individual's account with respect to the plan year ending with or within the individual's taxable year. This rule applies even if an individual is not employed at any time during the individual's taxable year.

(d) *Profit-sharing and stock-bonus plans*—(1) *In general.* This paragraph applies to profit-sharing and stock bonus plans. An individual is an active participant in such plans in a taxable year if a forfeiture is allocated to his account as of a date in such taxable year. An individual is also an active participant in a taxable year in such plans if an employer contribution is added to the participant's account in such taxable year. A contribution is added to a participant's account as of the later of the following two dates: the date the contribution is made or the date as of which it is allocated. Thus, if a contribution is made in an individual's taxable year 2 and allocated as of a date in individual's taxable year 1, the later of the relevant dates is the date the

contribution is made. Consequently, the individual is an active participant in year 2 but not in year 1 as a result of that contribution.

(2) *Special rule.* An individual is not an active participant for a particular taxable year by reason of a contribution made in such year allocated to a previous year if such individual was an active participant in such previous year by reason of a prior contribution that was allocated as of a date in such previous year.

(e) *Employee contributions.* If an employee makes a voluntary or mandatory contribution to a plan described in paragraphs (b), (c), or (d) of this section, such employee is an active participant in the plan for the taxable year in which such contribution is made.

(f) *Certain individuals not active participants.* For purposes of this section, an individual is not an active participant under a plan for any taxable year of such individual for which such individual elects, pursuant to the plan, not to participate in such plan.

(g) *Retirement savings for married individuals.* The provisions of this section apply in determining whether an individual or his spouse is an active participant in a plan for purposes of section 220 (relating to retirement savings for certain married individuals).

(h) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). The X Corporation maintains a defined benefit plan which has the following rules on participation and accrual of benefits. Each employee who has attained the age of 25 or has completed one year of service is a participant in the plan. The plan further provides that each participant shall receive upon retirement $12 per month for each year of service in which the employee completes 1,000 hours of service. The plan year is the calendar year. B, a calendar-year taxpayer, enters the plan on January 2, 1980, when he is 27 years of age. Since B has attained the age of 25, he is a participant in the plan. However, B completes less than 1,000 hours of service in 1980 and 1981. Although B is not accruing any benefits under the plan in 1980 and 1981, he is an active participant under section 219(b)(2) because he is a participant in the plan. Thus, B cannot make deductible contributions to an individual retirement arrangement for his taxable years of 1980 and 1981.

Example (2). The Y Corporation maintains a profit-sharing plan for its employees. The plan year of the plan is the calendar year. C is a calendar-year taxpayer and a participant in the plan. On June 30, 1980, the employer makes a contribution for 1980 which as allocated on July 31, 1980. In 1981 the employer makes a second contribution for 1980, allocated as of December 31, 1980. Under the general rule stated in § 1.219–2(d)(1), C is an active participant in 1980. Under the special rule stated in § 1.219–2(d)(2), however, C is not an active participant in 1981 by reason of that contribution made in 1981.

(i) *Effective date.* The provisions set forth in this section are effective for taxable years beginning after December 31, 1978.

Par. 2. The following new section is added immediately after § 1.407–1:

§ 1.408–1 General rules.

(a) *In general.* Section 408 prescribes rules relating to individual retirement accounts and individual retirement annuities. In addition to the rules set forth in §§ 1.408–2 and 1.408–3, relating respectively to individual retirement accounts and individual retirement annuities, the rules set forth in this section shall also apply.

(b) *Exemption from tax.* The individual retirement account or individual retirement annuity is exempt from all taxes under subtitle A of the Code other than the taxes imposed under section 511, relating to tax on unrelated business income of charitable, etc., organizations.

(c) *Sanctions*—(1) *Excess contributions.* If an individual retirement account or individual retirement annuity accepts and retains excess contributions, the individual on whose behalf the account is established or who is the owner of the annuity will be subject to the excise tax imposed by section 4973.

(2) *Prohibited transactions by owner or beneficiary of individual retirement account*—(i) Under section 408(e)(2), if, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or the individual's beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. In any case in which any individual retirement account ceases to be an individual retirement account by reason of the preceding sentence as of the first day of any taxable year, section 408(d)(1) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day). The preceding sentence applies even though part of the fair market value of the individual retirement account as of the first day of the taxable year is attributable to excess contributions which may be returned tax-free under section 408(d)(4) or 408(d)(5).

(ii) If the trust with which the individual engages in any transaction described in subdivision (i) of this subparagraph is established by an employer or employee association under section 408(c), only the employee who engages in the prohibited transaction is subject to disqualification of his separate account.

(3) *Prohibited transaction by person other than owner or beneficiary of account.* If any person other than the individual on whose behalf an individual retirement account is established or the individual's beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such person shall be subject to the taxes imposed by section 4975.

(4) *Pledging account as security.* Under section 408(e)(4), if, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) *Borrowing on annuity contract.* Under section 408(e)(3), if during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. See § 1.408–3(c).

(6) *Premature distributions.* If a distribution (whether a deemed distribution or an actual distribution) is made from an individual retirement account, or individual retirement annuity, to the individual for whose benefit the account was established, or who is the owner of the annuity, before the individual attains age 59½ (unless the individual has become disabled within the meaning of section 72(m)(7)), the tax under Chapter 1 of the Code for the taxable year in which such distribution is received is increased under section 408(f)(1) or (f)(2). The increase equals 10 percent of the amount of the distribution which is includible in gross income for the taxable year. Except in the case of the credits allowable under section 31, 39, or 42, no credit can be used to offset the increased tax described in this subparagraph. See, however, § 1.408–4(c)(3).

(d) *Limitation on contributions and benefits.* An individual retirement account or individual retirement annuity is subject to the limitation on contributions and benefits imposed by section 415 for years beginning after December 31, 1975.

(e) *Community property laws.* Section 408 shall be applied without regard to any community property laws.

§ 1.408-2 Individual retirement accounts.

(a) *In general.* An individual retirement account must be a trust or a custodial account (see paragraph (d) of this section). It must satisfy the requirements of paragraph (b) of this section in order to qualify as an individual retirement account. It may be established and maintained by an individual, by an employer for the benefit of his employees (see paragraph (c) of this section), or by an employee association for the benefit of its members (see paragraph (c) of this section).

(b) *Requirements.* An individual retirement account must be a trust created or organized in the United States (as defined in section 7701(a)(9)) for the exclusive benefit of an individual or his beneficiaries. Such trust must be maintained at all times as a domestic trust in the United States. The instrument creating the trust must be in writing and the following requirements must be satisfied.

(1) *Amount of acceptable contributions.* Except in the case of a contribution to a simplified employee pension described in section 408(k) and a rollover contribution described in section 408(d)(3), 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8) or 409(b)(3)(C), the trust instrument must provide that contributions may not be accepted by the trustee for the taxable year in excess of $1,500 on behalf of any individual for whom the trust is maintained. An individual retirement account maintained as a simplified employee pension may provide for the receipt of up to $7,500 for a calendar year.

(2) *Trustee.* (i) The trustee must be a bank (as defined in section 401(d)(1) and the regulations thereunder) or another person who demonstrates, in the manner described in paragraph (b)(2)(ii) of this section, to the satisfaction of the Commissioner, that the manner in which the trust will be administered will be consistent with the requirements of section 408 and this section.

(ii) A person may demonstrate to the satisfaction of the Commissioner that the manner in which he will administer the trust will be consistent with the requirements of section 408 only upon the filing of a written application to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224. Such application must meet the applicable requirements of the regulations under section 401(d)(1), relating to nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.

(iii) Section 11.408(a)(2)-1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this subparagraph (2).

(3) *Life insurance contracts.* No part of the trust funds may be invested in life insurance contracts. An individual retirement account may invest in annuity contracts which provide, in the case of death prior to the time distributions commence, for a payment equal to the sum of the premiums paid or, if greater, the cash value of the contract.

(4) *Nonforfeitability.* The interest of any individual on whose behalf the trust is maintained in the balance of his account must be nonforfeitable.

(5) *Prohibition against commingling.* (i) The assets of the trust must not be commingled with other property except in a common trust fund or common investment fund.

(ii) For purposes of this subparagraph, the term "common investment fund" means a group trust created for the purpose of providing a satisfactory diversification or investments or a reduction of administrative expenses for the individual participating trusts, and which group trust satisfies the requirements of section 408(c) (except that it need not be established by an employer or an association of employees) and the requirements of section 401(a) in the case of a group trust in which one of the individual participating trusts is an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iii) For purposes of this subparagraph, the term "individual participating trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or a trust which satisfies the requirements of section 408(a) provided that in the case of such an employees' trust, such trust would be permitted to participate in such a group trust if all the other individual participating trusts were employees' trusts described in section 401(a) which are exempt from tax under section 501(a).

(6) *Distribution of interest.* (i) The trust instrument must provide that the entire interest of the individual for whose benefit the trust is maintained must be distributed to him in accordance with paragraph (b)(6)(ii) or (iii) of this section.

(ii) Unless the provisions of paragraph (b)(6)(iii) of this section apply, the entire interest of the individual must be actually distributed to him not later than the close of his taxable year in which he attains age 70½.

(iii) In lieu of distributing the individual's entire interest as provided in paragraph (b)(6)(ii) of this section, the interest may be distributed commencing not later than the taxable year described in such paragraph (b)(6)(ii). In such case, the trust must expressly provide that the entire interest of the individual will be distributed to the individual and the individual's beneficiaries, in a manner which satisfies the requirements of paragraph (b)(6)(v) of this section, over any of the following periods (or any combination thereof)—

(A) The life of the individual,

(B) The lives of the individual and spouse,

(C) A period certain not extending beyond the life expectancy of the individual, or

(D) A period certain not extending beyond the joint life and last survivor expectancy of the individual and spouse.

(iv) The life expectancy of the individual or the joint life and last survivor expectancy of the individual and spouse cannot exceed the period computed by use of the expected return multiples in § 1.72-9, or, in the case of payments under a contract issued by an insurance company, the period computed by use of the mortality tables of such company.

(v) If an individual's entire interest is to be distributed over a period described in paragraph (b)(6)(iii) of this section, beginning in the year the individual attains 70½ the amount to be distributed each year must be not less than the lesser of the balance of the individual's entire interest or an amount equal to the quotient obtained by dividing the entire interest of the individual in the trust at the beginning of such year (including amounts not in the individual retirement account at the beginning of the year because they have been withdrawn for the purpose of making a rollover contribution to another individual retirement plan) by the life expectancy of the individual (or the joint life and last survivor expectancy of the individual and spouse (whichever is applicable)), determined in either case as of the date the individual attains age 70 in accordance with paragraph (b)(6)(iv) of this section, reduced by one for each taxable year commencing after the individual's attainment of age 70½. An annuity or endowment contract issued by an insurance company which provides for non-increasing payments over one of the periods described in paragraph (b)(6)(iii) of this section beginning not later than the close of the taxable year in which the individual attains age 70½ satisfies this provision. However, no distribution need be made in any year, or a lesser amount may be distributed, if beginning with the year

the individual attains age 70½ the aggregate amounts distributed by the end of any year are at least equal to the aggregate of the minimum amounts required by this subdivision to have been distributed by the end of such year.

(vi) If an individual's entire interest is distributed in the form of an annuity contract, then the requirements of section 408(a)(6) are satisfied if the distribution of such contract takes place before the close of the taxable year described in subdivision (ii) of this subparagraph, and if the individual's interest will be paid over a period described in subdivision (iii) of this subparagraph and at a rate which satisfies the requirements of subdivision (v) of this subparagraph.

(vii) In determining whether paragraph (b)(6)(v) of this section is satisfied, all individual retirement plans maintained for an individual's benefit (except those under which he is a beneficiary described in section 408(a)(7)) at the close of the taxable year in which he reaches age 70½ must be aggregated. Thus, the total payments which such individual receives in any taxable year must be at least equal to the amount he would have been required to receive had all the plans been one plan at the close of the taxable year in which he attained age 70½.

(7) *Distribution upon death.* (i) The trust instrument must provide that if the individual for whose benefit the trust is maintained dies before the entire interest in the trust has been distributed to him, or if distribution has been commenced as provided in paragraph (b)(6) of this section to the surviving spouse and such spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) must, within 5 years after the individual's death (or the death of the surviving spouse) be distributed or applied to the purchase of an immediate annuity for this beneficiary or beneficiaries (or the beneficiary or beneficiaries of the surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity contract will be immediately distributed to such beneficiary or beneficiaries. A contract described in the preceding sentence is not includible in gross income upon distribution. Section 1.408–4(e) provides rules applicable to the taxation of such contracts. The first sentence of this paragraph (b)(7) shall have no application if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (b)(6)(iii) (C) or (D) of this section.

(ii) Each such beneficiary (or beneficiary of a surviving spouse) may elect to treat the entire interest in the trust (or the remaining part of such interest if distribution thereof has commenced) as an account subject to the distribution requirements of section 408(a)(6) and paragraph (b)(6) of this section instead of those of section 408(a)(7) and paragraph (b)(7) of this section. Such an election will be deemed to have been made if such beneficiary treats the account in accordance with the requirements of section 408(a)(6) and paragraph (b)(6) of this section. An election will be considered to have been made by such beneficiary if either of the following occurs: (A) any amounts in the account (including any amounts that have been rolled over, in accordance with the requirements of section 408(d)(3)(A)(i), into an individual retirement account, individual retirement annuity, or retirement bond for the benefit of such individual) have not been distributed within the appropriate time period required by section 408(a)(7) and paragraph (b)(7) of this section; or (B) any additional amounts are contributed to the account (or to the account, annuity, or bond to which the beneficiary has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 408(a)(6) and paragraph (b)(6) of this section.

(8) *Definition of beneficiaries.* The term "beneficiaries" on whose behalf an individual retirement account is established includes (except where the context indicates otherwise) the estate of the individual, dependents of the individual, and any person designated by the individual to share in the benefits of the account after the death of the individual.

(c) *Accounts established by employers and certain association of employees.* (1) *In general.* A trust created or organized in the United States (as defined in section 7701(a)(9)) by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees for the exclusive benefit of its members or their beneficiaries, is treated as an individual retirement account if the requirements of paragraphs (c)(2) and (c)(3) of this section are satisfied under the written governing instrument creating the trust. A trust described in the preceding sentence is for the exclusive benefit of employees or members even though it may maintain an account for former employees or members and employees who are temporarily on leave.

(2) *General requirements.* The trust must satisfy the requirements of paragraphs (b) (1) through (7) of this section.

(3) *Special requirement.* There must be a separate accounting for the interest of each employee or member.

(4) *Definitions.* (i) *Separate accounting.* For purposes of paragraph (c)(3) of this section, the term "separate accounting" means that separate records must be maintained with respect to the interest of each individual for whose benefit the trust is maintained. The assets of the trust may be held in a common trust fund, common investment fund, or common fund for the account of all individuals who have an interest in the trust.

(ii) *Employee association.* For purposes of this paragraph and section 408(c), the term "employee association" means any organization composed of two or more employees, including but not limited to, an employee association described in section 501(c)(4). Such association may include employees within the meaning of section 401(c)(1). There must be, however, some nexus between the employees (*e.g.*, employees of same employer, employees in the same industry, etc.) in order to qualify as an employee association described in this subdivision (ii).

(d) *Custodial accounts.* For purposes of this section and section 408(a), a custodial account is treated as a trust described in section 408(a) if such account satisfies the requirements of section 408(a) except that it is not a trust and if the assets of such account are held by a bank (as defined in section 401(d)(1) and the regulations thereunder) or such other person who satisfies the requirements of paragraph (b)(2)(ii) of this section. For purposes of this chapter, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account will be treated as the trustee thereof.

§ 1.408–3 Individual retirement annuities.

(a) *In general.* An individual retirement annuity is an annuity contract or endowment contract (described in paragraph (e) (1) of this section) issued by an insurance company which is qualified to do business under the law of the jurisdiction in which the contract is sold and which satisfies the requirements of paragraph (b) of this section. A

participation certificate in a group contract issued by an insurance company described in this paragraph will be treated as an individual retirement annuity if the contract satisfies the requirements of paragraph (b) of this section; the certificate of participation sets forth the requirements of paragraphs (1) through (5) of section 408 (b); the contract provides for a separate accounting of the benefit allocable to each participant-owner; and the group contract is for the exclusive benefit of the participant owners and their beneficiaries. For purposes of this title, a participant-owner of a group contract described in this paragraph shall be treated as the owner of an individual retirement annuity. A contract will not be treated as other than an individual retirement annuity merely because it provides for waiver of premium on disability. An individual retirement annuity contract which satisfies the requirements of section 408 (b) need not be purchased under a trust if the requirements of paragraph (b) of this section are satisfied. An individual retirement endowment contract may not be held under a trust which satisfies the requirements of section 408 (a). Distribution of the contract is not a taxable event. Distributions under the contract are includible in gross income in accordance with the provisions of § 1.408–4 (e).

(b) *Requirements*—(1) *Transferability.* The annuity or the endowment contract must not be transferable by the owner. An annuity or endowment contract is transferable if the owner can transfer any portion of his interest in the contract to any person other than the issuer thereof. Accordingly, such a contract is transferable if the owner can sell, assign, discount, or pledge as collateral for a loan or as security for the performance of an obligation or for any other purpose his interest in the contract to any person other than the issuer thereof. On the other hand, a contract is not to be considered transferable merely because the contract contains: a provision permitting the individual to designate a beneficiary to receive the proceeds in the event of his death, a provision permitting the individual to elect a joint and survivor annuity, or other similar provisions.

(2) *Annual premium.* Except in the case of a contribution to a simplified employee pension described in section 408 (k), the annual premium on behalf of any individual for the annuity or the endowment contract cannot exceed $1,500. Any refund of premiums must be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) *Distribution.* The entire interest of the owner must be distributed to him in the same manner and over the same period as described in § 1.408–2 (b) (6).

(4) *Distribution upon death.* If the owner dies before the entire interest has been distributed to him, or if distribution has commenced to the surviving spouse, the remaining interest must be distributed in the same manner, over the same period, and to the same beneficiaries as described in § 1.408–2 (b) (7).

(5) *Nonforfeitability.* The entire interest of the owner in the annuity or endowment contract must be nonforfeitable.

(6) *Flexible premium.* (Reserved)

(c) *Disqualification.* If during any taxable year the owner of an annuity borrows any money under the annuity or endowment contract or by use of such contract (including, but not limited to, pledging the contract as security for any loan), such contract will cease to be an individual retirement annuity as of the first day of such taxable year, and will not be an individual retirement annuity at any time thereafter. If an annuity or endowment contract which constitutes an individual retirement annuity is disqualified as a result of the preceding sentence, an amount equal to the fair market value of the contract as of the first day of the taxable year of the owner in which such contract is disqualified is deemed to be distributed to the owner. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day. The preceding sentence applies even though part of the fair market value of the individual retirement annuity as of the first day of the taxable year is attributable to excess contributions which may be returned tax-free under section 408(d)(4) or 408(d)(5).

(d) *Premature distribution tax on deemed distribution.* If the individual has not attained age 59½ before the beginning of the year in which the disqualification described in paragraph (c) of this section occurs, see section 408(f)(2) for additional tax on premature distributions.

(e) *Endowment contracts*—(1) *Additional requirement for endowment contracts.* No contract providing life insurance protection issued by a company described in paragraph (a) of this section shall be treated as an endowment contract for purposes of this section if—

(i) Such contract matures later than the taxable year in which the individual in whose name the contract is purchased attains the age of 70½;

(ii) Such contract is not for the exclusive benefit of such individual or his beneficiaries;

(iii) Premiums under the contract may increase over the term of the contract;

(iv) When all premiums are paid when due, the case value of such contract at maturity is less than the death benefit payable under the contract at any time before maturity;

(v) The death benefit does not, at some time before maturity, exceed the greater of the cash value or the sum of premiums paid under the contract;

(vi) Such contract does not provide for a cash value;

(vii) Such contract provides that the life insurance element of such contract may increase over the term of such contract, unless such increase is merely because such contract provides for the purchase of additional benefits;

(viii) Such contract provides insurance other than life insurance and waiver of premiums upon disability; or

(ix) Such contract is issued after November 6, 1978.

(2) *Treatment of proceeds under endowment contract upon death of individual.* In the case of the epayment of a death benefit under an endowment contract upon the death of the individual in whose name the contract is purchased, the portion of such payment which is equal to the cash value immediately before the death of such individual is not excludable from gross income under section 101(a) and is treated as a distribution from an individual retirement annuity. The remaining portion, if any, of such payment constitutes current life insurance protection and is excludable under section 101(a). If a death benefit is paid under an endowment contract at a date or dates later than the death of the individual, section 101(d) is applicable only to the portion of the benefit which is attributable to the amount excludable under section 101(a).

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

(a) *General rule*—(1) *Inclusion in income.* Except as otherwise provided in this section, any amount actually paid or distributed or deemed paid or distributed from an individual retirement account or individual retirement annuity shall be included in the gross income of the payee or distributee for the taxable year in which the payment or distribution is received.

(2) *Zero basis.* Notwithstanding section 1015(d) or any other provision of the Code, the basis (or investment in the contract) of any person in such an

account or annuity is zero. For purposes of this section, an assignment of an individual's rights under an individual retirement account or an individual retirement annuity shall, except as provided in § 1.408–4(g) (relating to transfer incident to divorce), be deemed a distribution to such individual from such account or annuity of the amount assigned.

(b) *Rollover contribution*—(1) *To individual retirement arrangement.* Paragraph (a)(1) of this section shall not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit the account was established or who is the owner of the annuity if the entire amount received (including the same amount of money and any other property) is paid into an individual retirement account, annuity (other than an endowment contract), or bond created for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

(2) *To qualified plan.* Paragraph (a)(1) of this section does not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit the account was established or who is the owner of the annuity if—

(i) No amount in the account or no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or a rollover contribution from an annuity plan described in section 403(a) and the earnings on such sums, and

(ii) The entire amount received (including the same amount of money and any other property) represents the entire amount in the account and is paid into another such trust or plan (for the benefit of such individual) not later than the 60th day after the day on which the payment or distribution is received.

This subparagraph does not apply if any portion of the rollover contribution described in paragraph (b)(2)(i) of this section is attributable to an employees' trust forming part of a plan or an annuity under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

(3) *To section 403(b) contract.* [Reserved]

(4) *Frequency limitation.* (i) For taxable years beginning on or before December 31, 1977, paragraph (b)(1) of this section does not apply to any amount received by an individual from an individual retirement account, annuity or bond if at any time during the 3-year period ending on the day of receipt, the individual received any other amount from an individual retirement account, annuity or bond which was not includible in his gross income because of the application of paragraph (b)(1) of this section.

(ii) [Reserved]

(c) *Excess contributions returned before due date of return*—(1) *Excess contribution.* For purposes of this paragraph, excess contributions are the excess of the amounts contributed to an individual retirement account or paid for an individual retirement annuity during the taxable year over the amount allowable as a deduction under section 219 or 220 for the taxable year.

(2) *General rule.* (i) Paragraph (a)(1) of this section does not apply to the distribution of any excess contribution paid during a taxable year to an account or annuity if: the distribution is received on or before the date prescribed by law (including extensions) for filing the individual's return for such taxable year; no deduction is allowed under section 219 or section 220 with respect to the excess contribution; and the distribution is accompanied by the amount of net income attributable to the excess contribution as of the date of the distribution as determined under subdivision (ii).

(ii) The amount of net income attributable to the excess contributions is an amount which bears the same ratio to the net income earned by the account during the computation period as the excess contribution bears to the sum of the balance of the account as of the first day of the taxable year in which the excess contribution is made and the total contribution made for such taxable year. For purposes of this paragraph, the term "computation period" means the period beginning on the first day of the taxable year in which the excess contribution is made and ending on the date of the distribution from the account.

(iii) For purposes of paragraph (c)(2)(ii), the net income earned by the account during the computation period is the fair market value of the balance of the account immediately after the distribution increased by the amount of distributions from the account during the computation period, and reduced (but not below zero) by the sum of: (A) the fair market value of the balance of the account as of the first day of the taxable year in which the excess contribution is made and (B) the contributions to the account made during the computation period.

(3) *Time of inclusion.* (i) For taxable years beginning before January 1, 1977, the amount of net income determined under subparagraph (2) is includible in the gross income of the individual for the taxable year in which it is received. The amount of net income thus distributed is subject to the tax imposed by section 408(f)(1) for the year includible in gross income.

(ii) [Reserved]

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. On January 1, 1975, A, age 55, who is a calendar-year taxpayer, contributes $1,500 to an individual retirement account established for his benefit. For 1975, A is entitled to a deduction of $1,400 under section 219. For 1975, A does not claim as deductions any other items listed in section 62. A's gross income for 1975 is $9,334. On April 1, 1976, $107 is distributed to A from his individual retirement account. As of such date, the balance of the account is $1,498 [$1,605 − $107]. There were no other distributions from the account as of such date. The net amount of income earned by the account is $105 [$1,498 + $107 − (0 + $1,500)]. The net income attributable to the excess contribution is $7. [$105 × ($100/$1,500)]. A's adjusted gross income for 1975 is his gross income for 1975 ($9,334) reduced by the amount allowable to A as a deduction under section 219 ($1,400), or $7,934. A will include the $7 of the $107 distributed on April 1, 1976, in his gross income for 1976. Further, A will pay an additional income tax of $.70 for 1976 under section 408(f)(1).

(d) *Deemed distribution*—(1) *General rule.* In any case in which an individual retirement account ceases to be an individual retirement account by reason of the application of section 408(e)(2), paragraph (a)(1) of this section shall apply as if there were a distribution on the first day of the taxable year in which such account ceases to be an individual retirement account of an amount equal to the fair market value on such day of all of the assets in the account on such day. In the case of a deemed distribution from an individual retirement annuity, see § 1.408–3(d).

(2) *Using account as security.* In any case in which an individual for whose benefit an individual retirement account is established uses, directly or indirectly, all or any portion of the account as security for a loan, paragraph (a)(1) of this section shall apply as if there were distributed on the first day of the taxable year in which the loan was made an amount equal to that portion of the account used as security for such loan.

(e) *Distribution of annuity contracts.* Paragraph (a)(1) of this section does not apply to any annuity contract which is distributed from an individual

retirement account and which satisfies the requirements of paragraphs (b) (1), (3), (4) and (5) of section 408. Amounts distributed under such contracts will be taxable to the distributee under section 72. For purposes of applying section 72 to a distribution from such a contract, the investment in such contract is zero.

(f) *Treatment of assets distributed from an individual retirement account for the purchase of an endowment contract.* Under section 408(e)(5), if all, or any portion, of the assets of an individual retirement account are used to purchase an endowment contract described in § 1.408-3(e) for the benefit of the individual for whose benefit the account is established—

(1) The excess, if any, of the total amount of assets used to purchase such contract over the portion of the assets attributable to life insurance protection shall be treated as a rollover contribution described in section 408(d)(3), and

(2) The portion of the assets attributable to life insurance protection shall be treated as a distribution described in paragraph (a)(91) of this section, except that the provisions of section 408(f) shall not apply to such amount.

(g) *Transfer incident to divorce*—(1) *General rule.* The transfer of an individual's interest, in whole or in part, in an individual retirement account, individual retirement annuity, or a retirement bond, to his former spouse under a valid divorce decree or a written instrument incident to such divorce shall not be considered to be a distribution from such an account or annuity to such individual or his former spouse; nor shall it be considered a taxable transfer by such individual to his former spouse notwithstanding any other provision of Subtitle A of the Code.

(2) *Spousal account.* The interest described in this paragraph (g) which is transferred to the former spouse shall be treated as an individual retirement account of such spouse if the interest is an individual retirement account; an individual retirement annuity of such spouse if such interest is an individual retirement annuity; and a retirement bond of such spouse if such interest is a retirement bond.

§ 1.408-5 Annual reports by trustees or issuers.

(a) *In general.* The trustee of an individual retirement account or the issuer of an individual retirement annuity shall make annual calendar year reports concerning the status of the account or annuity. The report shall contain the information required in paragraph (b) and be furnished or filed in the manner and time specified in paragraph (c).

(b) *Information required to be included in the annual reports.* The annual calendar year report shall contain the following information for transactions occurring during the calendar year—

(1) The amount of contributions;

(2) The amount of distributions;

(3) In the case of an endowment contract, the amount of the premium paid allocable to the cost of life insurance;

(4) The name and address of the trustee or issuer; and

(5) Such other information as the Commissioner may require.

(c) *Manner and time for filing.* (1) The annual report shall be furnished to the individual on whose behalf the account is established or in whose name the annuity is purchased (or the beneficiary of the individual or owner). The report shall be furnished on or before the 30th day of June following the calendar year for which the report is required.

(2) The Commissioner may require the annual report to be filed with the Service at the time the Commissioner specifies.

(d) *Penalties.* Section 6693 prescribes penalties for failure to file the annual report.

(e) *Effective date.* This section shall apply to reports for calendar years after 1978.

(f) *Reports for years prior to 1979.* For years prior to 1979, a trustee or issuer shall make reports in the time and manner as the Commissioner requires.

§ 1.408-6 Disclosure statements for individual retirement arrangements.

(a) *In general*—(1) *General rule.* Trustees and issuers of individual retirement accounts and annuities are, under the authority of section 408 (i), required to provide disclosure statements. This section sets forth these requirements.

(2) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Requirements.* (1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) *Disclosure statements*—(i) Under the authority contained in section 408(i), a disclosure statement shall be furnished in accordance with the provisions of this subparagraph by the trustee of an individual retirement account described in section 408(a) or the issuer of an individual retirement annuity described in section 408(b) or of an endowment contract described in section 408(b) to the individual (hereinafter referred to as the "benefited individual") for whom such an account, annuity, or contract is, or is to be, established.

(ii)(A)*(1)* The trustee or issuer shall furnish, or cause to be furnished, to the benefited individual, a disclosure statement satisfying the requirements of subdivisions (iii) through (viii) of this subparagraph, as applicable, and a copy of the governing instrument to be used in establishing the account, annuity, or endowment contract. The copy of such governing instrument need not be filled in with financial and other data pertaining to the benefited individual; however, such copy must be complete in all other respects. The disclosure statement and copy of the governing instrument must be received by the benefited individual at least seven days preceding the earlier of the date of establishment or purchase of the account, annuity, or endowment contract. A disclosure statement or copy of the governing instrument required by this subparagraph may be received by the benefited individual less than seven days preceding, but no later than, the earlier of the date of establishment or purchase, if the benefited individual is permitted to revoke the account, annuity, or endowment contract pursuant to a procedure which satisfies the requirements of subdivision (ii)(A)*(2)* of this subparagraph.

(2) A procedure for revocation satisfies the requirements of this subdivision (ii)(A)*(2)* of this subparagraph if the benefited individual is permitted to revoke the account, or endowment contract by mailing or delivering, at his option, a notice of revocation on or before a day not less than seven days after the earlier of the date of establishment or purchase and, upon revocation, is entitled to a return of the entire amount of the consideration paid by him for the account, annuity, or endowment contract without adjustment for such items as sales commissions, administrative expenses or fluctuation in market value. The procedure may require that the notice be in writing or that it be oral, or it may require both a written and an oral notice. If an oral notice is required or permitted, the procedure must permit it to be delivered by telephone call during normal business hours. If a written notice is required or permitted, the procedure must provide that, if mailed, it shall be deemed mailed on the date of the postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the mail in the United States in an envelope,

or other appropriate wrapper, first class postage prepaid, properly addressed.

(B) If after a disclosure statement has been furnished, or caused to be furnished, to the benefited individual pursuant to paragraph (d)(4)(ii)(A) of this section and—

(*1*) On or before the earlier of the date of establishment or purchase, or

(*2*) On or before the last day on which the benefited individual is permitted to revoke the account, annuity, or endowment contract (if the benefited individual has a right to revoke the account, annuity, or endowment contract pursuant to the rules of subdivision (ii)(A) of this subparagraph). there becomes effective a material adverse change in the information set forth in such disclosure statement or a material change in the governing instrument to be used in establishing the account, annuity, or contract, the trustee or issuer shall furnish, or cause to be furnished, to the benefited individual such amendments to any previously furnished disclosure statement or governing instrument as may be necessary to adequately inform the benefited individual of such change. The trustee or issuer shall be treated as satisfying this subdivision (ii)(B) of this subparagraph only if material required to be furnished by this subdivision is received by the benefited individual at least seven days preceding the earlier of the date of establishment or purchase of the account, annuity, or endowment contract or if the benefited individual is permitted to revoke the account, annuity, or endowment contract on or before a date not less than seven days after the date on which such material is received, pursuant to a procedure for revocation otherwise satisfying the provisions of subdivision (ii)(A)(*2*) of this subparagraph.

(C) If the governing instrument is amended after the account, annuity, or endowment contract is no longer subject to revocation pursuant to subdivision (ii)(A) or (B) of this subparagraph, the trustee or issuer shall not later than the 30th day after the later of the date on which the amendment is adopted or becomes effective, deliver or mail to the last known address of the benefited individual a copy of such amendment and, if such amendment affects a matter described in subdivisions (iii) through (viii) of this subparagraph, a disclosure statement with respect to such matter meeting the requirements of subdivision (iv) of this subparagraph.

(D) For purposes of subdivision (ii) (A) and (B) of this subparagraph, if a disclosure statement, governing instrument, or an amendment to either, is mailed to the benefited individual, it shall be deemed (in the absence of evidence to the contrary) to be received by the benefited individual seven days after the date of mailing.

(E) In the case of a trust described in section 408(c) (relating to certain retirement savings arrangements for employees or members of associations of employees), the following special rules shall be applied:

(*1*) For purposes of this subparagraph, references to the benefited individual's account, annuity, or endowment contract shall refer to the benefited individual's interest in such trust, and

(*2*) The provisions of subdivision (ii) of this subparagraph shall be applied by substituting "the date on which the benefited individual's interest in such trust commences" for "the earlier of the date of establishment or purchase" wherever it appear therein.

Thus, for example, if an employer establishes a trust described in section 408(c) for the benefit of employees, and the trustee furnishes an employee with a disclosure statement and a copy of the governing instrument (as required by this subparagraph) on the date such employee's interest in the trust commences, such employee must be given a right to revoke such interest within a period of at least seven days. If any contribution has been made within such period (whether by the employee or by the employer), the full amount of such contribution must be paid to such employee pursuant to subdivision (ii)(A)(*2*) of this subparagraph.

(iii) The disclosure statement required by this subparagraph shall set forth in nontechnical language the following matters as such matters relate to the account, annuity, or endowment contract (as the case may be);

(A) Concise explanations of—

(*1*) The statutory requirements prescribed in section 408(a) (relating to an individual retirement account) or section 408(b) (relating to an individual retirement annuity and an endowment contract), and any additional requirements (whether or not required by law) that pertain to the particular retirement savings arrangement.

(*2*) The income tax consequences of establishing an account, annuity, or endowment contract (as the case may be) which meets the requirements of section 408(a) relating to an individual retirement account) or section 408(b) (relating to an individual retirement annuity and an endowment contract), including the deductibility of contributions to, the tax treatment of distributions (other than premature distributions) from, the availability of income tax free rollovers to and from, and the tax status of such account, annuity, or endowment contract.

(*3*) The limitations and restrictions on the deduction for retirement savings under section 219, including the ineligibility of certain individuals who are active participants in a plan described in section 219(b)(2)(A) or for whom amounts are contributed under a contract described in section 219(b)(2)(B) to make deductible contributions to an account or for an annuity or endowment contract.

(*4*) The circumstances under which the benefited individual may revoke the account, annuity, or endowment contract, and the procedure therefor (including the name, address, and telephone number of the person designated to receive notice of such revocation). Such explanation shall be prominently displayed at the beginning of the disclosure statement.

(B) Statements to the effect that—

(*1*) If the benefited individual or his beneficiary engages in a prohibited transaction, described in section 4975(c) with respect to an individual retirement account, the account will lose its exemption from tax by reason of section 408(e)(2)(A), and the benefited individual must include in gross income, for the taxable year during which the benefited individual or his beneficiary engages in the prohibited transaction the fair market value of the account.

(*2*) If the owner of an individual retirement annuity or endowment contract described in section 408(b) borrows any money under, or by use of, such annuity or endowment contract, then, under section 408(e)(3), such annuity or endowment contract loses its section 408(b) classification, and the owner must include in gross income, for the taxable year during which the owner borrows any money under, or by use of, such annuity or endowment contract, the fair market value of the annuity or endowment contract.

(*3*) If a benefited individual uses all or any portion of an individual retirement account as security for a loan, then, under section 408(e)(4), the portion so used is treated as distributed to such individual and the benefited individual must include such distribution in gross income for the taxable year during which he so uses such account.

(*4*) An additional tax of 10 percent is imposed by section 408(f) on distributions (including amounts deemed distributed as the result of a prohibited loan or use as security for a loan) made before the benefited individual has attained age 59½, unless such distribution is made on account of death or disability, or unless a rollover

contribution is made with such distribution.

(5) Sections 2039(e) (relating to exemption from estate tax of annuities under certain trusts and plans) and 2517 (relating to exemption from gift tax of specified transfers of certain annuities under qualified plans) apply (including the manner in which such sections apply) to the account, annuity, or endowment contract.

(6) Section 402(a)(2) and (e) (relating to tax on lump sum distributions) is not applicable to distributions from an account, annuity, or endowment contract.

(7) A minimum distribution is required under section 408(a) (6) or (7) and 408(b) (3) or (4) (including a brief explanation of the amount of minimum distribution) and that if the amount distributed from an account, annuity, or endowment contract during the taxable year of the payee is less than the minimum required during such year, an excise tax, which shall be paid by the payee, is imposed under section 4974, in an amount equal to 50 percent of the excess of the minimum required to be distributed over the amount actually distributed during the year.

(8) An excise tax is imposed under section 4973 on excess contributions (including a brief explanation of an excess contribution).

(9) The benefited individual must file Form 5329 (Return for Individual Retirement Savings Arrangement) with the Internal Revenue for each taxable year during which the account, annuity, or endowment contract is maintained.

(10) The account or contract has or has not (as the case may be) been approved as to form for use as an account, annuity, or endowment contract by the Internal Revenue Service. For purposes of this subdivision, if a favorable opinion or determination letter with respect to the form of a prototype trust, custodial account, annuity, or endowment contract has been issued by the Internal Revenue Service, or the instrument which establishes an individual retirement trust account or an individual retirement custodial account utilizes the precise language of a form currently provided by the Internal Revenue Service (including any additional language permitted by such form), such account or contract may be treated as approved as to form.

(11) The Internal Revenue Service approval is a determination only as to the form of the account, annuity, or endowment contract, and does represent a determination of the merits of such account, annuity, or endowment contract.

(12) The proceeds from the account, annuity or endowment contract may be used by the benefited individual as a rollover contribution to another account or annuity or retirement bond in accordance with the provisions of section 408(d)(3).

(13) In the case of an endowment contract described in section 408(b), no deduction is allowed under section 219 for that portion of the amounts paid under the contract for the taxable year properly allocable to the cost of life insurance.

(14) If applicable, in the event that the benefited individual revokes the account, annuity, or endowment contract, pursuant to the procedure described in the disclosure statement (see subdivision (A)(4) of this subdivision (iii)), the benefited individual is entitled to a return of the entire amount of the consideration paid by him for the account, annuity, or endowment contract without adjustment for such items as sales commissions, administrative expenses or fluctuation in market value.

(15) Further information can be obtained from any district office of the Internal Revenue Service.

To the extent that information on the matters described in subdivisions (iii) (A) and (B) of this subparagraph is provided in a publication of the Internal Revenue Service relating to individual retirement savings arrangements, such publication may be furnished by the trustee or issuer in lieu of providing information relating to such matters in a disclosure statement.

(C) The financial disclosure required by paragraph (d)(4) (v), (vi), and (vii) of this section.

(iv) In the case of an amendment to the terms of an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section, the disclosure statement required by this subparagraph need not repeat material contained in the statement furnished pursuant to paragraph (d)(4)(iii) of this section, but it must set forth in nontechnical language those matters described in paragraph (d)(4)(iii) of this section which are affected by such amendment.

(v) With respect to an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section (other than an account or annuity which is to receive only a rollover contribution described in paragraph (d)(4)(vi) of this section and to which no deductible contributions will be made), the disclosure statement must set forth in cases where either an amount is guaranteed over period of time (such as in the case of a nonparticipating endowment or annuity contract), or a projection of growth of the value of the account, annuity, or endowment contract can reasonably be made (such as in the case of a participating endowment or annuity contract (other than a variable annuity) or passbook savings account), the following:

(A) To the extent that an amount is guaranteed,

(1) The amount, determined without regard to any portion of a contribution which is not deductible, that would be guaranteed to be available to the benefited individual if (*i*) level annual contributions in the amount of $1,000 were to be made on the first day of each year, and (*ii*) the benefited individual were to withdraw in a single sum the entire amount of such account, annuity, or endowment contract at the end of each of the first five years during which contributions are to be made, at the end of the year in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the guaranteed available amount is less than the increase of the guaranteed available amount during any preceding year for any reason other than decrease of cessation of contributions, and

(2) A statement that the amount described in subdivision (v)(A)(1) of this subparagraph is guaranteed, and the period for which guaranteed;

(B) To the extent a projection of growth of the value of the account, annuity, or endowment contract can reasonably be made but the amounts are not guaranteed.

(1) The amount, determined without regard to any portion of a contribution which is not deductible, and upon the basis of an earnings rate no greater than, and terms no different from, those currently in effect, that would be available to the benefited individual if (*i*) level annual contributions in the amount of $1,000 were to be made on the first day of each year, and (*ii*) the benefited individual were to withdraw in a single sum the entire amount of such account, annuity, or endowment contract at the end of each of the first five years during which contributions are to be made, at the end of each of the years in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the available amount is less than the increase of the available amount during any preceding year for any reason other than decrease or cessation of contributions, and

(2) A statement that the amount described in paragraph (d)(4)(v)(B)(1) of this section is a projection and is not

guaranteed and a statement of the earnings rate and terms on the basis of which the projection is made;

(C) The portion of each $1,000 contribution attributable to the cost of life insurance, which would not be deductible, for each year during which contributions are to be made; and

(D) The sales commission (including any commission attributable to the sale of life insurance), if any, to be charged in each year, expressed as a percentage of gross annual contributions (including any portion attributable to the cost of life insurance) to be made for each year.

(vi) With respect to an account or annuity described in paragraph (d)(4)(i) of this section to which a rollover contribution described in section 402(a)(5)(A), 403(a)(4)(A), 408(d)(3)(A) or 409(b)(3)(C) will be made, the disclosure statement must set forth, in cases where an amount is guaranteed over a period of time (such as in the case of a non-participating annuity contract, or a projection of growth of the value of the account or annuity can reasonably be made (such as in the case of a participating annuity contract (other than a variable annuity) or a passbook savings account), the following:

(A) To the extent guaranteed,

(1) The amount that would be guaranteed to be available to the benefited individual if *(i)* Such a rollover contribution in the amount of $1,000 were to be made on the first day of the year, *(ii)* No other contribution were to be made, and *(iii)* The benefited individual were to withdraw in a single sum the entire amount of such account or annuity at the end of each of the first five years after the contribution is made, at the end of the year in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the guaranteed available amount is less than the increase of the guaranteed available amount during any preceding year, and

(2) A statement that the amount described in paragraph (d)(vi)(A)(*1*) of this section is guaranteed;

(B) To the extent that a projection of growth of the value of the account or annuity can reasonably be made but the amounts are not guaranteed,

(1) The amount, determined upon the basis of an earnings rate no greater than, and terms no different from, those currently in effect, that would be available to the benefited individual if *(i)* such a rollover contribution in the amount of $1,000 were to be made on the first day of the year, *(ii)* no other contribution were to be made, and *(iii)* the benefited individual were to withdraw in a single sum the entire amount of such account or annuity at the end of each of the first five years after the contribution is made, at the end of each of the years in which the benefited individual attains the ages 60, 65, 70, and at the end of any other year during which the increase of the available amount is less than the increase of the available amount during any preceding year, and

(2) A statement that the amount described in paragraph (d)(4)(vi)(B) *(1)* of this section is a projection and is not guaranteed and a statement of the earnings rate and terms on the basis of which the projection is made; and

(C) The sales commission, if any, to be charged in each year, expressed as a percentage of the assumed $1,000 contribution.

(vii) With respect to an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section, in all cases not subject to paragraph (d)(4) (v) or (vi) of this section (such as in the case of a mutual fund or variable annuity), the disclosure statement must set forth information described in subdivisions (A) through (C) of this subdivisions (vii) based (as applicable with respect to the type or types of contributions to be received by the account, annuity, or endowment contract) upon the assumption of (1) level annual contributions of $1,000 on the first day of each year, (2) a rollover contribution of $1,000 on the first day of the year and no other contributions, or (3) a rollover contribution of $1,000 on the first day of the year plus level annual contributions of $1,000 on the first day of each year.

(A) A description (in nontechnical language) with respect to the benefited individual's interest in the account, annuity, or endowment contract, of:

(1) Each type of charge, and the amount thereof, which may be made against a contribution,

(2) The method for computing and allocating annual earnings, and

(*3*) Each charge (other than those described in complying with paragraph (d)(4)(vii)(A)(*1*) of this section) which may be applied to such interest in determining the net amount of money available to the benefited individual and the method of computing each such charge;

(B) A statement that growth in value of the account, annuity, or endowment contract is neither guaranteed nor projected; and

(C) The portion of each $1,000 contribution attributable to the cost of life insurance, which would not be deductible, for every year during which contributions are to be made.

(viii) A disclosure statement, or an amendment thereto, furnished pursuant to the provisions of this subparagraph may contain information in addition to that required by paragraph (d)(4)(iii) through (vii) of this section. However, such disclosure statement will not be considered to comply with the provisions of this subparagraph if the substance of such additional material or the form in which it is presented causes such disclosure statement to be false or misleading with respect to the information required to be disclosed by this paragraph.

(ix) The provisions of section 6693, relating to failure to provide reports on individual retirement accounts or annuities, shall apply to any trustee or issuer who fails to furnish, or cause to be furnished, a disclosure statement, a copy of the governing instrument, or an amendment to either, as required by this paragraph.

(x) This section shall be effective for disclosure statements and copies of governing instruments mailed, or delivered without mailing, after February 14, 1977.

(xi) This section does not reflect the amendments made by section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734) relating to retirement savings for certain married individuals.

§ 1.408–7 Reports on distributions from individual retirement plans.

(a) *Requirement of report.* The trustee of an individual retirement account or the issuer of an individual retirement annuity who makes a distribution during any calendar year to an individual from such account or under such annuity shall make a report on Form W–2P (in the case of distributions that are not total distributions) or Form 1099R (in the case of total distributions), and their related transmittal forms, for such year. The return must show the name and address of the person to whom the distribution was made, the aggregate amount of such distribution, and such other information as is required by the forms.

(b) *Amount subject to this section.* The amounts subject to reporting under paragraph (a) include all amounts distributed or made available to which section 408(d) applies.

(c) *Time and place for filing.* The report required under this section for any calendar year shall be filed after the close of that year and on or before February 28 of the following year with the appropriate Internal Revenue Service Center.

(d) *Statement to recipients.* (1) Each trustee or issuer required to file Form 1099R or Form W–2P under this section

shall furnish to the person whose identifying number is (or should be) shown on the forms a copy of the form.

(2) Each statement required by this paragraph to be furnished to recipients shall be furnished to such person after November 30 of the year of the distribution and on or before January 31 of the following year.

(e) *Effective date.* This section is effective for calendar years beginning after December 31, 1977.

Par. 3. The following new section is added immediately after § 1.408–7:

§ 1.409–1 Retirement bonds.

(a) *In general.* Section 409 authorizes the issuance of bonds under the Second Liberty Bond Act the purchase price of which would be deductible under section 219. Section 409 also prescribes the tax treatment of such bonds. See paragraph (b) of this section.

(b) *Income tax treatment of bonds—*(1) *General rule.* Except as provided in paragraph (b)(2) of this section, the entire proceeds upon redemption of a retirement bond described in section 409(a) shall be included in the gross income of the taxpayer entitled to such proceeds. If a bond has not been tendered for redemption by the registered owner before the close of the taxable year in which he attains age 70½, he must include in his gross income for such taxable year the amount of the proceeds he would have received if the bond had been redeemed at age 70½. The provisions of sections 72 and 1232 do not apply to a retirement bond.

(2) *Exceptions.* (i) If a retirement bond is redeemed within 12 months after the issue date, the proceeds are excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond. For definition of issue date, see 31 CFR 346.1(c).

(ii) If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½ the proceeds from the redemption of the bond are excludable from the gross income of the registered owner or his beneficiary to the extent that such proceeds were includible in the gross income of the registered owner for such taxable year.

(iii) If a retirement bond is surrendered for reissuance in the same or lesser face amount, the difference between current redemption value of the bond surrendered for reissuance and the current surrender value of the bond reissued is includible in the gross income of the registered owner.

(3) *Basis.* The basis of a retirement bond is zero.

(c) *Rollover.* The first sentence of paragraph (b)(1) of this section shall not apply in any case in which a retirement bond is redeemed by the registered owner before the close of the taxable year in which he attains the age of 70½ if he transfers the entire amount of the proceeds of such redemption to—

(1) An individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (other than an endowment contract described in § 1.408–3(e)), or

(2) An employees' trust which is described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a), for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption. This subparagraph shall not apply in the case of a transfer to a trust or plan described in (c)(2) of this section unless no part of the purchase price of the retirement bond redeemed is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or employees' trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).

(d) *Additional tax.* (1) *Early redemption.* Except as provided in paragraph (d)(2) of this section, under section 409(c) if a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under chapter 1 of the Code is increased by an amount equal to 10 percent of the proceeds of the redemption includible in his gross income for the taxable year. Except in the case of the credits allowable under sections 31, 39, or 42, no credit can be used to offset the tax described in the preceding sentence.

(2) *Limitations.* Paragraph (d)(1) of this section shall not apply if—

(i) During the taxable year of the registered owner in which a retirement bond is redeemed, the registered owner becomes disabled within the meaning of section 72(m)(7), or

(ii) A retirement bond is tendered for redemption in accordance with paragraph (b)(2)(i) of this section.

PART 54—PENSION EXCISE TAXES

Par. 4. The following new section is added immediately after § 53.4952–1:

§ 54.4974–1 Excise tax on accumulations in individual retirement accounts or annuities.

(a) *General rule.* A tax equal to 50 percent of the amount by which the minimum amount required to be distributed from an individual retirement account or annuity described in section 408 during the taxable year of the payee under paragraph (b) of this section exceeds the amount actually distributed during the taxable year is imposed by section 4974 on the payee.

(b) *Minimum amount required to be distributed.* For purposes of this section, the minimum amount required to be distributed is the amount required under § 1.408–2(b)(6)(v) to be distributed in the taxable year described in paragraph (a) of this section.

(c) *Examples.* The application of this section may be illustrated by the following examples.

Example (1). In 1975, the minimum amount required to be distributed under § 1.408–2(b)(6)(v) to A under his individual retirement account is $100. Only $60 is actually distributed to A in 1975. Under section 4974, A would have an excise tax liability of $20 [50% of ($100—$60)].

Example (2). Although no distribution is required under § 1.408–2(b)(6)(v) to be made in 1986, H, a married individual born on February 1, 1921, who has established and maintained an individual retirement account decides to begin receiving distributions from the account beginning in 1986. H's wife, W, was born on March 6, 1921. H and W are calendar year taxpayers. H decides to receive his interest in the account over the joint life and last survivor expectancy of himself and his wife. On January 1, 1986, the balance in H's account is $10,000; H and W, based on their nearest birthdates, are 65; and the joint life and last survivor expectancy of H and his wife is 22.0 years (see Table II of § 1.72–9). His annual payments during the following years (none of which were required) were determined by dividing the balance in the account on the first day of each year by the joint life and last survivor expectancy reduced by the number of whole years elapsed since the distributions were to commence.

Date	Life expectancy minus whole years elapsed	Account balance at beginning of each year	Annual payment
Jan. 1, 1986	22.0	$10,000	$455
Jan. 1, 1987	21.0	10,118	482
Jan. 1, 1988	20.0	10,214	511
Jan. 1, 1989	19.0	10,285	541
Jan. 1, 1990	18.0	10,329	574
Jan. 1, 1991	17.0	10,340	608

For 1986, 1987, 1989, and 1990, the amount required to be distributed under § 1.408–2(b)(6)(v) is zero.

Thus, H would have no excise tax liability under section 4974 for these years. In 1991, the year H attains age 70½, the amount required to be distributed from the account under § 1.408–2(b)(6)(v) is $565, determined by dividing $10,340 (the account balance as of January 1, 1991) by 18.8 years (the joint life and last survivor expectancy of H and W, assuming they are both still living, as of January 1, 1991). If W should die after December 31, 1990, the joint life and last survivor expectancy determined on January 1, 1991 (18.3 years) would not be redetermined. Because the amount distributed from the account in 1991 ($608) exceeds the amount required to be distributed from the account in 1991 ($565), H has no excise tax liability under section 4974 for 1991.

Example (3). Assume the same facts as in example (2) except that W dies in 1988. For 1988, 1989, and 1990, the amount required to be distributed under § 1.408–2(b)(6)(v) is zero. Thus, H would have no excise tax liability under section 4974 for these years. In 1991, the amount required to be distributed under § 1.408–2(b)(6)(v) is $855, determined by dividing $10,340 (the account balance as of January 1, 1991) by 12.1 years (the life expectancy of H as of January 1, 1991). Because the amount distributed from the account in 1991 ($608) is less than the amount required to be distributed from the account in 1991 ($855), H has an excise tax liability of $123.50 under section 4974 for 1991 [50% of ($855—$608)].

[FR Doc. 80–24001 Filed 8–7–80; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 48

[T.D. 7709]

Excise Taxes; Payments To Be Made To Aerial Applicators in Certain Cases

Corrections

In FR Doc. 80–22380 appearing at page 49544 in the issue for Friday, July 25, 1980, make the following changes:

(1) On page 49546, third column, eleventh line from the bottom, "of" should read "or".

(2) On page 49547, first column, third line of paragraph (f), "tanant" should read "tenant".

BILLING CODE 1505–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 853

Security Qualifications for Membership in the USAF

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by deleting Part 853, Security Qualifications for Membership in the USAF. This rule is deleted because the basic document has been rescinded. The intended effect of this amendment is to improve 32 CFR, Chapter VII, by removing unnecessary material.

EFFECTIVE DATE: August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, DC 20330, telephone: (202) 697–1861.

PART 853 [Deleted]

Title 32 of the Code of Federal Regulations is amended by deleting Part 853 in its entirety.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80–23902 Filed 8–7–80; 8:45 am]

BILLING CODE 3910–01–M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Appendix A: Georgia

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This Notice identifies the location of 8 new offices for filing of applications or complaints under the Voting Rights Act of 1965, as amended.

EFFECTIVE DATE: July 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Clogston, Coordinator Voting Rights Program, Office of Personnel Management, Washington, D.C. 20415, 202–632–4540.

SUPPLEMENTARY INFORMATION: The Attorney General has certified that in his judgment the appointment of examiners to serve in the counties of Calhoun, Bulloch, Early, Johnson, Mitchell, Sumter, Telfair and Tift, all in the State of Georgia, is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C 1973d, the U.S. Office of Personnel Management has appointed examiners to serve in those counties. OPM has determined that this is a non-significant regulation for the purpose of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones

Issuance System Manager.

Appendix A to 45 CFR Part 801 is amended as set out below to show under the heading "Dates, Times And Places For Filing," additional places for filing in Georgia.

* * * * *

GEORGIA

County; Place for filing; Beginning date

Bulloch; Statesboro—Federal Building, Conference Room 208, 52 North Main Street; August 5, 1980.

Calhoun; Morgan—Soil Conservation Service, Main Street, P.O. Box 113; August 5, 1980.

Early; Blakely—Qual Motel, Room 26, U.S. 27 South; August 5, 1980.

Johnson; Wrightsville—U.S. Post Office, Basement Office 1, 151 South Marcus; August 5, 1980.

Mitchell; Camilla—FHA District Office Conference Room, Building 10A, Broad Street; August 5, 1980.

Sumter; Americus—Federal Building and Court House, Basement Conference Room 128, East Forsyth Street; August 5, 1980.

Telfair; McRae—Postmasters Office, U.S. Post Office, 211 South Second Avenue; August 5, 1980.

Tift; Tifton—FHA, Conference Room 306, Tifton County Administrative Building, 225 Tift Avenue; August 5, 1980.

(5 U.S.C. 1103,; Sec. 7, 9, 79 Stat. 440, 441, (42 U.S.C. 1973e, 1973g))

[FR Doc. 80–23975 Filed 8–7–80; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80–39; RM–3231]

FM Broadcast Station in Los Osos-Baywood Park, Calif.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: Action taken herein assigns a first Class B FM channel to Los Osos-Baywood Park, California, as that community's first FM assignment, in response to a petition filed by Thomas B. and Margrethe T. Friedman. The proposed channel could be used to provide a first local aural broadcast service to that community.

EFFECTIVE DATE: September 15, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Los Osos-Baywood Park, California), BC Docket No. 80–39, RM–3231.

Report and Order—Proceeding Terminated

Adopted: July 30, 1980.

Released: August 1, 1980.

1. The Commission has under consideration a *Notice of Proposed Rule Making*, adopted January 29, 1980, 45 FR 9755, in response to a petition filed by Thomas B. and Margrethe T. Friedman ("petitioners"), which proposed the assignment of FM Class B Channel 267 to Los Osos-Baywood Park, California, as that community's first FM assignment. Supporting comments were filed by the petitioners, by Rod B. and Laura Funston and by Morro Bay Investment Corporation, licensee of AM Station KBAI, Morro Bay, California. All three stated they would apply for the channel, if assigned. No oppositions to the proposal were filed.

2. Los Osos-Baywood Park (pop. 3,487),[1] is located in San Luis Obispo County (pop. 105,690), along the California coast. This community is located approximately 345 kilometers (215 miles) north of Los Angeles, and 385 kilometers (239 miles) south of San Francisco. It has no local aural broadcast service.

3. Petitioners have submitted information with respect to Los Osos-Baywood Park, which is persuasive as to its need for a first FM assignment.

4. Although we do not ordinarily assign a higher powered facility to a community the size of Los Osos-Baywood Park, the area for which the proposed channel was requested is a relatively thin strip of coastal land containing few communities. Petitioners, in response to our request, have provided a list of alternate channels available for precluded communities which is sufficient to alleviate our concerns in this regard. Therefore, we believe it would be in the public interest to assign Channel 267 to Los Osos-Baywood Park, California, as its first FM channel assignment.

5. Accordingly, pursuant to authority contained in Section 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective September 15, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the community listed below:

City	Channel No.
Los Osos-Baywood Park, California	267

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660.

Federal Communications Commission.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80–23969 Filed 8–7–80; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[BC Docket NO. 80–6; RM–3345]

TV Broadcast Stations in Irving and Dallas, Tex.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: Action taken herein assigns UHF television Channel 49 to Irving, Texas, at the request of CELA, Inc. This assignment will enable Irving, Texas to have its first local television broadcast service.

EFFECTIVE DATE: September 15, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ira H. Smart or Mark N. Lipp, Broadcast Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.606(b), Table of *assignments*, Television Broadcast Stations (Irving and Dallas, Texas), BC Docket No. 80–6, RM–3345.

Report and Order—Proceeding Terminated

Adopted: July 30, 1980.

Released: August 5, 1980.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*,[1] 45 FR 5358, adopted January 14, 1980, proposing the assignment of UHF–TV Channel 49 to either Irving, or Dallas, Texas, in the alternative. The Dallas assignment would permit the channel to be used at Irving under the "15-mile" rule.[2] Supporting comments were filed by petitioner in which he stated his readiness to apply for the channel, if assigned. An opposition to the proposal was filed by the National Business Network ("NBN") permittee of KNBN-TV, a new UHF station on Channel 33, Dallas, Texas. Petitioner filed a reply.

2. Irving (pop. 97,260) is located in Dallas County (pop. 1,327,695).[3] It is situated approximately 12 kilometers (8 miles) west of Dallas, and 45 kilometers (28 miles) east of Forth Worth, Texas. Irving has no television assignment, although it receives city-grade service from at least one non-commercial educational and five commercial stations in Dallas and Fort Worth.

3. The *Notice*, while acknowledging that Irving was large enough for its own television channel assignment, solicited comments on a possible Dallas assignment as the more appropriate location to determine the need and interest for another channel there.

4. Petitioner states that although Irving is located in the Dallas-Fort Worth metropolitan area, it is an independent city separated from Dallas and Forth Worth, both in its government and its municipal services. Petitioner notes that the proposed assignment to Irving will provide that city with its first local television service and thereby help to fulfill the community's unmet needs for local news, public affairs and entertainment programming.

5. In oppposition, NBN contends that an assignment of Channel 49 to Irving, Texas, would be a default assignment to Dallas. NBN argues that it would be premature to add another competitive UHF channel to the Dallas-Fort Worth market until the stations operating on the UHF channels already assigned to Dallas have become economically viable.

6. In reply CELA points out that the focus of NBN's argument is solely on the impact that another UHF station will have on its own proposed operation. CELA notes that such issues are more appropriately considered at the application stage where the Commission's staff can explore the issue more extensively through requests for further information. Finally CELA argues that although an assignment of the channel to Dallas would be beneficial in increasing diversity in the community, the assignment of Channel 49 to Irving would further the Commission's policy of providing a community with over 25,000 in

[1] Population figures are taken from the 1970 U.S. Census.

[1] Public Notice of the petition was given on March 19, 1979, Report No. 13515.

[2] § 73.607(b) of the Commission's rules.

[3] Population figures are taken from the 1970 U.S. Census.

population a broadcast outlet for local expression of its own special needs, problems and interests.

7. We have carefully considered the record in this proceeding, and conclude that it would be in the public interest to make the requested assignment so as to provide Irving with its first local television service. As between Dallas and Irving, no interest or showing of need for additional service to Dallas has been demonstrated. Although Irving receives the signals of Dallas-Fort Worth stations, it is not clear that they fully cover the separate and distant needs of this fact growing city. On this basis, a local television outlet is warranted. It appears that the opposition comments are really concerned with the competitive impact of another station in the market, but that is not an issue we need to consider here. As noted by petitioner, any such issue can more adequately be resolved within the context of the application processing. and further consideration shall be deferred until that stage.

8. Lastly, it should be noted that in establishing the Television Table of Assignments, we gave high priority to providing communities with a local television service. Even if nearby stations do provide programming coverage to Irving, this is not a basis for refusing to provide a community with a first broadcast outlet for local expression. A local television outlet in Irving would provide a choice of programming and local programs directed to meeting the special needs, interests and problems of Irving. No station, owing its primary obligation to another locality, could be expected to provide the equivalent of such local service.

9. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective September 15, 1980, the Television Table of Assignments (§ 73.606(b) of the rules) is amended with respect to the community listed below:

City and Channel No.
Irving, Texas—49

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this proceeding, contact Ira H. Smart or Mark N. Lipp, Broadcast Bureau (202) 632–7792.

Federal Communications Commission.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307)

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80–24000 Filed 8–7–80; 8:45 a.m.]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 55 (Sub-No. 46)]

Policy on Motor Carrier Control Applications Directly Related To Operating Rights Applications

Decided: July 23, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a rule permitting an affiliate of a carrier to file concurrently, as a directly related matter, a control application under 49 U.S.C. 11343 along with an initial application for motor carrier operating authority under 49 U.S.C. 10922 or 10923. In these circumstances, only one filing fee need be paid. Procedurally, the Commission will handle these cases on a consolidated basis with the operating rights application as the lead proceeding. The Commission, accordingly, modifies the provisions of 49 CFR 1002.2 (c)(1) to reflect this change.

EFFECTIVE DATE: August 8, 1980.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, (202) 275–7564. William Drew, (202) 275–7947.

SUPPLEMENTARY INFORMATION: The acquisition of control provisions of 49 U.S.C. 11343 apply when an initial grant of motor carrier operating authority is sought by a noncarrier affiliated with an established carrier having gross revenues from interstate operations exceeding $2 million per year. Although continuation of control following issuance of operating authority, rather than acquisition of control, is involved in these circumstances, section 11343 will apply. *Hannon—Control—Hannon Motor Lines, Inc.*, 39 M.C.C. 620 (1944), as affirmed in *Schwerman T. Co.—Control—Schwerman T. Co. of Texas*, 80 M.C.C. 382 (1959). In these circumstances, under prior Commission practice, the operating rights application was decided first. If that application were granted, issuance of a certificate or permit was conditioned upon approval of the control application. See *White Air Freight Service Inc., Com. Car. Applic.*, 95 M.C.C. 616 (1964). At present, the Commission will approve issuance of the authority sought, but caution the applicant regarding the need for approval of common control. The handling of the operating rights and control applications in separate proceedings unnecessarily burdens the Commission in its internal handling of the proceedings, and causes undue delay in applicants' ability to meet legal requirements for obtaining operating authority. Our action under the rule adopted here is consistent with our handling of other related matters, as set forth in 49 CFR 1002.2(c)(1). We interpret the Commission's regulations and rules of practice as permitting the concurrent filing of a control application as a matter directly related to an operating rights application, if approval of control would be necessary as a result of approval of the operating rights application. An applicant may file these applications concurrently and only one filing fee need be paid. 49 CFR 1002.2(c). Procedurally, the Commission will handle these cases on a consolidated basis under the time limits established for processing operating authority applications.

We find that Part 1002 of Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations should be amended by modifying § 1002.2(c)(1) as set forth below. Minor nonsubstantive changes have been made to conform to the revised Interstate Commerce Act.

This statement interprets Commission rules and modifies other rules relating to agency practice and procedure. Therefore, the final rule is being adopted without prior notice or public proceedings, in accordance with the provisions of 5 U.S.C. 553 (b)(A)

This action will not significantly affect either the quality of the human environment of the conservation of energy resources.

§ 1002.2 [Amended]

Accordingly, 49 CFR is revised by the modification of § 1002.2(c)(1) to read as follows:

* * * * *

(c) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as a single petition for modification of more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities; a motor carrier acquisition application pursuant to 49 U.S.C. 11343 combined with a related application for a certificate of public convenience and necessity under 49 U.S.C. 10922, an application for an initial grant of motor carrier operating authority by an

affiliate of a carrier combined with a related finance application for approval of continuation of control; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (d) of this section; except that, directly related applications involving a transfer under 49 U.S.C. 10926 or 10931 and an application on Form OP–1 for gateway elimination and/or a conversion, the sole fee shall be the basic fee for the transfer application.

* * * * *

(49 U.S.C. 10321(a) and 5 U.S.C. 553 and 559)

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–24012 Filed 8–7–80; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Part 1033

[Service Order No. 1469, Amdt. 1]

The Atchison, Topeka and Santa Fe Railway Co., Authorized To Operate Over Tracks of St. Louis-San Francisco Railway Co., at Winfield, Kans.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1469.

SUMMARY: This order amends Service Order No. 1469 by extending the time period during which the Santa Fe Railway is authorized to operate over tracks of the St. Louis-San Francisco Railway.

EFFECTIVE DATE: 11:59 p.m., August 5, 1980, and continuing in effect until October 31, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840.

SUPPLEMENTARY INFORMATION:

Decided: August 4, 1980.

Upon further consideration of Service Order No. 1469, (45 FR 31724), and good cause appearing therefor:

§ 1033.1469 [Amended]

It is ordered, § 1033.1469 *The Atchison, Topeka and Santa Fe Railway Company authorized to operate over tracks of St. Louis-San Francisco Railway Company at Winfield, Kansas.*

Service Order No. 1469 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1980, unless modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 5, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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. Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–24014 Filed 8–7–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Listing the Valley Elderberry Longhorn Beetle as a Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) to be a Threatened species. This action is being taken because alteration of this species' riverside habitat has reduced the known populations of the beetle to a few areas in the California central valley. Critical Habitat in California is included with this final rule. The rule will provide protection to wild populations of this species.

DATE: This rule becomes effective on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

In prior Service correspondence, and in **Federal Register** documents pertaining to *Desmocerus californicus dimorphus,* this subspecies was referred to as the "California elderberry longhorn beetle." Since this name would more appropriately apply to the nominate coastal subspecies, *Desmocerus californicus californicus,* the Service intends to use the common name "valley elderberry longhorn beetle" for the subspecies *Desmocerus californicus dimorphus.*

On August 10, 1978, the Service published a proposed rulemaking in the **Federal Register** (43 FR 35636–43) advising that sufficient evidence was on file to support a determination that the valley elderberry longhorn beetle was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That proposal summarized the factors thought to be contributing to the likelihood that this species could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory within which a resident species of wildlife is known to occur be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. A letter was sent to the Governor of California on August 16, 1978, notifying him of the proposed rulemaking for the valley elderberry longhorn beetle. On August 14, 1978, a memorandum was sent to other interested parties notifying them of the proposal and soliciting their comments and suggestions. On May 2, 1980, the Service published a proposed rule in the **Federal Register** (45 FR 29373–75) reproposing Critical Habitat for the valley elderberry longhorn beetle, to comply with the 1978 Endangered Species Act amendments. A letter notifying the Governor of California of this action, and letters to other interested parties were sent on March 31, 1980. A public meeting and a public hearing on the reproposal of Critical Habitat for the valley elderberry longhorn were held at Davis, California on May 22 and June 12, 1980, respectively.

Official comment was received from the Governor of California, Sacramento County, Solano County, and the U.S. Water and Power Resources Service (formerly the U.S. Bureau of Reclamation).

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any species to the list of Endangered and Threatened Wildlife and Plants.

In the August 10, 1978, proposal (43 FR 35636–43) to list the valley elderberry longhorn beetle as a Threatened species, the May 2, 1980, proposal of Critical Habitat (45 FR 29373–75), and the respective press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All comments received from August 10, to November 7, 1978, regarding the proposal to list the valley elderberry longhorn beetle as Threatened were considered. Comments regarding the reproposal of Critical Habitat received from May 2, to June 30, 1980, were considered. Additional opportunity for public comment was provided by the May 22, 1980, public meeting and the June 12, 1980, public hearing.

In response to the August 10, 1978, proposal, four comments were received. The Commissioner of Reclamation stated that the beetle should not be listed because exhaustive distributional data were not available. The Director of the California Department of Fish and Game suggested that additional field data be obtained before listing the beetle. Dr. John Chemsak, an entomologist at the University of California at Berkeley, stated that the valley elderberry longhorn beetle had always been rare and restricted in distribution, and supported Critical Habitat designation. Dr. Robert Pyle, representing the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources, supported the proposal.

In response to the May 2, 1980, reproposal of Critical Habitat for the valley elderberry longhorn beetle, seven comments were received. Mr. Douglas Peterson, Environmental Analyst for the Sacramento County Planning Department, supported the proposal and suggested that the host plant elderberry was *Sambucus mexicana caerulea*, not *Sambucus glauca*. Dr. Arthur Shapiro of the Department of Zoology of the University of California at Davis supported the proposal, pointed out that the taxonomy of *Sambucus* was confused, and suggested that *Desmocerus californicus dimorphus* be called the "Sacramento Valley elderberry longhorn beetle" to distinguish it from the coastal subspecies *Desmocerus californicus californicus*. Mr. Wallace Brazelton objected to Critical Habitat designation for the beetle, because the beetle was not "* * * important to the general welfare of Solano county or the Nation." Mr. Brazelton also objected to the locality of the public meeting and hearing on the beetle, and felt that insufficient time had been allowed for review of the proposal. Mrs. Amza Petersen and Mrs. Claire Davis opposed listing and Critical Habitat designation for the beetle, Mrs. Davis suggested that the beetle be transplanted to the Suisun Game Refuge. Dr. John Chemsak, an entomologist at the University of California at Berkeley, supported the proposal. Mr. Philip A. Stohr, an attorney representing a landowner within the Critical Habitat, objected to Critical Habitat designation on land owned by his client. Mr. Stohr contended that such designation threatened economic damage to the property, and that Critical Habitat designation would be academic, and to no purpose, if Federal activities were not involved in the area. Mr. Stohr also objected to the Critical Habitat designation on the grounds that the beetle occurs in sites other than those proposed as Critical Habitat, and suggested that the beetle was already protected by State law through the California Environmental Quality Act and the California Subdivision Map Act.

At the June 12, 1980, public hearing two statements relating to the beetle were made. Mr. Stohr presented statements similar to those already discussed above under responses to the reproposal. Mr. John Anderson, of the Sacramento Audubon Society, supported the listing proposal and designation of Critical Habitat.

Conclusion

The Services recognizes the fact that additional populations of the valley elderberry longhorn beetle may be located, but does not believe that the beetle will ever be found to occupy all areas where the host plant, *Sambucus*, occurs. Although exhaustive distributional studies would contribute additional data to the knowledge of the beetle, the Endangered Species Act requires that the Service make decisions based on the best available data. There is no evidence that additional studies would yield a different distributional pattern. Regarding Dr. Shapiro's comments, the Service has changed the common name of the beetle to the "valley elderberry longhorn beetle" to better reflect the distribution of this subspecies. Since confusion on the specific and subspecific identity of the *Sambucus* host of the beetle exists, the Service considers that one or more species of the *Sambucus* may be suitable hosts. With respect to Mr. Brazelton's comments, the Endangered Species Act does not require that economic value for a species be established in order for it to be listed. The Service has complied with the regulations concerning location of the public meeting and hearing and provision of comment periods. Regarding Mrs. Davis' comments, the Service has no indication that the Suisan Game Refuge would serve as an appropriate habitat to transfer the beetles to. In response to Mr. Stohr's comments, the definition of Critical Habitat is based primarily on biological information, although economic impacts are considered in its delineation. The Service knows of no specific Federal involvement which would presently affect the landowner's activities in the area. Future Federal involvement will not be prohibited in the Critical Habitat. Federal agencies will be required to consider the impacts of their actions, should such actions appear likely to jeopardize the continued existence of this species, or to destroy or adversely modify the Critical Habitat. If Federal involvement is likely to result in jeopardy to the species, the Secretary would be required to suggest reasonable and prudent alternatives that would avoid the conflict. Critical Habitat need not include all the areas where the species is known to occur. The Service realizes California law requires certain environmental considerations to be taken into account when land use planning occurs, but believes that Federal listing may increase the consideration given the species by the State of California, because attention will be drawn to a little-known, but unique, biological attribute of the environment which might otherwise be overlooked.

After a thorough review and consideration of all the information available, the Director has determined that the valley elderberry longhorn beetle is likely to become endangered throughout all of its range. Two of the five factors described in Section 4(a) of the Act, and affecting the beetle, were outlined in the August 10, 1978, proposal (43 FR 35636–43) to list this beetle as Threatened. The five criteria as described in that proposal are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range. The valley elderberry longhorn beetle originally occurred in elderberry thickets in moist valley oak woodland along the margins

of the Sacramento and San Joaquin Rivers in the Central Valley of California. The beetle is presently known from less than 10 localities in Merced, Sacramento, and Yolo Counties. The habitat of this insect has now largely disappeared throughout much of its former range due to agricultural conversion, levee construction, and stream channelization. Today, remnant populations are found in the few remaining natural woodlands and in some State and county parks. However, in parks the clearing of undergrowth (including elderberry) and planting of lawns has resulted in further habitat degradation.

2. Overutilization for commercial, sporting, scientific, or educational purposes. Not applicable to this species.

3. Disease or predation. This factor is not known to affect the present status of this species.

4. The inadequacy of existing regulatory mechanisms. There currently exist no State or Federal laws protecting this species or its habitat.

5. Other natural or manmade factors affecting its continued existence. None.

Critical Habitat

Subsection 4(a)(1) of the Act states in pertinent part:

> At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

50 CFR Part 424 defines Critical Habitat as:

> (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that two areas in Sacramento Country, California should be designated as Critical Habitat for the valley elderberry longhorn beetle. These areas include the densest known populations of the beetle. Due to lack of information on the beetle from one of the areas proposed as Critical Habitat for the beetle in Solano County (Putah Creek Zone), this area has not been designated as Critical Habitat. The designated Critical Habitat areas include the known biological constituent elements essential to the conservation of the valley elderberry longhorn beetle. These elements are described below in the description of Critical Habitat for this species.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.31 pertaining to threatened wildlife will apply to the valley elderberry longhorn beetle. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also will be illegal to possess, sell, deliver, carry, transport or ship any specimens illegally taken. Certain exceptions will apply to agents of the Service and State conservation agencies. Permits for specified purposes will be available in accordance with 50 CFR 17.32.

Section 7(a) of the Act provides:

> Federal Agency Actions and Consultations—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.
>
> (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption of such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.
>
> (3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existance of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

Provisions for Interagency Cooperation were published in the **Federal Register** on January 4, 1978 (43 FR 870–876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued will require Federal agencies to satisfy these statutory and regulatory obligations with respect to the valley elderberry longhorn beetle. These agencies will be required not only to insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of this species, but also to insure that their actions do not result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifiying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the valley elderberry longhorn beetle.

(1) Modification of riparian habitats by river channelization.

(2) Construction of buildings, roads, bridges, or parking lots, directly eliminating the beetle's host plant, elderberry (*Sambucus sp.*).

(3) Human disturbance, such as vandalism or fire, resulting from increased recreational use, which adversely affects the beetle.

No present Federal involvement in the above activities is known. In 1978, an informal consultation between the U.S. Coast Guard and the U.S. Fish and Wildlife Service was carried out; no conflict was found with a proposed plan to build a pedestrian bridge over the American River. Further recreational development in the American Parkway Zone is not expected to involve Federal agencies, and the Sacramento Department of Parks and Recreation intends to protect most of the riparian areas remaining in the Parkway. Future development in the Sacramento Zone of the Critical Habitat could involve Federal funding or permits such as Small Business Administration loans and federally subsidized sewage collection, according to the landowner's attorney. However, no development proposals are available to provide an estimate of future impact.

Effect Internationally

The Service will review the status of the valley elderberry longhorn beetle to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The Primary author of this rule is Dr. Michael M. Bentzien, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240 (703/235–1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations promulgation

Accordingly, Subparts B and I of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

§ 17.11 [Amended]

1. Section 17.11 is amended by adding the valley elderberry longhorn beetle to the list, alphabetically, under "Insects" as indicated below:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Beetle, valley elderberry longhorn	*Desmocerus californicus dimorphus.*	U.S.A. (California)	NA	T	100	§ 17.95(i)	NA

§ 17.95 [Amended]

2. Section 17.95(i) is amended by adding Critical Habitat for the valley elderberry longhorn beetle, alphabetically, as follows:

Valley elderberry longhorn beetle

(Desmocerus californicus dimorphus)

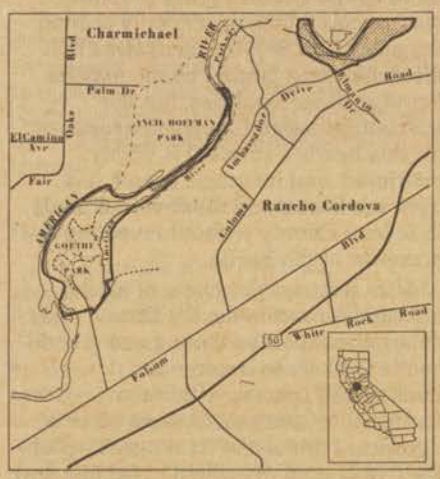
California. Sacramento County.

(1) *Sacramento Zone.* An area in the city of Sacramento enclosed on the north by the Route 160 Freeway, on the west and southwest by the Western Pacific railroad tracks, and on the east by Commerce Circle and its extension southward to the railroad tracks.

California Elderberry Longhorn Beetle (Sacramento Zone) Sacramento County, Calif.

(2) *American River Parkway Zone.* An area of the American River Parkway on the south bank of the American River, bounded on the north by latitude 30°37'30"N, on the west and southwest by Elmanto Drive from its junction with Ambassador Drive to its extension to latitude 38°37'30"N, and on the south and east by Ambassador Drive and its extension north to latitude 38°37'30"N. Goethe Park, and that portion of the American River Parkway northeast of Goethe Park, west of the Jedediah Smith Memorial Bicycle Trail, and north to a line extended eastward from Palm Drive.

California Elderberry Longhorn Beetle (American River and American River Parkway Zones) Sacramento County, Calif.



Dated: July 31, 1980.

Robert B. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 80-23899 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Delta Green Ground Beetle as a Threatened Species With Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the delta green ground beetle (*elaphrus viridis*) to be a Threatened species. This action is being taken because known populations of the beetle are small, highly restricted in range, and threatened by agricultural practices. The delta green ground beetle is known to occur only at two sites in Solano County, California. Critical Habitat in California is also included with this final rule. The rule will provide to the species the protections provided by the Endangered Species Act.

DATE: This rule becomes effective on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service Washington, D.C. 20240 (703/235-2771).

Background

SUPPLEMENTARY INFORMATION: The delta green ground beetle is a metallic green and golden predaceous member of the family Carabidae. It is known to occur only near two vernal pools south of Dixon, Solano County, California. The beetle is threatened by agricultural practices in these areas.

On August 10, 1978, the Service published a proposed rulemaking in the **Federal Register** (43 FR 35636-43) advising that sufficient evidence was on file to support a determination that the delta green ground beetle was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*). That proposal summarized the factors thought to be contributing to the likelihood that this species could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. A letter was sent to the Governor of California September 1, 1978, notifying him of the proposed rulemaking for the delta green ground beetle and requesting his views on the proposed action. The Critical Habitat portion of that proposal was withdrawn by the Service on March 6, 1979 (44 FR 12384-84), because of procedural and substantive changes in prior law made by the Endangered Species Act Amendments of 1978. On May 2, 1980, the Service published a rulemaking in the **Federal Register** (45 FR 29371-73) reproposing Critical Habitat for the delta green ground beetle, to comply with the 1978 Endangered Species Act Amendments. A letter to the Governor of California and letters to other interested parties were sent on March 31, 1980. A public meeting and a public hearing on the reproposal of Critical Habitat for the delta green ground beetle were held at Davis, California, on May 22, and June 12, 1980, respectively.

Official comment was received from the Governor of California, the California Department of Parks and Recreation, the California State Water Resources Control Board, the Department of the Army (Corps of Engineers), and the Solano County Board of Supervisors.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the list of Endangered and Threatened Wildlife and Plants.

In the August 10, 1978, proposal to list the delta green ground beetle as a Threatened species, the May 2, 1980, reproposal of Critical Habitat and the respective press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All comments received from August 10 to October 8, 1978, regarding the proposal to list the delta green ground beetle as Threatened were considered. Comments regarding the reproposal of Critical Habitat received from May 2 to July 3, 1980, were considered. Additional opportunity for public comment was provided by the May 22, 1980, public meeting and the June 12, 1980, public hearing.

In response to the August 10, 1978, proposal, three comments were received. Dr. Robert Pyle, representing the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources, supported the proposal. Dr. W. James Barry, plant ecologist for the California Department of Parks and Recreation, also supported the proposal, and submitted the preliminary draft of a report, the "Jepson Prairie Project," which provided information about the vernal pool habitats in the area where the delta green ground beetle occurs. The Director of the California Department of Fish and Game, representing the Governor, supported the listing and Critical Habitat designation.

Nine comments were received following the reproposal of Critical Habitat for the delta green ground beetle. The Director of the California Department of Fish and Game, responding for the Governor of California, recommended including an additional area in the Critical Habitat for the beetle. The California Water Resources Control Board indicated that potential effluent discharge through Barker Slough would not be likely to affect the vernal pool habitat of the delta green ground beetle. This agency

also suggested alteration of the proposed Critical Habitat area. The Department of the Army (San Francisco District, Corps of Engineers), which is processing a permit application for Phase II of the North Bay Aqueduct in Solano County, stated that a Biological Assessment concerning this project would be submitted to the Fish and Wildlife Service for review. Mr. Wallace L. Brazelton, Chairman of the Solano County Board of Supervisors, objected to the location of the public meeting and hearing concerning the delta green ground beetle, and expressed doubt that the beetle was "critical to the general welfare of Solano County or of the nation." Mr. Brazelton suggested that more effort be given to coordination with local officials, and hoped that no determination would be made without review by County personnel and agencies. Claire P. Davis, an owner of land near the proposed Critical Habitat, objected to possible restrictions on the use of Federal funds in the area, and suggested that the delta green ground beetle be established in the nearby Suisun Game Refuge. Amza Petersen, a private citizen, objected to the proposal, believing that the Federal government would confiscate State land. Dr. Terry L. Erwin, Curator of Coleoptera at the National Museum of Natural History, supported the proposal and indicated that other rare insect species were restricted to vernal pool habitats. Mr. James Day, an attorney representing private landowners in the proposed Critical Habitat area, opposed listing of the beetle and designation of Critical Habitat. Mr. Day feared that listing and Critical Habitat designation could destroy the development potential of the land, particularly with regard to oil and gas exploration and development. Mr. Day stated that the economic value of the delta green ground beetle did not justify the economic effects of listing and Critical Habitat designation on his clients' land, and that insufficient search had been made for the beetle in other areas. He also included a report prepared by Mr. Patrick W. Weddle, a consulting entomologist, who stated that the delta green ground beetle was of no economic value and that little effort had been made to search other areas for the beetle.

At the May 22 public hearing, a Solano County representative questioned the adequacy of the notification procedures regarding the proposal. This comment was identical to that summarized below for the public hearing.

At the June 12 public hearing concerning the delta green ground beetle, one statement relating to this species was made. Mr. Richard Brann, a Solano County Supervisor, objected to the locality of the public meeting and hearing, to the Service's public notification procedures, and to the Service's failures to contact public officials in the listing process and to prepare an economic analysis of the effects of Critical Habitat designation.

Conclusion

The Service has considered changes in Critical Habitat boundaries suggested by the California Department of Fish and Game and State Water Resources Control Board, and has incorporated these changes into its final Critical Habitat designation. These changes involve including a portion of Olcott Lake outside the proposed Critical Habitat boundaries, and elimination of two areas which appear to be unsuitable as habitat for the beetle. Regarding the proposed wastewater project for the city of Vacaville, and Phase II of the North Bay Aqueduct, the Service is in contact with the State and Federal personnel involved with these projects and anticipates little, if any, conflict based on current proposals and planning for the projects. With respect to Mr. Brazelton's and Mr. Brann's comments, the Service has complied with all procedural requirements of the Endangered Species Act. Specifically, in reference to the points raised by the comments, the Service prepared a draft economic analysis at the time of the reproposal of Critical Habitat, and this document was sent to local governments adjacent to the proposed Critical Habitat area. The anticipated economic effects were also summarized in the reproposal of Critical Habitat for the beetle. This document has been made final and concludes that the action taken here will have no significant economic effect in the foreseeable future. Regarding Mrs. Davis' proposal to transplant the beetle to a game refuge, the Service notes that the Endangered Species Act generally intends conservation of the listed species within its ecosystem. As a practical matter, transplantation is usually not biologically feasible. With respect to Mrs. Petersen's comments, the Service has no intent to confiscate State lands and notes that nearly all the land within the designated Critical Habitat is in private ownership. Critical Habitat designation does not involve seizure of land; it is essentially a notification to Federal agencies of the presence of an Endangered or threatened species in the area. In response to the comments and information provided by Mr. Day, the Service notes that the economic value of a species is not a criterion for listing the species as Endangered or Threatened. The Service does not believe that Critical Habitat designation will significantly affect the rights of his clients to exercise the mineral rights which they hold on a quarter-section of land within the Critical Habitat. The Service knows of no Federal authorization or funding involving oil and natural gas exploration in this area. Should Federal involvement arise, the relevant agencies would be required to insure that their actions would not be likely to jeopardize the continued existence of the beetle. Federal agencies already have this responsibility in the areas surrounding Olcott Pond due to the presence of the federally Endangered Orcutt's grass (*Orcuttia mucronata*) which occurs only around the pond. The Service recognizes that the delta green ground beetle may be found at other localities, but the specialized habitat believed necessary for this beetle's survival is highly restricted, and intensive search has been made at many other vernal pools in Solano County without revealing the presence of the beetle.

After a thorough review of all the information available, the Director has determined that the delta green ground beetle is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range. Two of the five factors described in section 4(a) of the Act, and affecting the beetle, were outlined in the August 10, 1978, proposal (43 FR 35636–43) to list the beetle as Threatened. The five criteria and their application to this species are described below:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The delta green ground beetle was first collected in 1876 from an unknown locality in California and was not rediscovered until 1974. Its habitat is precariously small, limited to the edges of two vernal pools in Solano County, California. Vernal pools, which are filled by winter rains and dry out by late summer, were once widespread throughout California, but only a few remain. Many vernal pools have been lost to river channelization (loss of overflow), dam construction, and the agricultural conversion of natural habitats. The Service believes that the delta green ground beetle had a more extensive range in historical time. Elimination of the two vernal pools by agricultural conversion or other causes may cause the beetle's extinction. Plowing and land levelling may have

already adversely affected the beetle at one of the vernal pools.

2. *Overutilization for commercial sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation.* This factor is not known to affect the present status of this species.

4. *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws which insure the conservation of this species and its habitat.

5. *Other natural or manmade factors affecting its continued existence:* None.

Critical Habitat

Subsection 4(a)(1) of the Act states in pertinent part:

> At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

50 CFR Part 424 defines Critical Habitat as:

> (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service had concluded that two areas in Solano County, California should be designated as Critical Habitat for the delta green ground beetle. These areas include the only two known sites where populations of the beetle occur. The known biological and physical constituent elements in the Critical Habitat which are essential to the conservation of the delta green ground beetle are included below in the description of Critical Habitat for this species. As noted above, the Critical Habitat originally proposed has been modified in the manner suggested by State agencies.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are minor for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.31 pertaining to Threatened Wildlife will apply to the delta green ground beetle. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also will be illegal to possess, sell, deliver, carry, transport or ship any specimen illegally taken. Certain exception will apply to agents of the Service and State conservation agencies. Permits for specified purposes will be available in accordance with 50 CFR 17.32.

Section 7(a) of the Act provides:

> Federal Agency Actions and Consultations:
>
> (1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act.
>
> (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption of such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.
>
> (3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 or result in the destruction or adverse modification of Critical Habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in Subsection (a).

Provisions for Interagency Cooperation were published in the **Federal Register** on January 4, 1978 (43 FR 870–876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued will require Federal agencies to satisfy these statutory and regulatory obligations with respect to the delta green ground beetle. These agencies will be required not only to insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of this species, but also to insure that their actions are not likely to result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the delta green ground beetle:

1. Agricultural practices threaten this species. Bulldozing and plowing near one of the vernal pools where the beetle has been collected may have eliminated it at this site.

2. Phase II of the North Bay Aqueduct and wastewater disposal for the city of Vacaville could adversely affect the Critical Habitat of the beetle if the needs of this species are not considered. There is Federal involvement with both of these projects. The agencies planning these activities are aware of the presence of the delta green ground beetle and the federally Endangered Orcutt's grass in the area, and are considering possible impacts of their proposed actions on these species. As noted above, the Service anticipates little, if any, conflict based on current proposals and planning for these projects.

3. Oil or natural gas exploration and exploitation, if conducted without regard for the ecosystem represented in the Critical Habitat, could adversely affect the area. The Service has no information indicating that Critical Habitat designation will prevent these activities within or adjacent to the Critical Habitat.

Effect Internationally

The Service will review the status of the delta green ground beetle to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. Michael M. Bentzien, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

Note.—Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Subparts B and I of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

§ 17.11 [Amended]

1. Section 17.11 is amended by adding the delta green ground beetle to the list alphabetically, under "Insects" as indicated below:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Beetle, delta green ground	*Elaphrus viridis*	U.S.A. (California)	N/A	T	99	§ 17.95(i)	N/A

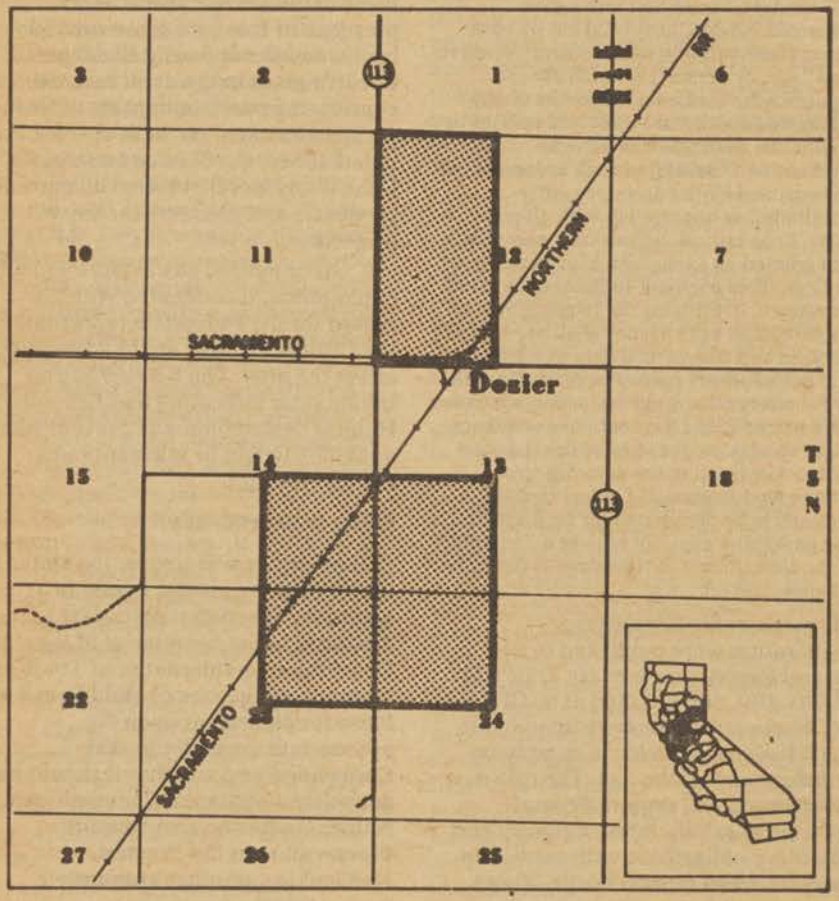
§ 17.95 [Amended]

2. Section 17.95(i) is amended by adding Critical Habitat for the delta green ground beetle, alphabetically, as follows:

Delta Green Ground Beetle

Elaphrus Viridis

California. Solano County. T.5N. R.1E. West ½ Sec. 12, southwest ¼ Sec. 13, southeast ¼ Sec. 14, northeast ¼ Sec. 23, northwest ¼ Sec. 24.



Known constitutent elements essential to the continued existence of the delta green ground beetle are the vernal pools with their surrounding vegetation, and the land areas which surround and drain into these pools.

Dated: August 1, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-23900 Filed 8-7-80; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Atlantic Herring Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Promulgation of Final Regulations.

SUMMARY: These final regulations implement Amendment No. 3 (Amendment) to the Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic (FMP).

The major provisions of the Amendment are as follows:

(1) Redefinition of the fishery management unit;
(2) Establishment of new optimum yields (OYs);
(3) Allocation of the Gulf of Maine OY;
(4) Establishment of new area/period harvest allocations.

Proposed regulations and the Amendment were published March 12, 1980 (45 FR 15955); public comment was invited for a 60-day period.

EFFECTIVE DATE: August 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts, 01930, Telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: The FMP for the Atlantic Herring Fishery was prepared by the New England Fishery Management Council (Council) and approved in December, 1978 by the Assistant Administrator for Fisheries,

NOAA (Assistant Administrator). The FMP was implemented through emergency regulations, which became final on March 19, 1979 (44 FR 17186). Amendment No. 1 to the FMP revised the procedure for determining when a quota is reached; the regulations implementing this amendment became final on June 26, 1979 (44 FR 37616). Amendment No. 2 extended the OY and seasonal allocations for both management areas (Gulf of Maine and Georges Bank) through the 1979–80 fishing year. The regulations implementing Amendment No. 2 became final on September 28, 1979 (44 FR 56700).

Amendment No. 3 to the FMP was approved by the Assistant Administrator on February 13, 1980. The Amendment is the result of an improved analytical framework for assessing the status of the Gulf of Maine, Georges Bank, and Southwest Nova Scotia herring spawning stocks. When the original FMP was prepared in 1978, a sophisticated mathematical model was developed to assess the three stocks and to predict yields from the adult herring fisheries on each. However, this methodology contained many unverifiable assumptions concerning geographical and seasonal herring migrations. Aware of these uncertainties, the Council formed a Regional Herring Assessment Working Group to address management of the entire herring resource. As a result, a "pooled" approach to the assessment of the herring stocks was adopted and serves as the basis for the major changes in area/period allocations.

The Amendment changes several major provisions of the FMP, which are summarized as follows:

(1) *Redefinition of the fishery managment unit.*—The fishery managment unit has been redefined to include adult herring fisheries from the shoreline of the New England and Mid-Atlantic States out to the limit of the U.S. fishery conservation zone (FCZ). As a result, adult herring three years of age and older taken from the territorial waters of the New England and Mid-Atlantic States are to be deducted from the appropriate area/period allocation. Previously, adult herring caught in territorial waters of the State of Maine were not considered a part of the fishery management unit.

(2) *Establishment of new optimum yields.*—As a result of the reassessment of the adult herring stocks and the redefinition of the fishery management unit, the Council established new OYs for the Gulf of Maine and the Georges Bank and South stocks. The Amendment provides a harvest level of 30,000 mt for adult herring from the Gulf of Maine, and 15,000 mt (including 2,000 mt for Canadian fishermen) for adult herring from Georges Bank and south.

(3) *Allocation of the Gulf of Maine OY.*—Since adult herring caught in the Maine territorial waters are now counted in the management unit, an allocation system has been implemented within the Gulf of Maine to maintain the historical access between two principal user groups, purse seiners and pair trawlers, within the traditional "juvenile" (north of Cape Elizabeth) and "adult" (south of Cape Elizabeth) fisheries. The allocation of herring, age three years and older, is as follows:

Metric Tons

Gulf of Maine North of Cape Elizabeth (43°34'N.)	10,470
Gulf of Maine South of Cape Elizabeth (43°34'N.)	19,530

(4) *Establishment of new area/period harvest allocations.*—The area/period harvest allocation system set forth in Amendment No. 3 was adopted after extensive public review and comment on the alternatives. This allocation system provides the flexibility necessary to manage the migratory herring resource and to provide for the equitable distribution of the allowable harvest between the two principal user groups.

The following table summarizes the allocations.

Period	Catch allocation (metric tons)
Gulf of Maine—Gulf of Maine North (North of 43°34'N.):	
July 1 to November 30	8,850
December 1 to June 30	1,620
Gulf of Maine South (South of 43°34'N.):	
July 1 to November 30	9,000
April 1 to June 30	1,530
Georges Bank and South:	
July 1–November 30 (all areas)—U.S	10,000
December 1–March 31 (West of 71°50'W.)—Canadian	2,000
April 1–June 30 (all areas)	
Pooled Georges Bank and South (East of 71°50'W.) and Gulf of Maine South:	
December 1–March 31	*12,000

*Gulf of Maine South receives 2,000 mt and Georges Bank and South receives 1,000 mt as baseline allocations. The remaining 9,000 mt is available anywhere in the two combined areas to provide maximum flexibility.

Public Comment

Comments on the proposed regulations have been received from the Maine Sardine Council and the U.S. Coast Guard. A summary of those comments and NOAA's response, in addition to several changes made in these regulations, are discussed on a section-by-section basis below. Other technical and editorial changes of a minor nature were made in the final regulations.

Section 653.2 Definitions

One commenter recommended that the term "carrier vessel" be defined in the regulations. The final regulations have been revised to define the term "carrier vessel" as "any fishing vessel which only transports Atlantic herring between another fishing vessel and the shore and does not purchase or sell herring." See discussion of § 653.5 below.

The U.S. Coast Guard suggested a new definition for "Vessel of the United States," to include vessels over five net tons which had no U.S. documentation but had a number issued under the National Coordinated Boating Safety Program. NOAA's proposed definition, which is also used in the foreign fishing regulations and in regulations implementing many FMPs, prevents foreign vessels over five net tons from qualifying as a U.S. vessel by obtaining a Boating Safety number from a State. The current definition provides a better expression of the Act's distinction between U.S. and foreign fishing vessels; therefore no change has been made. NOAA is considering other means to deal with the problem of domestic vessels over five net tons which do not have U.S. documentation.

Section 653.5 Recordkeeping and Reporting Requirements

The commenter stated that a "carrier vessel" should be exempt from the recordkeeping requirements of this section. Since carrier vessels do not sell or purchase herring but only transport it, the regulations have been revised. Fish transported by carrier vessels will be reported by the first actual purchaser, since carrier vessels are exempt from the recordkeeping and reporting requirements in § 653.5.

The commenter also stated that § 653.5(b)(1) requiring fish dealer or processor reports presents a "conflict" since these logbooks are not currently available. NOAA has postponed implementation of this regulatory requirement pending recommendations by an industry/government/Council task force on an acceptable recordkeeping and reporting form for fish dealers or processors.

Section 653.5(b)(2) covering inspection of processor reports has been reserved and will be reproposed after NOAA has completed its processor-reporting system and has determined its data needs with greater specificity.

Section 653.7 Prohibitions

The commenter recommended that Canadian fishing vessels be exempt from § 653.7(i) forbidding transfers of herring from a U.S. fishing vessel to a foreign vessel without a permit. No change has been made in the regulations since the Act clearly prohibits such activity.

FMP Approval

The Assistant Administrator has reviewed the comments received on Amendment No. 3 to the FMP and finds that the FMP, as amended, is consistent with the national standards, other provisions of the Act, and other applicable law.

National Environmental Policy Act of 1969 (NEPA)

Development and implementation of Amendment No. 3 to the FMP have been deemed a major federal action significantly affecting the quality of the human environment. A supplement to the final environmental impact statement (EIS) has been prepared and a notice of availability was published on October 5, 1979 (44 FR 51484).

Executive Order 12044

A draft regulatory analysis (RA) was prepared and made available for comment at the time the proposed rulemaking was published. No comments were received on the draft RA. A final RA has been prepared and is available to the public by contacting the Regional Director (see "address" above).

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C., this 5th day of August, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Part 653 is adopted as final to read as set forth below:

PART 653—ATLANTIC HERRING FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 653.1 Purpose and scope.

(a) The regulations in this part implement the Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic, which was prepared and adopted by the New England Fishery Management Council and approved by the Assistant Administrator. They govern fishing for adult Atlantic herring by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) These regulations do not limit harvests of Atlantic herring in the territorial waters of any State. Harvests from State waters, however, are deducted from the seasonal catch quotas provided for in these regulations.

§ 653.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic herring or *herring* means *Clupea harengus*, three years of age and older.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) An certified enforcement officer or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Carrier vessel means any vessel which only transports Atlantic herring between another fishing vessel and the shore and does not purchase or sell herring.

Catch, take, or harvest includes, but is not limited, to, any activity which results in mortality to any herring or in bringing any herring on board a vessel.

Discard means to throw away, cast back, or return to the sea any fish that has been caught. The removal and release of a live fish before that fish is brought on board a vessel is not a discard. Failure to retain any live fish once it is on board a vessel, or failure to retain any dead fish, is a discard.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accomodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of herring;

(2) The attempted catching, taking, or harvesting of herring;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of herring; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period running from 0001 hours Sunday through 2400 hours Saturday.

Georges Bank and South means that management area consisting of the Northwest Atlantic Ocean excluding the Gulf of Maine.

Gulf of Maine means that management area consisting of a portion of the Northwest Atlantic Ocean north of 42°20′ N. latitude, plus that area south of 42°20′ N. latitude which is west of 70°00′ W. longitude and which is bounded on the south by the northern shore of Cape Cod, including the waters of Cape Cod Bay.

Operator, with respect to any fishing vessel, means the master or other

individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, functions, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraphs (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic herring for commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of herring. The term includes, but is not limited to dealers, brokers, porcessors, cooperatives, or fish exchanges. It does not include a person who only transports herring between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street. Gloucester, Massachusetts 01930, or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested herring means caught, taken or harvested by vessels of the United States under this part, whether or not such herring are landed in the United States.

Vessel fishing for mackerel means any fishing vessel whose catch on board at any time is 75 percent mackerel (scomber-scombrus) by weight.

Vessel of the United States means: (a) any vessel documented or numbered by the United States Coast Guard under United States law; or (b) any vessel, under five net tons, which is registered under the laws of any State.

§ 653.3 Relation to other laws.

Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

§ 653.4 Vessel permits and fees.

(a) *General.* Every vessel fishing for Atlantic herring under this part must have a permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of herring per trip.

(b) *Eligibility.* [Reserved].

(c) *Application.* (1) An application for a permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all of the following information:

(i) The name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under the provisions of 46 U.S.C.;

(iv) The home port, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish hold capacity of the vessel;

(vii) The type and quantity of fishing gear used by the vessel;

(viii) The average size of the crew, which may be stated in terms of a normal range; and

(ix) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted by the applicant in writing to the Regional Director within 15 days of any such change.

(d) *Fees.* No fee shall be required for any permit issued under this part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in full force and effect until it expires or is revoked, suspended or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutiliate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the fishing vessel for which it is issued.

(k) *Display.* A permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon the request of an Authorized Officer.

(l) *Revocation.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act of these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 653.5 Recordkeeping and reporting requirements.

(a) *Fishing Vessel Records.* (1) The operator of any fishing vessel issued a permit to fish for herring subject to this part shall:

(i) Maintain an accurate and complete fishing vessel record on forms supplied by the Regional Director, according to the requirements of § 653.5(a)(2);

(ii) Make the fishing vessel record available for inspection or reproduction by an authorized officer at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the record; and

(iv) Submit fishing vessel records, as specified in § 653.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director within 48 hours after the end of any fishing week or fishing trip, whichever is the longer time period; or

(ii) Submit a statement to a location designated by the Regional Director within 48 hours after the end of any fishing week within which no fishing for any regulated species occurred.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which herring or any other regulated species are caught, and shall contain information for all fish which are caught.

(4) A request for exemption from the provisions of paragraph (a)(ii) of this section shall be submitted in writing to

the Regional Director. Such request shall state the reason for the request and the period of time for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional director must be notified in writing of the operator's intent to resume fishing before fishing is resumed.

(5) The authority to sanction permits in accordance with the provisions of 50 CFR Part 621 shall include the power to revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section.

(b) *Fish Dealer or Processor Reports.* Any person who receives Atlantic herring for a commercial purpose from a fishing vessel subject to this part shall:

(1) File a weekly report (Sunday through Saturday) at a location designated by the Regional Director on forms supplied by the Regional Director within 48 hours of the end of any week in which herring is received. This report shall include information on all first transfers, purchases, or receipts of all adult herring and other fish made during that week.

(2) Inspection of records. [Reserved]

(c) Paragraphs (a) and (b) of this section do not apply to operators of carrier vessels.

§ 653.6 Vessel Identification.

(a) *Official Number.* Each fishing vessel subject to this part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(b) *Numerals.* (1) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height of all other vessels over 25 feet in length.

(2) The Official Number must be in block Arabic numerals in contrasting color to the background.

(c) *Vessel Length.* The length of a vessel, for purposes of this section, is the length set forth in Coast Guard or State Records.

(d) *Duties of Operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from any enforcement vessel or aircraft.

§ 653.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic herring (except as provided for in § 653.4(a)), unless the vessel has a valid permit issued pursuant to this part on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer/processor report, or other record or report required by this part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any herring;

(e) Fail to affix and maintain markings as required by § 653.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic herring taken in violation of the Act, this part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic herring from the FCZ after the fishery has been closed pursuant to § 643.22;

(h) Discard Atlantic herring at sea;

(i) Transfer directly or indirectly, or attempt to so transfer, any United States harvested herring to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit, under section 204 of the Act, which authorizes the receipt by such vessel of United States harvesting herring;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 653.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(o) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process or enforcing this part;

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 653.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF–FM radiotelephone communication is the normal method of communicating between vessels. Should radiotelephone communication fail, however, other methods of communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which maybe used and are included here for the safety and information of fishing vessel operators:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" means "You should stop or heave to; I am going to board you"; and

(3) "AA AA AA" etc., which is the call to an unknown station to which the signaled vessel shall respond by illuminating the vessel's identification required by § 653.6.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate boarding and/or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forefeiture provisions

prescribed in the Act, and to 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures) of this chapter.

Subpart B-Management Measures

§ 653.20 Fishing year.

The fishing year for Atlantic herring is the 12–month period beginning on July 1 and ending on June 30 of the following year.

§ 653.21 Seasonal catch quotas.

(a) *Gulf of Maine.* The annual quota of herring is 30,000 mt. It is divided by area and by periods of the year as follows:

(1) For the period July 1 through November 30, 17,850 mt, divided by area as follows:

(i) North of 43°34′ N. latitude (Cape Elizabeth, Maine), 8,850 mt.

(ii) South of 43°34′ N. latitude (Cape Elizabeth, Maine), 9,000 mt.

(2) For the period December 1 to June 30, for the area north of 43°34′ N. latitude, 1,620 mt.

(3) For the period April 1 to June 30, for the area south of 43°34′ N. latitude, 1,530 mt.

(4) For the period December 1 to March 31, a pooled quota for the areas of the Gulf of Maine south of 43°34′ N. latitude and Georges Bank and South, east of 71°50′ W. longitude, 12,000 mt.

(b) *Georges Bank and South.* The annual domestic quota for herring is 13,000 mt. It is divided by area and periods of the year as follows:

(1) For the period July 1 to November 30 and April 1 to June 30, in all areas, and for the period December 1 to March 31, west of 71°50′ W. longtitude, 10,000 mt.

(2) For the period December 1 to March 31, a pooled quota for the areas of Georges Bank and South, east of 71°50′ W. longitude and the Gulf of Maine south of 43°34′ N. latitude, 12,000 mt.

§ 653.22 Closures.

(a) *Closures.* (1) The Assistant Administrator shall project, at least once a month, a date when the quota of herring for each management area, less an anticipated amount to be taken incidentally pursuant to paragraph (b) of this section, will be caught. Except as provided in paragraph (2), if the projected date is earlier than the end of the period, the Assistant Administrator shall, by notice, prohibit fishing for herring in the applicable management area after the projected date.

(2) During the period December 1 through March 31, the Assistant Administrator shall by notice prohibit fishing for herring:

(i) In the Gulf of Maine south of 43°34′ N. latitude, and in Georges Bank and South, east of 71°50′ W. longitude, after the projected date that the combined catch from these areas will be 12,000 metric tons; or

(ii) In the Gulf of Maine south of 43°34′ N. latitude, after the projected date that the catch from this area will be 11,000 metric tons; or

(iii) In Georges Bank and South, east of 71°50′ W. latitude, after the projected date that the catch from this area will be 10,000 metric tons.

(b) *Incidental catch.* (1) Fishing vessels may fish in an area closed pursuant to this section for fish other than herring and be allowed an incidental catch of herring of not more than 5 percent by weight of the total catch on board. It shall be a rebuttable presumption that all herring found on board a vessel fishing in a closed area were taken in the closed area.

(2) Vessels fishing for mackerel in an area closed pursuant to this section shall be allowed an incidental catch of herring of not more than 20 percent by weight of the total catch on board.

§ 653.23 Adjustments to seasonal quotas.

(a) *Adjustments.* Quotas shall be adjusted by the Regional Director only in the following manner:

(1) Unharvested portions of the July 1–November 30 quota for the Gulf of Maine north of 43°34′ N. latitude shall be added to the December 1–June 30 quota for this area;

(2) Unharvested portions of the December 1–March 31 quota for the Gulf of Maine south of 43°34′ N. and Georges Bank east of 71°50′ W. latitude shall be added to the April 1–June 30 quota for the Gulf of Maine south of 43°34′ N. latitude;

(3) Unharvested portions of the July 1–November 30 quota for the Gulf of Maine south of 43°34′ N. latitude and Georges Bank and South, east of 71°50′ W. latitude.

(b) *Notice.* The Regional Director shall publish a notice of adjustment in the **Federal Register.**

§ 653.24 Notice of requirements.

(a) *Contents.* Any notice issued by the Assistant Administrator under this part shall include the following information:

(1) A description of the management area which is the subject of the closure;

(2) The effective date and any termination date of the closure;

(3) The reason for the closure.

(b) *Consultation.* Prior to publication of any notice, the Regional Director shall notify the Executive Directors of the New England and Mid-Atlantic Fishery Management Councils.

(c) *Effective date.* No notice issued under this section shall be effective until it is filed for publication with the **Federal Register** and has been mailed to all persons holding permits issued under § 653.4 at least 48 hours prior to its effective date.

(d) *Termination.* Notices published pursuant to this section shall remain in effect until the earlier of the following dates:

(1) Any expiration date stated in the notice; or

(2) The effective date of any notice which modifies, rescinds, or supercedes the initial notice.

§ 653.25 Discard prohibitions.

There shall be no discarding of herring at sea by fishing vessels.

§ 653.26 Spawning closures. [Reserved]

§ 653.27 Size restrictions. [Reserved]

[FR Doc. 80–24028 Filed 8–7–80; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 45, No. 155
Friday, August 8, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

West Indian Sugarcane Root Borer

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule changes; reopening of comment period; notice of public hearing.

SUMMARY: A document published in the **Federal Register** on February 8, 1980, proposed to quarantine Florida, Puerto Rico, and the Virgin Islands of the United States, and establish regulations for the purpose of restricting the interstate movement of certain articles from Puerto Rico, the Virgin Islands of the United States, and certain areas of Florida because of the West Indian sugarcane root borer. This document changes the proposal by amending the list of proposed regulated areas for Orange County and Seminole County in Florida. Also, this document gives notice of a reopening of the comment period and an additional public hearing to be held in Puerto Rico concerning the proposal. These actions are necessary to correct mistakes in the list of proposed regulated areas and to increase public involvement concerning the proposal.

DATE: Written comments must be received on or before October 7, 1980. A public hearing will be held on September 16, 1980.

ADDRESS: Written comments should be submitted to H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782. A public hearing will be held at the U.S. Department of Agricutlure Experiment Station, Room 8, Rio Piedras, Puerto Rico 00928, (809) 767–9705.

FOR FURTHER INFORMATION CONTACT:

H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, 301–436–8247. The Draft Impact Analysis describing the options considered in developing the proposed rule (the entire proposed rule, including the amendments thereof set forth in this document) and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION:

Classificaiton

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Background

On February 8, 1980, the Animal and Plant Health Inspection Service (APHIS) published a document in the **Federal Register** (45 FR 8654–8662) which proposed to quarantine Florida, Puerto Rico, and the Virgin Islands of the United States, and establish regulations for the purpose of restricting the interstate movement of certain articles from Puerto Rico, the Virgin Islands of the United States, and regulated areas in Florida, because of the occurence of the West Indian sugarcane root borer. Also, in accordance with the **Federal Register** document of February 8, 1980, a public hearing to consider the proposal was held on March 12, 1980, in Orlando, Florida.

Change in Proposal

Under the proposal, regulated articles would be prohibited from being moved interstate from any regulated area in Florida, Puerto Rico, or the Virgin Islands of the United States unless moved in accordance with specified conditions. Certain areas in Broward County, Orange County, and Seminole County in Florida were proposed to be designated as regulated areas because of the West Indian sugarcane root borer (see proposed § 301.89–2(c)). This included the following areas in Orange County and Seminole County:

Orange County: Secs. 22, 23, 24, 25, 26, 27, 34, 35 and 36, T. 20 S., R. 27 E.; Secs. 1, 2, 3, 10, 11, 12, 13, 14, 23 and 24, T. 21 S., R. 27 E.; W½ and secs. 3, 10, 13, 22, 26, 27, 34 and 35, T. 20 S., R. 28 E.; N½ and secs. 19, 20, 21, 22, 23, and 24, T. 21 S., R. 28 E.

Seminole County: Secs. 7, 10, 22, and 19, T. 21 S., R. 29 E.

Under the provisions of the proposal an area was listed as a proposed regulated area only if it appeared that the West Indian sugarcane root borer occurred in that area. However, as was pointed out at the public hearing held in Orlando, Florida, there were mistakes in the proposal with respect to the listing of areas in Orange County and Seminole County. The reference to "W½ and secs. 3, 10, 13, 22, 26, 27, 34 and 35, T. 20 S., R. 28 E" was intended to read "W½ and secs. 3, 10, 15, 22, 26, 27, 34 and 35, T. 20 S., R. 28 E" and the reference to Secs. 7, 10, 22, and 19, T. 21 S., R. 29 E" with respect to Seminole County was intended to read "Secs. 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21 and 22, T. 21 S., R. 29 E."

Accordingly, the proposal is changed to reflect what was intended. These changes are necessary to accurately reflect the list of areas in Orange County and Seminole County where it appears that the West Indian sugarcane root borer occurs.

Written Comments

The comment period for written comments concerning the proposal as set forth in the document published in the **Federal Register** on February 8, 1980, expired on April 8, 1980. However, the comment period is reopened until October 7, 1980, to afford interested persons the opportunity to comment concerning the changes in the proposed list of regulated areas in Orange County and Seminole County in Florida, and to comment concerning any other portions of the proposal.

Comments should bear a reference to the date and page numbers of this issue of the **Federal Register**. All written comments made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 633, Hyattsville, MD 20782, 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 (7 CFR 1.27(b)).

Public Hearing

Also, APHIS has received letters requesting that an additional public hearing concerning the entire proposal be held in Puerto Rico, including such a letter from the Secretary of Agriculture of Puerto Rico. In order to provide additional public involvement concerning any aspects of the proposal an additional public hearing will be held at the U.S. Department of Agriculture Experiment Station, Room 8, Rio Piedras, Puerto Rico 00928, (809) 767–9705.

A representative of APHIS will preside at the hearing. Also, at the hearing, a representative of APHIS will present a statement explaining the purpose and basis for the proposal. Any interested person may appear and be heard in person, by attorney, or by other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions concerning the proposal.

The hearing will commence at 10 a.m., and conclude at 5 p.m., local time, unless the presiding official otherwise specifies during the course of the hearing. Persons who wish to be heard are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 to 10 a.m. Those registered persons will be heard in the order of their registration. However, any other person who wishes to be heard or ask questions at the hearing will be afforded such opportunity, after the registered persons have presented their views. It is requested that duplicate copies of any written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may, if it becomes necessary, limit the time for each presentation in order to allow everyone wishing to present a statement the opportunity to be heard.

Done at Washington, D.C., this 4th day of August 1980.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-24127 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 722

1981 Extra Long Staple Cotton Program; Proposed Determinations Regarding National Marketing Quota, National Acreage Allotment, and Other Related Operating Provisions for 1981

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1981 crop of extra long staple cotton (referred to as "ELS cotton"):

(1) National marketing quota.

(2) National acreage allotment.

(3) Apportionment of the national acreage allotment to States and counties.

(4) Date or period for conducting the national marketing quota referendum.

The above determinations are required to be made by the Secretary in accordance with provisions of the Agricultural Adjustment Act of 1938, as amended.

This notice invites written comments on these proposed determinations.

DATES: Comments must be received on or before October 7, 1980.

ADDRESS: Mail comments to Mr. Jeffress A. Wells, Director, Production Adjustment Division, ASCS, USDA, Room 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, 202–447–7873.

SUPPLEMENTARY INFORMATION: The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from the above named individual. This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified "not significant".

In compliance with Secretary's Memorandum No. 1955 and "Improving Government Regulations" (43 FR 50988), it is determined after review of these regulations contained in 7 CFR 722 for need, currency, clarity and effectiveness that no additional changes be proposed at this time.

Any comments which are offered during the public comment period on any of these regulations, however, will be evaluated in the development of the final rule.

The title and number of the federal assistance programs that this notice applies to are: Title-Cotton Production Stabilization; Number 10.052; as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Proposed Determinations

The following determinations with respect to the 1981 crop of ELS cotton are to be made pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, 7 U.S.C. 1281) (hereinafter referred to as the "Act"):

(a) *National marketing quota.* Section 347(b)(1) of the Act requires the Secretary to proclaim the amount of the national marketing quota for the 1981 crop of ELS cotton by October 15, 1980. Such marketing quota shall be the number of standard bales of ELS cotton equal to the sum of the estimated domestic consumption and estimated exports, less estimated imports, for the 1981–82 marketing year, which begins August 1, 1981, plus such additional number of bales, if any, as the Secretary determines necessary to assure adequate working stocks in trade channels until ELS cotton from the 1981 crop becomes readily available without resort to Commodity Credit Corporation (CCC) stocks. (At present, CCC stocks are insignificant.) The Secretary may reduce the quota so determined for the purpose of reducing surplus stocks, but not below the minimum quota of 82,481 standard bales prescribed under section 347(b)(2) of the Act.

(b) *National acreage allotment.* Pursuant to section 344(a) of the Act, the national acreage allotment for the 1981 crop of ELS cotton shall be that acreage determined by multiplying the national marketing quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield per acre of ELS cotton for the four calendar years 1976, 1977, 1978, and 1979. The national average yield per planted acre during this four year period was 623 pounds.

If favorable growing conditions exist throughout the 1980–81 season, the carryover of ELS cotton as of August 1, 1981, could be around 45,000 bales. If poor growing conditions should prevail during the 1980–81 season, carryover on August 1, 1981, could be around 30,000 bales. A carryover of about 50,000 to 60,000 bales is generally considered desirable.

Based on these carryover projections, and tentative projections of domestic use, exports and imports for the 1981–82 season, the marketing quota should be between 156,000 and 221,000 bales, and the national acreage allotment should be between 120,000 to 170,000 acres in order to maintain the desirable carryover level at the end of the 1981–82 marketing year.

(c) *Apportionment of the national acreage allotment to States and counties.* Sections 344 (b) and (e) of the Act provide that the national acreage allotment for the 1981 crop of ELS cotton shall be apportioned to States and counties on the basis of the acreage planted to ELS cotton (including acreage regarded as having been planted) during the five calendar years 1975, 1976, 1977, 1978, and 1979, adjusted for abnormal weather conditions during such period. Section 344(e) further provides that the State committee may reserve not to exceed 10 percent of its State allotment to adjust county allotments for trends in acreage, for counties adversely affected by abnormal conditions affecting plantings, or for small or new farms, or to correct inequities in farm allotments and to prevent hardship.

(d) *Date or period for conducting the national marketing quota referendum.* Section 343 of the Act requires the Secretary to conduct a referendum by secret ballot of the farmers engaged in the production of ELS cotton during 1980 by December 15, 1980, to determine whether such farmers are in favor of or opposed to the quota. If more than one-third of the farmers voting in the referendum oppose the national marketing quota, such quota shall become in effective upon proclamation of the results of the referendum. Section 343 further requires the Secretary to proclaim the results of the referendum within 30 days after the date of such referendum.

Pursuant to section 343, the Secretary proposes that said referendum be held during the period December 8–11, 1980, inclusive.

Accordingly, comments are requested with respect to the amounts of the national marketing quota, national acreage allotment, apportionment of the national acreage allotment to States and counties and dates for conducting the national marketing quota referendum, in accordance with the provisions of the Act.

Comments will be made available for public inspection at the Office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.).

Signed at Washington D.C., on August 5, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-24009 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 94

Importation of Carcasses, Parts or Products of Poultry, Game Birds, and Other Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed amendment is to provide for the importation of carcasses of quail of free flying origin which have been eviscerated with the heads and feet removed. This action is being proposed to permit the entry of such carcasses from viscerotropic velogenic Newcastle disease (VVND) affected countries in the same manner that other game birds are allowed entry. The intended effect of this action would be to facilitate the importation of such quail carcasses without the risk of the introduction and spread of VVND. This proposed amendment would also change the definition of "game birds" to provide for the importation of migratory fowl other than those species presently listed in the definition of game birds. This action is being taken because the present definition is too limited. The intended effect of this action is to enlarge the definition of game birds to include migratory birds other than just ducks, geese, pigeons and doves.

DATE: Comments on or before September 8, 1980.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 823, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: W. J. Turner, USDA, APHIS, VS, Federal Building, Room 823, Hyattsville, MD 20782, (301) 436–8499. The Draft Impact Analysis describing the options considered in developing this proposed rule, and the impact of implementing each option is available on request from Program Services Staff, Veterinary Services, Animal and Plant Health Inspection Service, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8695.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant". Dr. M. J. Tillery, Director, National Program Planning Staffs, VS, APHIS, USDA, has determined that an emergency situation exists which warrants less than a 60-day comment period on this proposed action because quail hunting season begins in Mexico, October 1, 1980. Therefore, if adopted, it is of importance that this proposed amendment be published in the **Federal Register** and effective no later than that date.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132 (21 U.S.C. 111, 134c, 134f), the Animal and Plant Health Inspection Service is considering amending Part 94, Title 9, Code of Federal Regulations.

This proposed amendment would provide for the importation into the United States of carcasses of free flying quail when such carcasses have been eviscerated with the head and feet removed. The carcasses of quail must be of a free flying origin as opposed to commercial, domestic or pen raised birds.

Under the present regulations, carcasses of game birds which originate in or transit any country infected with VVND may be imported into the United States pursuant to 9 CFR 94.6(d)(1) if they have been eviscerated and the heads and feet removed. This manner of importation applies only to game birds and is allowed because it has been shown through experience that migrating birds do not constitute a significant risk of introducing VVND into this country if they have been eviscerated with the heads and feet removed. This proposal would add another species of bird to the list of those whose carcasses can be imported into the United States if eviscerated with the heads and feet removed. This species is quail of free flying origin.

Although free-flying quail are non-migratory birds, a review of scientific studies concerning the VVND virus indicates that such birds, when imported under the same conditions as game birds, would not constitute any risk of introduction and spread of VVND.

As with importations of game birds, carcasses of free-flying quail would be inspected at the port of entry by a representative of the United States Department of Agriculture to ensure that a qualified individual has observed such carcasses being imported and has

determined that such carcasses of quail are of free flying origin.

Close inspection of free-flying quail carcasses would reveal that these birds do not carry the subcutaneous fat that characterize commercial, domestic, or pen raised quail. Also, the carcasses of free-flying quail would generally be felled by hunters and would usually show evidence of bird shot or other weapon related injuries.

This proposal would amend the definition of the term "game birds" in § 94.6(b)(4). The proposed amendment would delete the word "of" in the first sentence and insert in lieu of the words "such as", so as to provide for the importation of migratory birds other than just ducks, geese, pigeons and doves which may be legally hunted and imported into the United States and which do not fit in the present limited definition of game birds. This amendment is necessary because occasionally a migratory game bird, other than just ducks, geese, pigeons and doves, is offered for entry into the United States pursuant to 9 CFR 94.6(d)(1), but such entry is denied because of the limited definition of game birds. Yet, these other birds would not present any greater risk of introducing VVND than would ducks, geese, pigeons or doves. Therefore, it is felt that the term "game birds" should be redefined to include these other migratory birds.

Accordingly, Part 94, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. In § 94.6(b)(4) the first sentence would be amended to read:

§ 94.6 Carcasses of poultry, game birds, and other birds, parts or products thereof, and eggs other than hatching eggs; restrictions, exceptions.

(b) * * *

(4) *Game Birds*—Migratory types of game birds such as ducks, geese, pigeons, and doves. * * *

* * * * * *

2. Section 94.6(d)(1) would be revised to read:

(d) * * *

(1) Carcasses of game birds and carcasses of free-flying quail (as opposed to commercial, domestic, or pen raised quail) may be imported if they have been eviscerated and the heads and feet removed.

* * * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, room 823, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 31st day of July 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-23746 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 309

Public Access to Application Files

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed amendments to regulations.

SUMMARY: FDIC regulations provide that with respect to most applications filed by banks a separate public file is to be created and made available for public review. The FDIC has found that, relative to the number of applications filed, very few requests are made to review the public files. As a result, most public files on pending applications are prepared and never used. The FDIC is proposing to amend its regulations to eliminate the separate public file as such. Instead, the information currently kept in a public file will be retained as a part of the application file and will be made available within one day after a request to see the file is made.

DATES: Comments must be received by October 20, 1980.

ADDRESSES: Comments should be mailed to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. Comments may be hand delivered to and reviewed in Room 6108 at the same address between 8:30 a.m. and 5:00 p.m. during work days.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel, Legal Division, FDIC, 550 17th Street, NW., Washington, D.C. 20429 (202–389–4628) or James L. Sexton, Deputy Director, Division of Bank Supervision, FDIC, 550 17th Street NW., Washington, D.C. 20429 (202–389–4283).

SUPPLEMENTARY INFORMATION: Section 303.14(c) of FDIC's regulation (12 CFR 303.14(c)) provides that with respect to any application for deposit insurance, to establish a branch, to relocate a main office or a branch, or to merge, a public file is to be maintained and made available for public inspection. This file is to consist of: the application with supporting data and supplementary information; data comments and information submitted by interested persons in favor of or in opposition to the application; and those portions of the investigation report prepared by the FDIC's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant and either the future earnings prospect or the future prospects of the applicant or applicants. In addition, although not required by the regulation, a summary assessment of the application, based on the applicant's last Community Reinvestment Act examination (*see* 12 CFR 345.7), is made a part of the public file. The public file does not contain any confidential information that represents: (1) Personal information the release of which could constitute a clearly unwarranted invasion of privacy: (2) commercial financial information the disclosure of which would result in substantial competitive harm to the submitter; or (3) information the disclosure of which could seriouly affect the financial condition of any financial institution.

It has been the experience of the FDIC that in most instances no one ever asks to view the public file on a pending application. As a result, most public files are prepared, copied, filed and eventually shredded without ever being used. The maintenance of separate public files on each application has proven to be a waste of filing space, paper and personnel time.

In order to eliminate the expenses incurred under the current procedures, while meeting the need for public access where it is desired, the FDIC is proposing that § 303.14(c) be revised. This revision provides that specified nonconfidential portions of an application file will be publicly available upon request. The information to be available is the same as is currently contained in the public file. A separate public file will no longer be maintained. In order to ensure quick access to the file, the proposal requires that the nonconfidential portions of the file be made available to a requestor no later than one day after receipt of a request to review the file. (In most instances, it is expected the file could be made available almost immediately upon request.)

Certain technical amendments to other sections of Parts 303 and 309 that refer to the public file also are being proposed in order to conform these sections with the change to § 303.14(c).

As the amendments are internal in nature (i.e., affect the manner in which

applications will be filed) these changes in FDIC procedures will have no effect on any insured bank. In particular, they will not affect the recordkeeping, reporting requirements, or competitive status of banks. In view of this, FDIC has concluded that a cost-benefit analysis (including a small bank impact statement) regarding the change is unnecessary.

Alternatives considered other than the proposal were: (1) Leaving the regulation unchanged; or (2) eliminating the public file and requiring requestors to use the procedures of the Freedom of Information Act (the "FOIA", 5 U.S.C. 552) to obtain information relating to pending applications. As discussed above the FDIC determined retained the public file will result in a large expenditure of resources with little corresponding public benefit. Eliminating the public file with no provisions for expedited access would unreasonably burden any individual who has a need to review a file. Under the FOIA a file need not be made available for ten days after receipt of the request. Also, under FDIC procedures, the request must be made in writing to the Executive Secretary in Wasington, D.C. Where an individual needs to view the application file the FOIA procedures may be inconvenient or too slow. The proposed regulation provides access to more information than required to be released under the FOIA, permits a request for access to be made either in writing or orally and requires the material to be made available *no later* than one working day after receipt of the request. The proposed amendment relieves regional staff of the administrative burdens and costs attendant with the current public file, while not adversely affecting the public's interest.

In consideration of the foregoing, it is proposed to amend 12 CFR Chapter III as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, AND NOTICES OF ACQUISITION OF CONTROL

1. By revising the third sentence of the notice required by § 303.14(b)(3) to read as follows:

§ 303.14 Application procedures.

* * * * *

(b) * * *

(3) * * * The nonconfidential portions of the application file are on file in the Regional Office and available for public inspection upon request during regular business hours. * * *

2. By revising § 303.14(c) to read as follows:

§ 303.14 Applications procedures.

* * * * *

(c) *Public access to application file*—(1) *Inspection of application.* Any person may inspect the nonconfidential portions of an application file. The nonconfidential portions of the file will be available for inspection in the Regional Office of the Federal Deposit Insurance Corporation in which an application has been filed not more than one working day after receipt by the Regional Office of the request (either written or oral) to see the file. Photocopies of the nonconfidential portions of the file will be available, upon request, to any person. The charge for copies will be made in accordance with the fee schedule contained in § 309.5(b) of this chapter.

(2) *Nonconfidential portions of application.* Subject to the provisions of paragraph (c)(3) of this section, the following information in an application file will be available for public inspection:

(i) The application with supporting data and supplementary information.

(ii) Data, comments, and other information submitted by interested persons in favor of or in opposition to such application.

(iii) Those portions of the investigation report prepared by the Corporation's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant or applicants and either the future earnings prospects or the future prospects of the applicant or applicants.

(iv) A summary assessment of the applicant or applicants, based on their last Community Reinvestment Act examination.

(v) Where a hearing has been held pursuant to paragraph (e) of this section, any evidence submitted pursuant to paragraph (f)(3) of this section and the hearing transcript described in paragraph (f)(5) of this section.

(3) *Withholding of confidential information.* No material described in paragraph (c)(2) of this section shall be available if it is determined to be confidential under the provisions of 5 U.S.C. 552. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy.

(ii) Commercial or financial information the disclosure of which would result in substantial competitive harm to the submitter.

(iii) Information the disclosure of which could seriously affect the financial condition of any financial institution.

3. By revising § 303.14(f)(6)(i) and deleting and reserving section 303.14(h) as follows:

§ 303.14 Application procedures.

* * * * *

(f) *Hearing rules.* * * *

(6) *The hearing record*—(i) *Contents. The nonconfidential portions of the application, as described in paragraph (c) of this section, shall automatically be a part of the hearing record.*

(ii) * * *

(iii) * * *

(iv) * * *

(v) * * *

* * * * *

(h) [Reserved].

* * * * *

PART 309—DISCLOSURE OF INFORMATION

4. By revising § 309.4(b)(2) as follows:

§ 309.4 Information made available for public inspection.

* * * * *

(b) *Information made available at the Corporation's discretion.* (1) * * *

(2) Nonconfidential portions of applications filed with the Corporation as provided in § 303.14(c). These files are maintained at the Regional Office of the Corporation where the applicant bank is located and include applications for deposit insurance, to establish branches, to relocate main or branch offices and to merge.

* * * * *

Dated: August 4, 1980.

By order of the Board of Directors.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-23976 Filed 8-7-80; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Economic Regulation; Docket 38348; EDR-404A]

Notice to Passengers of Conditions of Carriage

Dated: August 5, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The CAB is extending the comment period in its rulemaking proceeding to require that airlines give

actual notice to passengers about the terms of the contract of carriage. The extension is at the request of the Air Transport Association.

DATES: Comments by: September 3, 1980. Reply comments by: September 23, 1980.

Comments and relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 38348, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Patricia Kennedy, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202–673–5158.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR–404 (45 42629, June 25, 1980), the Board proposed to prevent tariffs from automatically becoming part of the passenger/airline contract. Under the proposal, airlines would be required to give passengers actual notice of the terms of the contract of carriage.

On July 23, 1980, the Air Transport Association of America (ATA) asked for an extension of the comment period for 30 days. ATA argued that the broad scope of the proposal and the issues, both practical and legal, raised by it require extensive, detailed examination. Since only a total of 6 weeks was provided for comments in this proceeding, additional time is needed for study of the complex issues raised by the proposal.

There have been no previous extensions requested in this proceeding, and no specific target date has been set for Board action. The Board recognizes that this proceeding raises issues and practical problems that require the type of study described by ATA. The Board would also like to have as many and as thorough comments as possible.

Accordingly, I find good cause to extend the time for preparation of initial comments for 30 days. The time for the filing of reply comments is being extended accordingly.

Under authority delegated by the Board in 14 CFR 385.20(d), the time for filing initial comments is extended to September 3, 1980, and the time for filing reply comments is extended to September 23, 1980.

(Secs. 204, 403, 411, and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 72 Stat. 758, as amended, 72 Stat. 769, 72 Stat. 788, as amended; 49 U.S.C. 1324, 1373, 1381, 1482)

By the Civil Aeronautics Board.

Richard B. Dyson,

Associate General Counsel, Rules and Legislation.

[FR Doc. 80–23996 Filed 8–7–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 606

[Docket No. 79N–0094]

Blood and Blood Components; Error and Accident Reports

AGENCY: Food and Drug Administration.

ACTION: Proposed rule

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations concerning blood and blood components to require the submission of certain error and accident reports to the agency by licensed and unlicensed blood establishments. These reports of error and accidents are being limited to those related to the issue of hepatitis-reactive blood and blood components and the accidental infusion of the wrong red blood cells to a donor during plasmapheresis. Certain other reports of error and accidents would no longer be required to be submitted to the Director, Bureau of Biologics, by these blood establishments. The agency is also proposing to amend the current good manufacturing practice (GMP) regulations for blood and blood components to provide a uniform procedure for reporting and maintaining these records.

DATE: Comments by November 6, 1980.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul K. Hirananka, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Section 351 of the Public Health Service Act (42 U.S.C. 262) requires the licensing of all manufacturers of blood (whole blood collected from a single donor and processed either for transfusion or further manufacturing) and blood components (that part of a single-donor unit of blood separated by physical or chemical means) engaged in interstate commerce. Both blood and blood components are used therapeutically. A license is issued to a blood establishment only after the establishment has demonstrated that it is capable of consistently manufacturing products that are safe, pure, potent, and effective. While blood banks and blood component manufacturers engaged only in intrastate commerce are not required to be licensed under the Public Health Service Act, they are required to comply with the current GMP regulations for blood and blood components (21 CFR Part 606) as are licensed blood establishments. The GMP regulations require both licensed and unlicensed manufacturers to comply with the regulations for additional standards for human blood and blood products (21 CFR Part 640). Both types of establishments are required by the GMP regulations to maintain records of errors and accidents under § 606.160(b)(7)(iii) (21 CFR 606.160(b)(7)(iii)), and adverse reactions under § 606.170(a) (21 CFR 606.170(a)), and to report fatalities to the Director, Bureau of Biologics, under § 606.170 (b) (21 CFR 606.170(b)).

In addition, all licensed establishments are required under § 600.14 (21 CFR 600.14) to promptly notify the Director, Bureau of Biologics, of errors or accidents in the manufacture of products that may affect the safety, purity, or potency of any product. The reporting of errors or accidents occurring in the manufacture of blood and blood components is necessary so that FDA can respond with maximum efficiency in situations where the public health may be endangered. These reports are also useful to the agency in assessing the adequacy of existing regulations to protect the safety of donors, processors, and recipients while ensuring the continued safety, purity, potency, and effectiveness of blood and blood components. Moreover, these reports are necessary in assessing the adequacies of manufacturers' standard operation procedures and compliance with GMP.

The agency has determined that the submission of much of the information that licensed blood and blood components manufacturers are required to submit to the Director, Bureau of Biologics, under § 600.14 is unnecessary because many of the errors and accidents concerning these products are corrected before their administration. Submission of these error and accident reports is time consuming and costly for the manufacturer and requires immediate followup by FDA although in

most cases the manufacturer has corrected the error or accident before transfusion of the product. Aftert review and analysis of the § 600.14 reports, the agency concludes that only two types of errors and accidents need be reported to the Director, Bureau of Biologics, by blood establishments. There are errors and accidents related to the issue of blood or a blood component that is reactive to a test for hepatitis B surface antigen, and the infusion of the wrong red blood cells to a donor during plasmapheresis; each could result in an adverse reaction or a fatality.

Hepatitis reactive blood that is labeled by the processing laboratory as nonreactive may remain undetected because the test for hepatitis is not usually repeated by the receiving blood banks. As a result, such blood may be used for transfusion with the likelihood of transmitting hepatitis to the recipient or to laboratory personnel processing the blood. Another danger could result from the infusion of the wrong red blood cells to a donor during plasmapheresis. Infusion of incompatible red cells causes the destruction of the recipient's red blood cells, and could result in death of the recipient, or it may sensitize the recipient to antigens the recipient does not possess.

Other potentially hazardous errors or accidents that occur in the processing laboratory, such as incorrect ABO and Rh grouping and labeling, should be discovered by the blood bank during the crossmatching or retyping of the blood and corrected before the blood is transfused. Consequently, it is not essential that reports of such errors be submitted to the Director, Bureau of Biologics. Reducing the amount of information required to be submitted to the Bureau of Biologics will lessen the burden for both licensed blood establishments as well as the agency. This proposed change in reporting requirements, moreover, would not lessen the public's protection. Under § 606.160(b), blood establishments are still required to maintain reports of all errors and accidents for review by FDA personnel during routine and other types of establishment inspections.

The reporting of information concerning errors and accidents under § 600.14 does not presently apply to unlicensed blood establishments. Similarly, under § 606.100 *Standard operating procedures* (21 CFR 606.100), unlicensed blood establishments are exempted from the requirements of Parts 640 (21 CFR Part 640) relating to licenses, licensed establishments, and submission of material or data to or approval by the Director, Bureau of Biologics. Because of the inherent danger to the public, and because these establishments represent such a large sector of the blood processing community, the agency believes that unlicensed blood establishments must also be required to submit reports of certain errors or accidents to the Director, Bureau of Biologics. In addition to the substantive changes, the agency is making a grammatical change in the proposed § 600.14 to state the regulatory requirements of the agency in the active rather than the passive voice.

Therefore, the agency is proposing to amend §§ 600.14 and 606.100 to provide that errors and accidents associated with blood and blood components shall be reported as required in Part 606.

The records and reporting requirements under § 606.160 (21 CFR 606.160) provide that records must be maintained for errors and accidents and be as detailed as necessary. The agency believes that detailed records should include corrective actions taken to prevent or reduce the possibility of a recurrence of the error or accident, including any change in the blood establishment's standard operating procedure. Additionally, the agency believes these records should be summarized at least annually for a review by FDA to determine the adequacy of corrective actions taken for the continued protection of patients and donors. However, existing § 606.160 does not specifically identify the information concerning errors and accidents which should be recorded and reported.

Accordingly, FDA is proposing to add new § 606.171 to identify the information to be included in the reporting and recording of errors and accidents and, in accordance with the amendment, FDA is proposing to amend § 606.160(b)(7)(iii) to reference the information required under proposed § 606.171. For uniformity and clarification in preparing error and accident reports, FDA is also proposing to amend § 606.3 (21 CFR 606.3) to include definitions of "error and accident" and "issue."

The recordkeeping and periodic reporting requirements contained in this proposal are subject to clearance by the Office of Management and Budget (OMB) under the Federal Reports Act of 1942 (44 U.S.C. Chapter 35). FDA intends to submit to the Director, OMB copies of this proposed regulation and other related materials during the comment period on the proposal. If OMB approves the proposed requirements, FDA intends to impose the requirements at the time a final regulation based on the proposal is made effective. If OMB does not approve, without change, the recordkeeping and periodic reporting requirements contained in the proposal, FDA will revise the final regulation as necessary to comply with OMB's determination. Any comments received from OMB will become part of the administrative record for this matter and will be placed on file for public review in the office of the Hearing Clerk, FDA, in Docket No. 79N–0094.

The agency has determined under 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 510, and 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended 1055–1056 as amended), 76 Stat. 794 as amended (21 U.S.C. 321, 351, 352, 360, 371); the Public Health Service Act (secs. 351, 352, 353, and 361), 58 Stat. 702 and 703, as amended, 81 Stat. 536 (42 U.S.C. 262, 263, 263a, and 264), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 600 and 606 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. In Part 600, § 600.14 is amended by revising the section heading, and the existing text and designating it as paragraph (a), and by adding new paragraph (b) to read as follows:

§ 600.14 Reporting of errors and accidents.

(a) Except as provided in paragraph (b) of this section, a manufacuturer shall notify promptly the Director, Bureau of Biologics, of errors and accidents in the manufacture of products that may affect the safety, purity, or potency of any product.

(b) Notification of errors and accidents associated with blood and blood components is required only for those relating to the issue of blood and blood components that are reactive to a test for hepatitis B surface antigen and the infusion of the wrong red blood cells to a donor during plasmapheresis. The manufacturer shall promptly report such errors and accidents to the Director, Bureau of Biologics, as required in Part 606 of this chapter.

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

2. In Part 606:

a. Section 606.3 is amended by adding paragraphs (k) and (l) to read as follows:

§ 606.3 Definitions.

* * * * *

(k) "Issue" means the initial distribution of blood or a blood component after completion of processing or compatibility testing.

(l) "Error and accident" means an inadvertent or other diviation from a standard operating procedure or an unexpected event occurring by chance or from unknown causes, that results in the issue of blood or a blood component that fails to meet the appropriate regulations, or the accidental infusion of the wrong red blood cells to a donor during plasmapheriesis.

b. Section 606.100(a) is revised to read as follows:

§ 606.100 Standard operating procedures.

(a) Standard operating procedures, except those for clinical investigations, shall comply with published additional standards for human blood and blood products in Part 640 of this chapter. References in Part 640 relating to licenses, licensed establishments, and submission of material or data to or approval by the Director, Bureau of Biologics, are not applicable to establishments not subject to licensure under section 351 of the Public Health Act; except that unlicensed establishments shall report to the Director, Bureau of Biologics, any errors and accidents relating to the issue of blood or a blood component that is reactive to a test for hepatitis B surface antigen and the infusion of the wrong red blood cells to a donor during plasmapheresis.

* * * * *

c. Section 606.160(b)(7)(iii) is revised to read as follows:

§ 606.160 Records

* * * * *

(b) * * *

(7) * * *

(iii) Errors and accidents as required in § 606.171.

* * * * *

d. New § 606.171 is added to read as follows:

§ 606.171 Reporting and recording of errors and accidents.

(a) *Submission of reports.* Under § 600.14(b) of this chapter, a report of an error or accident relating to the issue of blood and blood components that are reactive to a test for hepatitis B surface antigen and the infusion of the wrong red blood cells to a donor during plasmapheresis shall be made in writing to the Director, Bureau of Biologics, within 7 working days of its discovery by the facility responsibile for the error or accident. Names of donors or patients shall be omitted from the reports.

(b) *Contents of submitted reports.* (1) Reports related to the issue of blood or a blood component that is reactive to a test for hepatitis B surface antigen shall include, but are not to be limited to, the following information:

(i) The name of the product.

(ii) The lot number.

(iii) The date the error or accident was discovered.

(iv) The date the error or accident occurred.

(v) A statement indicating whether or not the product was transfused.

(vi) If the product was transfused, a statement indicating whether or not the patient's physician was aware of the error or accident.

(vii) A statement indicating whether or not the patient subsequently contracted hepatitis.

(viii) A statement indicating the type of person responsible for the error or accident, e.g., a nurse, a technologist, a shipping clerk, etc.

(ix) An explanation of how the error or accident occurred.

(x) The action taken by the manufacturer to prevent a recurrence of the error or accident. If corrective action included a procedural revision, a description of the revised procedure shall be submitted for review and approval by the Director, Bureau of Biologics.

(xi) If defective hepatitis reagents are implicated as the cause of the error or accident, the name of the manufacturer, the lot number, and the expiration date of the reagent. When available, one unopened sample of the suspect reagent lot shall be retained for field collection by FDA field or other personnel and its submission to the Bureau of Biologics along with a copy of any laboratory test results indicating the suspected deficiency.

(2) Reports related to the infusion of the wrong red blood cells to a donor during plasmapheresis shall include, but are not to be limited to, the following information:

(i) The date infusion occurred.

(ii) The approximate volume of red blood cells infused.

(iii) The blood group of the donor.

(iv) The blood group of the infused red blood cells.

(v) A description of the effect on the donor.

(vi) A description of the care given to the donor.

(vii) An explanation of how the incident occurred.

(viii) The corrective actions taken to prevent a recurrence of the error or accident. If this action includes a procedural revision, a description of the revised procedure shall be submitted for review and approval by the Director, Bureau of Biologics.

(c) *Records.*—(1) *General.* Records of reported and unreported errors and accidents shall be maintained by the manufacturers as required in § 606.160(b)(7)(iii), and shall meet the requirements under paragraph (b) (1) and (2) of this section. If a corrective action includes a procedural revision, a description of the revised procedure shall be included in the establishment's standard operating procedure.

(2) *Annual summary.* The records in paragraphs (b) (1) and (2) and (c)(1) of this section shall be summarized by the manufacturer at least annually and shall be available to the Food and Drug Administration at the time of inspection. The annual summary shall be submitted to the Director, Bureau of Biologics, upon request. In preparing the annual summary, the manufacturer shall include at least the errors and accidents concerned with:

(i) ABO group determination.

(ii) Rh group determination.

(iii) Application of incorrect labels to correctly tested products.

(iv) Incorrect identification (or labeling) of a donor or recipient or any mislabeling of blood or a blood component sample.

(v) Clerical errors in recording a summary of automated test results or in the issue of the wrong unit.

(vi) Absence of required labels on products.

(vii) Issue of incorrectly crossmatched blood for transfusion, except as approved in special cases by the blood bank director.

(viii) Antibody screening (detectable by standard operating procedure method).

(ix) Incorrect expiration date.

(x) Leakage of containers; breakage of frozen products during shipment may be excluded.

(xi) Release of product not intended for, or not suitable for, distribution.

(xii) Issue of products having a reactive hepatitis B surface antigen test.

(xiii) Contaminated products issued; specify.

Interested persons may, on or before November 6, 1980, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The

comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: July 31, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-23884 Filed 8-7-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-277-76]

Income Tax; Shareholder Requirements Relating To Electing Small Business Corporations; 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 certain shareholder requirements, and related matters, for electing small business corporations.

DATES: The public hearing will be held on October 8, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by September 24, 1980.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-277-76), 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, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1371 and 1372 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Thursday, April 17, 1980, at page 26092 (45 FR 26092).

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 by 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 September 24, 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 unitl 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. 80-23989 Filed 8-7-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Parts 2520 and 2530

Rules and Regulations for Reporting and Disclosure and Minimum Standards for Employee Pension Benefit Plans; Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans

AGENCY: Department of Labor.

ACTION: Proposed rulemaking.

SUMMARY: This document contains proposed regulations, applicable to certain multiple employer pension plans, which deal with reports that must be furnished to participants in such plans (and, in some cases, to their beneficiaries) regarding their benefit entitlements, and with records that must be maintained to provide the information necessary for these reports. The Employee Retirement Income Security Act of 1974 (the Act) authorizes the Secretary of Labor to prescribe regulations regarding individual benefit reporting to participants and beneficiaries and individual benefit recordkeeping. The proposed regulations, if adopted, would provide necessary guidance to employers maintaining certain multiple employer pension plans and to plan administrators of such plans, and would enable participants in such plans to receive accurate, timely and useful information.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor (the Department) on or before October 7, 1980. These regulations, if adopted, would generally become effective 120 days after adoption. However, with respect to collectively bargained multiple employer plans, the regulations would not become effective until nine months after the expiration of current collective bargaining agreements (but in no case more than 45 months after adoption).

ADDRESSES: Written comments (preferably three copies) should be submitted to the Division of Reporting and Disclosure, Pension and Welfare Benefit Programs, Room N-4508, U.S. Department of Labor, Washington, D.C. 20216, Attention: Multiple Employer Individual Benefit Reporting and Recordkeeping Regulations. All comments should be clearly referenced to the section of the regulations to which they apply. All written comments will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mary O. Lin, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-9595, or Joseph L. Roberts III, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8685. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor has under consideration proposed

regulations applicable to multiple employer pension plans [1] dealing with reports that must be furnished to individual participants (and, in some cases, to their beneficiaries) regarding their benfit entitlements under employee pension benefit plans, and with records that must be maintained to provide the information necessary for these reports. These regulations are proposed under the authority contained in sections 105, 209 and 505 of the Act (Pub. L. 93–406, 88 Stat. 849, 865 and 894, 29 U.S.C. 1025, 1059 and 1135). Parallel regulations relative to single employer plans [2] have already been proposed (45 FR 51231, August 1, 1980).

The Department has determined that these proposed regulations are "significant" within the meaning of Department of Labor guidelines (44 FR 5570, January 26, 1979) issued to implement Executive Order (44 FR 12661, March 24, 1978).

A. Statutory Provisions

Section 105(a) of the Act generally requires each administrator of an employee pension benefit plan to furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information, the total benefits accrued and the nonforfeitable pension benefits which have accrued, if any, or the earliest date on which such benefits will become nonforfeitable. Similarly, section 209(a)(1) of the Act generally requires the plan administrator of a plan subject to Part 2 of Title I of the Act to make a report, in accordance with regulations of the Secretary of Labor, to each employee who is a participant under the plan and who requests such report. The report required under section 209(a)(1) must be sufficient to inform the employee of his accrued benefits which are nonforfeitable. Under both sections 105(a) and 209(a)(1), no participant is entitled to more than one report on request during any single 12-month period. Section 209(a) also requires similar reports to be provided to a participant who terminates service with the employer or has a one-year break in service. Sections 105(d) and 209(a)(2) authorize the Secretary of Labor to prescribe regulations specifying the extent to which these reporting requirements apply to plans adopted by more than one employer. In addition, section 105(c) of the Act requires plan administrators to provide to participants with respect to whom registration statements are filed with the Internal Revenue Service under section 6057 of the Internal Revenue Code of 1954 (the Code) individual statements setting forth the information contained in the registration statements.

In order to enable employees' benefits to be determined, so that the reporting requirements of section 209 can be met, section 209(a)(1) generally requires records to be maintained by employers and authorizes the Secretary of Labor to prescribe regulations governing such recordkeeping. The information necessary for individual benefit reporting is to be furnished by the employer to the plan administrator. In the case of a plan adopted by more than one employer, however, section 209(a)(2) requires records to be maintained by the plan administrator, based on information to be provided by each such employer.

B. Background

On February 9, 1979 (44 FR 8294),the Department published proposed regulations with respect to individual benefit statements and recordkeeping (referred to herein as "the 1979 proposal"). These regulations would have applied both to single and multiple employer plans. A large number of public comments on the 1979 proposal were filed. Many of these comments suggested that substantial revisions should be made to the 1979 proposal. Comments filed on behalf of single and multiple employer plans raised distinct issues.

Upon consideration of those comments, the Department decided to withdraw the 1979 proposal and to propose separately regulations pertaining to single employer plans and to multiple employer plans. On August 1, 1980, (45 FR 51231), the Department published a document which withdrew the 1979 proposal and which contained new proposed regulations applicable only to single employer plans. That document also contained general provisions with respect to recordkeeping and individual benefit statement requirements. In addition, the Department announced in that document that proposed regulations dealing with multiple employer plans would be published in the **Federal Register** in the future. Accordingly, the regulations now being proposed contain provisions which pertain only to multiple employer plans. Many of these provisions are similar to the proposed regulations pertaining to single employer plans. As a result, many of the same considerations are applicable to these proposed regulations as were applicable to the single employer plan regulations. Although the discussion of the multiple employer plan regulations in this preamble is to a certain extent duplicative of the discussion in the preamble of the single employer proposal, the multiple employer plan regulations are discussed here in full in order to avoid making it necessary to refer to the single employer document for a discussion of the regulations proposed in this document.

Of the regulations now being proposed, 29 CFR § 2520.105–3 deals with individual benefit reporting to participants and beneficiaries, while 29 CFR § 2530.209–3 deals with the maintenance by plans of records to serve as a basis for individual benefit statements.

In addition to substantive changes from the 1979 proposal, this new proposal contains language changes designed to clarify provisions or to improve readability.

These regulations are proposed under the authority in sections 105, 209, and 505 of the Act (Pub. L. 93–466, 88 Stat. 849, 865, and 894, 29 U.S.C. 1025, 1059, and 1135).

C. Discussion of Proposed Individual Benefit Reporting Regulations

1. *Benefit statement.* Under these proposed regulations, the benefit statement is the basic document to be used for providing individual benefit information to participants upon request, upon termination or upon a one-year break in service. The benefit statement must state the amount of a participant's accrued benefit regardless of the extent to which it is nonforfeitable (i.e., "vested"), the percentage of the accrued benefit which is vested, and the amount of such accrued vested benefit. The regulations specify the form in which accrued benefits and accrued vested benefits must be reported. The new proposal is designed to ensure that the information provided to an individual participant is presented in a meaningful fashion, without imposing excessive administrative costs on plans.

Some of the comments received by the Department on the 1979 proposal raised objections to the degree to which that proposal would have required benefit statements to provide individualized information geared to each participant's particular circumstances. These

[1] The term "multiple employer plan" is defined in the proposed regulation to mean a plan adopted by more than one employer other than a plan maintained by employers under common control. In discussions of the proposal throughout this document, the term "multiple employer plan" generally should be read to be consistent with this definition.

[2] The term "single employer plan" has been defined in such proposal to include plans maintained by a group of employers under common control. Throughout this document the term "single employer plan" generally should be read to be consistent with his definition.

comments suggested that the degree of individualization that would have been required would entail significant additional costs for plans, and that ultimately these costs would be borne to some extent by participants. These commentators pointed out that, in some cases, the individualized information might be misleading or of little value to recipients of benefit statements as a result of changes in participants' circumstances. At the same time, it appears to the Department that some degree of individualization is necessary if individual benefit statements are to serve the purposes which underlie the statutory requirements. In the new proposal the Department has struck what it believes to be a better balance between the need for individualization of benefit statements and the costs that individualization imposes.

In the case of defined benefit plans, the accrued benefit and the amount of the participant's accrued vested benefit may be expressed either in terms of a straight life annuity payable at normal retirement age, or in terms of the normal form of benefits offered by the plan (e.g., annuity for a term of years, lump-sum distribution, etc.). By contrast, the 1979 proposal would have required accrued benefits to be stated either in the form of a straight life annuity payable at normal retirement age or, if the plan did not offer such a benefit, in the form of the primary option offered by the plan. If a participant had made any elections affecting the manner of payment of benefits, the 1979 proposal generally would have required accrued benefits to be stated in the form elected by the participant. The elimination in the new proposal of the requirement to state accrued benefits in the form elected by the participant is in keeping with the goal of reducing costs resulting from excessive individualization. It also reflects comments to the effect that the requirement to state accrued benefits in the form of a straight life annuity payable at normal retirement age might prove misleading to participants when this is not the normal form of benefits payable under the plan. One of the comments on the 1979 proposal suggested that the Department should explicitly prohibit inclusion in the benefit statement of benefit projections predicated on the assumption that a participant will work until retirement. The comment suggested that such projections would not satisfy the requirement that a benefit statement must report accrued benefits, vested percentage and accrued vested benefits as of the date of the statement. The Department has decided not to prohibit the inclusion of such projections, but notes that the benefit statement must be written in a manner calculated to be understood by the average plan participant or beneficiary and its format must not have the effect of misleading or misinforming participants or beneficiaries.

The new proposal would require the benefit statement to indicate that election of options under the plan might affect the participant's accrued benefits, and to refer the participant to the Summary Plan Description for information on available options. In addition, if the accrued benefit and accrued vested benefit are not expressed as amounts payable in the form of a joint and survivor annuity, the benefit statement must explain that the periodic benefit the participant will receive at retirement may be reduced on account of survivor benefits.

"Social Security offset plans" must furnish the net benefit. In the case of benefit statements furnished on request or under the annual benefit statement alternative, the net benefit may be determined on the basis of assumptions about participants' earnings in service not covered by the plan, provided that the benefit statement indicates that the reported amounts are approximate. Benefit statements furnished after a break in service (or after a "severance," as described below) must report the actual amounts of benefits to which the participant is entitled.

In the case of an individual account plan, the regulations make it clear that the participant's account balance is considered to be the accrued benefit.

In accordance with the statutory requirements, the benefit statement would be required to indicate the nonforfeitable (vested) percentage of the participant's accrued benefit. If the participant has no vested accrued benefits, the benefit statement must indicate the earliest date on which any benefits will become vested. Consistent with the goal of avoiding excessive administrative costs, the new proposal eliminates the requirement in the 1979 proposal that plans with "graded" vesting indicate the earliest dates on which a participant may attain each subsequent level of nonforfeitable accrued benefits derived from employer contributions. The new proposal also provides that class year plans would be required to indicate the nonforfeitable percentage of each portion of the participant's account balance to which a separate nonforfeitable percentage applies.

The benefit statement would also be required to indicate the amount of the participant's nonforfeitable accrued benefit, in the same form as that in which the accrued benefit is reported.

The new proposal requires only a general reference to the Summary Plan Description. The 1979 proposal required more detailed information regarding circumstances that might result in the reduction or elimination of accrued or nonforfeitable benefits, including detailed references to the Summary Plan Description. The new proposal also eliminates the requirement contained in the 1979 proposal that the benefit statement include certain information concerning a participant's work history used as a basis for calculation of the participant's benefits. This change was made to reduce the degree to which benefit statements must be individualized. The eliminated information, however, must be available to a participant under the provisions of these regulations regarding inspection of records (§ 2530.209–3(f), and, as under the 1979 proposal, the benefit statement must so indicate. As under the 1979 proposal, the benefit statement would be required to include a statement urging the participant to bring promptly to the attention of the plan administrator anything in the benefit statement that does not appear correct, information regarding the availability of plan records for inspection, the date as of which information is reported, and the participant's social security number (for the purpose of verification by the participant).

Like its predecessor, the new proposal would provide that the benefit statement must be written in a manner calculated to be understood by the average plan participant or beneficiary and that the format of the benefit statement must not have the effect of misleading or misinforming the participant or beneficiary. Under certain circumstances, plans must offer foreign language assistance to participants who are not literate in English to aid them in understanding their benefit statements, as is required under regulations relating to the Summary Plan Description (see 29 CFR § 2520–102.2(c)).

The benefit statement must be based on the latest available information. As under the 1979 proposal, benefit statements based on records that meet the standards of sufficiency set forth in the proposed recordkeeping regulations will be deemed to be based on the latest available information. Although "sufficient", a plan's records may nevertheless be incomplete (i.e., if they do not include all items necessary to determine participants' benefit entitlements) if, for example, a plan did not maintain complete records prior to

the adoption of these regulations. In these instances, the benefit statement must indicate that the records on which it is based are incomplete, and the participant or beneficiary must be offered an opportunity to provide other information relating to his benefit entitlements. The plan administrator must prepare a benefit statement based on such information although, to the extent that a benefit statement is based on such information, it may indicate that it is conditioned upon the accuracy of that information.

In the 1979 proposal the Department solicited comments on whether and to what extent it should adopt regulations concerning circumstances under which liability should be imposed for the payment of benefits in accordance with the information provided in the benefit statement. Some comments supported the adoption of regulations imposing liability, while others suggested that liability should be limited, or objected to the imposition of any liability. Upon consideration of the comments, the Department has concluded that a judgment concerning the consequences of an incorrect benefit statement can properly be made only after account has been taken of all of the facts and circumstances. The Department believes, therefore, that it would be more appropriate to leave determinations of this sort to plan fiduciaries, whose actions are subject to review by the judicial process, rather than to attempt to deal with all conceivable factual situations in the context of regulations.

In the 1979 proposal, the Department also solicited comments on whether it should publish model benefit statements. In view of the multiplicity of plan provisions, it would be difficult for the Department to ensure that the format of a model statement would not be misleading under any circumstances. Accordingly, the Department has made a decision at this time not to publish model benefit statements.

2. *Furnishing benefit statements on request.* Both sections 105(a) and 209(a)(1)(A) of the Act require plan administrators of pension plans to furnish individual benefit information on request. The requirements of both statutory provisions are substantially similar in this regard; accordingly, these requirements are dealt with in a single section of the regulations (§ 2520.105–3(a)). The only significant difference between the two statutory provisions is that section 105(a) applies to requests by both participants and their designated beneficiaries, while section 209(a)(1)(A) applies only to requests by participants. The regulations, therefore, apply to requests by both participants and beneficiaries, so as to cover the broadest range of circumstances under which benefit statements must be furnished on request.

In response to suggestions made in comments on the 1979 proposal, the new proposal provides that a plan administrator subject to these regulations need not provide a benefit statement upon request to certain classes of participants and beneficiaries. These include participants and beneficiaries currently receiving benefits; participants and beneficiaries to whom paid up insurance policies representing their full benefit entitlements have been distributed; participants and beneficiaries who have received a full distribution of their benefits; beneficiaries of participants who are entitled to benefit statements; and participants with deferred vested benefits who have received benefit statements upon termination or after having incurred a one-year break in service without returning to service with any employer maintaining the plan, and their beneficiaries. The Department believes that it would be superfluous to require benefit statements to be furnished to these participants and beneficiaries.

The plan administrator may establish a simple and convenient procedure for the submission of requests for benefit statements. If such a procedure is established and communicated to participants and beneficiaries (for example, in the Summary Plan Description), the plan administrator, under certain conditions, need not comply with requests that do not conform to the procedure. If no such procedure is established, however, the plan administrator must comply with any request in writing by a participant or beneficiary. The plan administrator may not require information regarding a participant's employment record as a condition for furnishing the benefit statement (although such information may be requested). The new proposal would, however, allow plan administrators to require the furnishing of certain items of information identifying the participant about whom information is requested.

Many of the comments on the 1979 proposal urged that the Department permit benefit statements to report benefits as of the end of the plan year. The comments suggested that this approach would relieve individual account plans of the expense of conducting a valuation whenever a participant or beneficiary requests a benefit statement. Defined benefit plans might also face lower administrative costs if an end-of-plan-year approach were adopted because it might enable these plans to gear data processing systems to a single date. In light of these comments, the new proposal would require a benefit statement to report benefits as of a date not earlier than the end of the plan year preceding the plan year in which a participant or beneficiary requests the statement.

The end-of-plan-year approach, however, entails changes in the deadlines for furnishing benefit statements on request. The new proposal is designed to permit a reasonable period of time after the end of the plan year for the processing of information. Under the new proposal, a benefit statement must be furnished to a participant or beneficiary on request within the later of 60 days of the date of the request or 120 days after the end of the plan year which immediately precedes the year in which the request was made. The Department recognizes that this scheme would provide participants and beneficiaries who request benefit statements towards the end of the plan year with a statement that contains relatively old information (as much as 14 months old), while participants and beneficiaries who request statements during the earlier part of the plan year may be required to wait a substantial period (up to four months) to receive their statements. Nevertheless, the Department believes that the proposed scheme strikes an appropriate balance between providing participants with timely information and reducing administrative costs.

As under the 1979 proposal, the plan administrator would not be required to furnish more than one benefit statement to a participant or beneficiary on request during any 12-month period.

The original proposal appeared to require plans to furnish a complete benefit statement to a non-vested participant if the annual alternative was used. The new proposal would permit a plan to provide annually, as an alternative to furnishing benefit statements on request, a benefit statement to each vested participant and a statement of non-vested status to each non-vested participant. Permitting the furnishing of a statement of non-vested status under the annual alternative should reduce costs to plans electing the alternative, while providing sufficient disclosure to a non-vested participant. The plan administrator must furnish a complete benefit statement, however, to any non-vested participant who requests

one after receiving the statement of non-vested status.

The annual benefit statement must be furnished within 180 days after the end of the plan year.

Despite comments objecting to the requirement in the 1979 proposal that the plan administrator furnish at least one duplicate of the annual benefit statement to any participant or beneficiary who requests it during the year, the Department has not eliminated this requirement. In some cases a participant or beneficiary may not receive an annual benefit statement mailed to him. Since it would be impracticable and unfair to require a participant or beneficiary to prove that he did not receive an annual statement in order to obtain a duplicate, the regulations allow all participants or beneficiaries entitled to receive a benefit statement on request at least one duplicate if the annual alternative is used.

3. *Furnishing benefit statements after one-year breaks in service.* The benefit statement must report benefits as of the end of the plan year in which a one-year break in service occurs. Consistent with end-of-the-year benefit reporting, the new proposal requires statements to be furnished within 180 days after the end of the plan year in which the break in service occurs. The 180 day period also would allow plans to satisfy the requirement to furnish benefit statements after a one-year break in service through the use of the annual benefit statement alternative, which is required to be furnished in the same time period.

A participant who receives a benefit statement upon incurring a one-year break in service, and thereafter incurs a subsequent one-year break in service, is not entitled to receive an additional benefit statement if the information in the second benefit statement would be the same as that in the first.

As under the 1979 proposal, plan administrators of multiple employer plans are not required to furnish benefit statements upon termination. However, if a multiple employer plan does not provide that a participant may suffer adverse consequences upon incurring a one-year break in service, the plan administrator is required to furnish a benefit statement to a participant if the participant is not listed on any Service Report furnished to the plan administrator by an employer for two consecutive plan years. The fact that the participant has not appeared on a Service Report for an extended period of time suggests that such participant has ceased to participate actively in the plan. In the Department's view, such a participant should be furnished a benefit statement for the same reasons as a participant who incurs a one-year break in service (or a participant in a single employer plan who terminates service with the employer).

In the case of participants who have no vested benefits, the new proposal, like the 1979 proposal, would permit plan administrators of multiple employer plans to satisfy the requirements to furnish individual benefit information after a one-year break in service by furnishing a statement of non-vested status. The statement of non-vested status informs the participant that he has no nonforfeitable benefits. It does not, however, provide information regarding accrued benefits. Thus, the statement of non-vested status does not require extensive calculations and may be presented to all participants entitled to it in a standardized form, with no need for preparation of an individual statement for each. However, the statement of non-vested status must inform the participant that he may request a benefit statement with more detailed information regarding his individual accrued (non-vested) benefits. Such a request must be treated as a request for a benefit statement.

4. *Corrections to the benefit statement.* As under the 1979 proposal, a participant who raises a question with regard to the accuracy of a benefit statement must be given an opportunity to furnish information regarding his benefit entitlements to the plan administrator. Within a reasonable time, the plan administrator must make a decision with regard to the question raised by the participant and notify the participant of the decision, the basis for the decision, and any change in benefit entitlements as a result of the decision. The plan administrator is not required to prepare a benefit statement based on the information furnished by the participant except, as noted above, in situations where the benefit statement is based on incomplete records.

5. *Statement of deferred vested benefits.* Under section 105(c) of the Act, each plan administrator required to register with the Internal Revenue Service under section 6057 of the Code shall furnish a statement of deferred vested benefits to each participant described in section 6057(a)(C) (i.e., to each participant who, during the plan year for which registration is required, is separated from service covered under the plan, is entitled to a deferred vested benefit under the plan as of the end of the plan year, and with respect to whom retirement benefits were not paid under the plan). Section 6057(e) of the Code requires plan administrators to furnish similar individual statements to the same class of participants. The requirements of section 105(c) will be deemed to be satisfied if, in accordance with section 6057(e) of the Code and regulations thereunder, the plan administrator furnishes to the participant the individual statement required under the latter section.

6. *Manner of furnishing individual benefit reporting documents.* Like the 1979 proposal, the new proposal would require a plan to furnish individual benefit documents to a participant or beneficiary either by first class mail to his last known address, or by personal delivery. The new proposal makes it clear that personal delivery may be accomplished by another party under the plan administrator's supervision.

The new recordkeeping proposal would require participants' individual benefit records to include current address information. Although some comments suggested that plans should not be required to maintain current address information on file, and should be permitted to use less reliable modes of delivery than first-class mail and personal delivery, the Department believes that these requirements represent the only means of assuring that individual benefit reporting documents will actually reach participants and beneficiaries in most cases.

D. Proposed Individual Benefit Recordkeeping Regulations

1. *Duty to maintain records.* In the case of a multiple employer plan, the duty to maintain individual benefit records would be imposed on the plan administrator. As under the 1979 proposal, the records are to be based on information in Service Reports furnished to the plan administrator by employers within 45 days (rather than 30, as under the 1979 proposal) after the end of a reporting period. The reporting period may be up to three months in duration. The new proposal makes it clear that a shorter reporting period may be established by agreement. The new proposal, like the 1979 proposal, requires Service Reports to contain information on all employees in service covered under the plan and all employees who have moved from covered to non-covered service after having met the plan's eligibility requirements for participation.

The new proposal imposes the duty to provide Service Reports upon every employer required to make contributions to the plan in respect of work performed by the employer's employees during the

reporting period. (As in the 1979 proposal, however, employers are not required to provide Service Reports on employees in non-covered job classfications who have never performed service covered under the plan.) In addition, an employer is generally required to file Service Reports if another party is required to make contributions in respect of work performed by the employer's employees. This requirement is designed to cover a situation brought to the Department's attention in comments on the 1979 proposal in which contributions are made to the plan not by the employers of covered employees, but by firms that contract with these employers for their output, and similar situations if they exist. Further, the language of the new proposal should make it clear that employers will not be required to furnish Service Reports to a plan if their employees accumulate service credits under the plan solely by virtue of a reciprocity agreement with another plan.

If the plan administrator fails to receive an employer's Service Report, or an employer's Service Report does not contain all the necessary information, or the plan administrator has reason to believe that the information in the Service Report is inaccurate, the plan administrator must make reasonable efforts to obtain accurate and complete information. The plan administrator may prescribe reasonable rules and regulations regarding the format, manner of reporting and reportable information, and may prescribe forms and worksheets for reporting.

2. *Sufficiency of records.* Records maintained by the plan administrator of a multiple employer plan will be deemed to be sufficient under the proposed regulations if such records accurately reflect the Service Reports furnished by employers to the plan administrator. In general, Service Reports must contain the same information as the records maintained by an employer in connection with a single employer plan (i.e., they must include all information relating to service with such employer during the reporting period which would be relevant to a determination of the benefit entitlements of each employee covered under the plan). This may include information regarding service in a job classification not covered by the plan during the quarter. Under certain circumstances, section 210 of the Act requires service not performed in job classifications covered by a multiple employer plan to be credited to a participant, particularly for purposes of vesting. These circumstances generally occur when an employee moves between a covered and a non-covered job classification. When an employee moves from a covered to a non-covered job classification, the employee must continue to report information regarding the employee to the plan administrator although the employee no longer performs service in a covered job classification, if this information is relevant to a determination of the employee's individual benefit entitlements. Under the proposal, an employer would not be reguired to furnish Service Reports on an employee who has not met the Plan's requirements for eligibility for participation in the plan. Since service in a covered job classification is always a requirement for eligibility to participate in a plan, the regulation would not require Service Reports to be furnished with respect to employees in non-covered job classifications merely because they might later move to covered job classifications and thereby become eligible to participate (with the result that their non-covered service would then be required to be credited for vesting or other purposes).

As in the case of single employer plans, there is no requirement to develop records relating to service before the effective date of the regulations, but records in existence on February 9, 1979 must be retained. In the Department's view, the 1979 proposal was sufficient to put plan administrators on notice that existing records would not be permitted to be destroyed.

3. *Retention, preservation and inspection of records.* As under the 1979 proposal, individual benefit records must be retained as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary. However, if they are lost or destroyed due to circumstances beyond the control of the person responsible for their maintenance, they will not be deemed insufficient solely for that reason. They must be maintained in a safe and accessible place at the offices of the plan administrator, or at special recordkeeping offices.

The proposal makes clear that original records may be disposed of at any time if microfilm, microfiche or similarly reproduced records which are clear reproductions of the original documents are retained, and adequate viewing equipment is available for inspecting them. (The 1979 proposal appeared to allow microfilm reproduction only.) The regulations do not preclude electronic data processing of records.

Individual benefit records, including original documents, must be available for inspection by participants, beneficiaries, and their representatives.

The period within which plan records must be made available for inspection after a request to do so has been extended from 72 hours, as under the 1979 proposal, to 10 working days. This change was made in response to comments noting the difficulties which would have been involved under the previous proposal.

In response to some public comments, provisions have been added to this proposal requiring the plan to bear the cost of converting records into a form accessible for inspection, although reasonable charges for copying may be imposed, not exceeding the actual cost. Inspection of records may be made only by those persons entitled to receive a benefit statement, and by their representatives. Representatives of the Department have the authority to inspect plan records under the circumstances specified in section 504(a)(2) of ERISA.

If a plan administrator ceases to be responsible for the maintenance of individual benefit records, they must be transferred to the person who becomes responsible for their maintenance.

4. *Definition of "multiple employer plans".* The Department has decided to limit the term "multiple employer plan", for the purposes of these regulations, to a plan adopted by more than one employer, other than a plan adopted by employers under common control.

5. *Reliance on Social Security records; variances for multiple employer plans.* Comments on the 1979 proposal indicate that a number of multiple employer plans have hitherto relied on records maintained by the Social Security Administration, among other sources of information, as a basis for making benefit determinations. The commentators suggest that these plans should be permitted to continue to rely on Social Security Administration records. The Department believes that adequate pre-retirement individual benefit reporting cannot be provided to participants and beneficiaries unless plans develop and maintain recordkeeping systems of their own. Consequently, the new proposal does not permit reliance on Social Security records as a substitute for recordkeeping by employers or plan administrators.

The comments indicate, however, that there may be a few multiple employer plans that operate under extraordinary circumstances that would make compliance with the multiple employer reporting and recordkeeping requirements in this proposal virtually impossible. The Department solicits detailed comments from these multiple

employer plans with respect to any such special circumstances. If warranted by the comments, the Department might consider a procedure under which such plans would be granted variances which would permit them to use alternative methods of complying with the individual benefit reporting and recordkeeping requirements of the Act and these regulations.

E. Effective Dates

A number of comments on the 1979 proposal suggested that some multiple employer plans may need additional time to make preparations for compliance. In order to allow for orderly preparations for compliance with the regulations would not become effective with respect to collectively bargained multiple employer plans until nine months after the expiration of the collective bargaining agreement or agreements in effect on the date of adoption of these regulations, but in no case more than 45 months after the date of adoption. For multiple employer plans which are not collectively bargained, the regulations, if adopted, would become effective 120 days after adoption.

F. Drafting Information

The principal author of these proposed regulations is Mary O. Lin of the Plan Benefits Security Division, Office of the Solicitor, Department of Labor. However, other persons in the Department of Labor participated in developing the proposed regulations, both on matters of substance and style.

G. Proposed Regulation

Accordingly, it is proposed to amend Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

1. By adding to Part 2520 new § 2520.105–3 to read as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Subpart G—Individual Benefit Reporting

Sec.

2520.105–3 Individual Benefit Reporting for Multiple Employer Plans.

Authority: Secs. 105, 209 and 505 of the Act, (Pub. L. 93–406; 88 Stat. 849, 865 and 894, 29 U.S.C. 1025, 1059 and 1135).

Subpart G—Individual Benefit Reporting

§ 2520.105–3 Individual benefit reporting for multiple employer plans.

(a) *Furnishing benefit statements on request.*—(1) *General.* The administrator of a multiple employer employee pension benefit plan (as defined in paragraph (k) of this section) subject to Parts 1 or 2 of Title I of the Act shall furnish a benefit statement which satisfies the requirements of this paragraph and paragraphs (c) through (i) of this section to all plan participants or beneficiaries who request in writing information regarding their individual benefit entitlements under the plan, except:

(i) Participants and beneficiaries who are currently receiving benefits under the plan;

(ii) Participants and beneficiaries whose entire benefit entitlements under the plan are fully guaranteed by an insurance company, insurance service or insurance organization qualified to do business in a State, provided that the benefits are paid under an insurance policy or contract on which no further premiums are payable and which has been distributed to the participant or beneficiary;

(iii) Participants and beneficiaries who have received all benefits to which they are entitled under the plan;

(iv) Beneficiaries of a participant who is entitled to a benefit statement on request; and

(v) Participants with deferred vested benefits who have received benefit statements on termination or after incurring a one year break in service and who have not returned to service with any employer maintaining the plan, and beneficiaries of such participants.

(2) *Procedure for submission of requests for benefit statements.* The plan administrator may establish a simple procedure, convenient to participants and beneficiaries, for the submission of requests for benefit statements. The plan administrator will not be required to comply with a request made in a manner which does not conform to such a procedure which has been communicated in writing to participants and beneficiaries, provided that the plan administrator informs the requesting participant or beneficiary that he has failed to comply with the procedure and explains how to comply with the procedure. A procedure shall be deemed to be communicated to participants and beneficiaries if a description of the procedure is included in the Summary Plan Description of the plan or in any other document distributed to all plan participants. If no such procedure is established, any request in writing to the plan administrator or plan office by a participant or beneficiary for information regarding his benefit entitlements under the plan shall be deemed a request to the plan administrator for the purposes of this section.

(3) *Information obtained from participant or beneficiary.* A participant or beneficiary who requests a benefit statement may not be required to furnish information regarding the participant's employment record as a condition to receiving the benefit statement, but may be required to furnish the following information: name, address, date of birth, Social Security account number, and, if relevant to information provided in the benefit statement, marital status and date of birth of spouse.

(4) *Date of furnishing.* A benefit statement shall be furnished to a participant or beneficiary who requests such a statement, no later than (i) 60 days after receipt of the request or (ii) 120 days after the end of the plan year which immediately precedes the plan year in which the request is made, whichever is later.

(5) *Date as of which information is provided.* A benefit statement furnished at the request of a participant or beneficiary shall report benefits as of a date not earlier than the end of the plan year preceding the plan year in which the request is made.

(6) *Annual benefit statement alternative.* (i) the requirement to furnish a benefit statement on request to a participant or beneficiary, as set forth in paragraph (a)(1) of this section, shall not apply if within one year before the request the plan administrator has furnished to such participant or beneficiary an annual benefit statement, or a "statement of non-vested status" described in paragraph (f) of this section, as appropriate, which is based on information as of the end of the plan year preceding the plan year in which it is furnished, and it is furnished within 180 days after the end of that plan year.

(ii) Notwithstanding the provisions of paragraph (a)(6)(i) of this section, the plan administrator shall furnish a complete benefit statement meeting the requirements of paragraph (d) and (e) of this section to a participant who requests information on his accrued benefits after receiving a statement of non-vested status, and shall furnish upon request a duplicate of the most recent annual benefit statement, or statement of nonvested status, as appropriate, to any participant or beneficiary who was entitled to such a statement but claims not to have received one.

(b) *Furnishing statements after one-year breaks in service or severance*—(1) *General.* Except as provided in paragraph (c) of this section, the plan administrator of a multiple employer pension plan that is subject to Part 2 of Title I of the act shall furnish a benefit statement to a particpant who incurs a

one-year break in service as defined in paragraph (b)(5) of this section. If, however, the plan does not provide that participants may suffer adverse consequences on incurring a one-year break in service, such plan adminstrator shall furnish a benefit statement to a participant who incurs a severance as defined in paragraph (b)(6) of this section.

(2) *Date of furnishing.* A benefit statement or statement of non-vested status shall be furnished within 180 days after the end of the plan year in which a participant incurs a one-year break in service or a severance. This requirement may be satisfied by furnishing to the participant an annual benefit statement described in paragraph (a)(6) of this section, which reports the participant's benefits as of the end of the plan year in which the one-year break in service or the severance occurred.

(3) *Non-vested participatants.* In the case of a participant who has no nonforfeitable benefits under the plan and who incurs a one-year break in service or a severance, the plan administrator will comply with the requirements of section 209(a)(1)(B) of the Act and this section if the plan furnishes such participant a "statement of non-vested status" as described in paragraph (f) of this section.

If a participant who incurs a one-year break in service is furnished a statement of non-vested status under this paragraph, and requests information concerning his accrued benefits under the plan, the plan administrator shall furnish a benefit statement meeting the requirements of paragraph (d) and (e) of this section to the participant no later than the later of 60 days after such request or 180 days after the end of the plan year in which he incurs a one year break in service.

(4) *Date as of which information is provided.* A benefit statement furnished after a one-year break in service or a severance shall report benefits as of the end of the plan year in which the one-year break in service or the severance occurs.

(5) *Definition of "one year break in service".* For purposes of this section, the term "one-year break in service" shall mean a one-year break in service for vesting purposes as defined in the plan documents, or in the case of a plan under which service is credited for purposes of vesting according to the elapsed time method permitted under 26 CFR 1.410(a)–7, a one-year period of severance for vesting purposes, as defined in 26 CFR 1.410(a)–7(c)(4).

(6) *Definition of "severance".* For purposes of this section, a participant shall be deemed to incur a "severance" in the second of two consecutive plan years in which the participant is not listed on any Service Report furnished by an employer to the plan administrator in accordance with paragraph (b) of this section.

(c) *Frequency of benefit statements.* (1) A plan administrator is not required to furnish to a participant or beneficiary more than one benefit statement upon request under paragraph (a) of this section in any 12-month period.

(2) Where a participant receives a benefit statement upon incurring a one-year break in service or a severance, the plan administrator is not required to furnish a second benefit statement upon a subsequent one-year break in service or severance, or upon a request by the participant, if the information that would be contained in a second benefit statement would be the same as that contained in the earlier benefit statement.

(d) *Style and format of benefit statements.*—(1) *General.* Individual benefit reporting documents shall be written in a manner calculated to be understood by the average plan participant or beneficiary. The format of these documents must not have the effect of misleading or misinforming the participant or beneficiary.

(2) *Foreign language assistance.* (i) The plan administrator of a plan described in paragraph (d)(2)(ii) of this section shall communicate to plan participants, in the non-English language common to such participants, information relating to any procedure for requesting benefit statements that may have been established by the plan administrator in accordance with paragraph (a)(2) of this section. In addition, the plan administrator shall provide these participants with either a benefit statement in such non-English language, or an English language benefit statement or statement of non-vested status which prominently displays a notice, in the non-English language common to these participants, explaining how they may obtain assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants.

(ii) The plan administrators of the following plans are subject to the foreign language requirements of paragraph (d)(2)(i) of this section:

(A) A plan that covers fewer than 100 participants at the beginning of the plan year, and in which 25 percent or more of plan participants are not literate in English and are all literate in the same non-English language, or

(B) A plan which covers 100 or more participants at the beginning of the plan year, and in which the lesser of 500 or more participants, or 10% or more of all plan participants, are not literate in English and are all literate in the same non-English language.

(e) *Contents of the benefit statement.*—(1) *General.* In accordance with paragraphs (e)(2), (e)(3), (e)(4) and (e)(5) of this section, each benefit statement shall contain the following information:

(i) The participant's total accrued benefits;

(ii) The nonforfeitable percentage of the participant's accrued benefits;

(iii) The amount of the participant's nonforfeitable accrued benefits; and

(iv) Additional information specified in paragraph (e)(5) of this section.

(2) *Total accrued benefits.*—(i) *Defined benefit plans.*—(A) *General.* In the case of a defined benefit plan, the accrued benefit shall be stated in the form of a straight life annuity payable at normal retirement age or in the normal form of benefit provided by the plan.

(B) *Contributory plans.* If a defined benefit plan requires contributions to be made by employees, the benefit statement shall separately indicate, in addition to the participant's total accrued benefit, either the amount of the participant's accrued benefit derived from employee contributions and the amount of the accrued benefit derived from employer contributions, or the percentages of the participant's total accrued benefit derived from employee contributions and from employer contributions. The portion of the accrued benefit derived from employer contributions and the portion derived from employee contributions shall be determined in accordance with section 204(c) of the Act (section 411(c) of the Internal Revenue Code of 1954 and Treasury Regulations thereunder).

(C) *Social Security offset plans.* If a participant's benefits under the plan are offset by a percentage of the participant's old-age insurance benefit under the Social Security Act, the benefit statement shall state the participant's accrued benefit after reduction by the applicable amount. In the case of a benefit statement furnished upon request or under the annual benefit statement alternative permitted under paragraph (a)(6) of this section, the amount of the offset may be determined on the basis of assumptions about the participant's earnings from service not covered under the plan, provided that the statement indicates that the stated amounts of the accrued and nonforfeitable accrued benefit are approximate. A benefit statement furnished when an employee terminates employment or incurs a break in service

must indicate the actual amounts of the accrued benefit and nonforfeitable accrued benefit to which the participant is entitled.

(ii) *Individual account plans.* In the case of an individual account plan, the participant's accrued benefit shall be the fair market value of the participant's account balance on the date as of which benefits are reported.

(3) *Nonforfeitable percentage.*—(i) *General.* The benefit statement shall indicate the percentage of a participant's accrued benefit which is nonforfeitable within the meaning of section 203 of the Act (and sections 411(a) of the Internal Revenue Code of 1954 and Treasury Regulations thereunder). Except in the case of a plan described in paragraph (e)(3)(ii) of this section, if a participant has no nonforfeitable benefits the benefit statement shall indicate the earliest date on which any benefits may become nonforfeitable; and if less than 100 percent of the participant's benefits are nonforfeitable, the benefit statement shall indicate the earliest date on which 100 percent of the participant's benefits may be nonforfeitable.

(ii) *Class year plans.* In the case of an individual account plan which provides for the separate nonforfeitability of benefits derived from contributions for each plan year, the benefit statement shall state each nonforfeitable percentage applicable to a portion of the participant's account balance and the value of that portion of the account balance.

(iii) *Contributory plans.* In the case of a plan which provides for employee contributions, the benefit statement shall indicate that the portion of the accrued benefits derived from the participant's contribution to the plan is nonforfeitable.

(4) *Nonforfeitable benefits.*—(i) *Defined benefit plans.* The benefit statement shall indicate the amount of the participant's nonforfeitable benefit in the same form as the participant's total accrued benefit is reported under paragraph (e)(2) of this section.

(ii) *Individual account plans.* In the case of an individual account plan, the benefit statement shall indicate the fair market value of the nonforfeitable portion of the participant's account balance on the date as of which benefits are reported.

(5) *Other information.* A benefit statement shall include the following information.

(i) In the case of a defined benefit plan, a statement to the effect that the amount of benefits which may be received under the plan may be affected as a result of electing any option under the plan, and that further information on such options is contained in the Summary Plan Description;

(ii) In the case of a defined benefit plan, if the accrued benefit and nonforfeitable benefit are not stated in the form of an annuity for the joint lives of the participant and his spouse, an explanation to the effect that unless a married participant elects not to receive benefits in that form, the participant's nonforfeitable benefit may be reduced;

(iii) A statement to the effect that further information on the circumstances, if any, which may result in a reduction or elimination of accrued benefits or of nonforfeitable benefits is contained in the Summary Plan Description;

(iv) A statement urging the participant or beneficiary to bring promptly to the attention of the plan administrator anything in the statement that does not appear correct;

(v) A statement informing the participant or beneficiary that plan records upon which information in the benefit statement is based are available for inspection upon request, and the name, address and telephone number of the person or office to whom requests should be directed;

(vi) The date as of which benefit entitlements are reported; and

(vii) The participant's Social Security Account Number.

(f) *Statement of non-vested status.* A statement of non-vested status shall inform the participant that he does not have any nonforfeitable benefits under the plan and that he may obtain upon request a benefit statement indicating his accrued benefits, if any, and the earliest date on which any benefits may become nonforfeitable.

(g) *Basis of benefit statement.* (1) *General.* A benefit statement shall be based on the latest available information. A benefit statement will be deemed to be based on the latest available information if it reports benefit entitlements as of the date benefits must be reported under paragraphs (a) or (b) of this section, as appropriate, or any subsequent date, and if it is based on plan records which comply with the requirements of paragraphs (b) and (c) of this section.

(2) *Benefit statement based on incomplete plan records.* A benefit statement based on incomplete plan records (i.e., records that do not contain all items of information necessary to determine the participant's benefit entitlements) shall so indicate. To the extent that the records of a plan are incomplete, an opportunity to provide information relating to benefit entitlements shall be offered to a participant or beneficiary entitled to a benefit statement, and the benefit statement shall be based on such information. A benefit statement based in whole or in part on information supplied by a participant may state that it is conditioned upon the accuracy of such information.

(h) *Manner of furnishing individual benefit reporting documents.* Individual benefit reporting documents shall be furnished either by first class mail to the participant or beneficiary at his last known address, or by personal delivery to the participant or beneficiary by the plan administrator or an individual under the plan administrator's supervision. In the event that the plan administrator learns that the participant or beneficiary has failed to receive a document by mail or personal delivery, the plan administrator shall employ any menas of delivery reasonably likely to ensure the receipt by such participant or benficiary of the document.

(i) *Corrections to the benefit statement.* A participant or beneficiary who raises questions regarding the accuracy of the benefit statement shall be given a reasonable opportunity to point out information in the benefit statement that he believes inaccurate, and to furnish to the plan administrator information which such participant or beneficiary believes relevant in determining his benefit entitlements. The plan administrator shall make reasonable attempts to determine whether the plan's records or the benefit statement are inaccurate and to verify the information furnished by the participant or beneficiary. Within a reasonable time after the plan administrator receives such a communication from a participant or beneficiary, the plan administrator shall notify him in writing of the plan's decision with respect to such matter, the basis for such decision, and any change in benefit entitlements as a result of the decision.

(j) *Statement of deferred vested benefits.* Section 105(c) of the Act provides that each plan administrator required to file a registration statement under section 6057 of the Internal Revenue Code of 1954 (the Code) shall furnish to each participant described in section 6057(a)(2)(C) of the Code an individual statement setting forth the information with respect to such participant which is contained in the registration statement. The requirements of section 105(c) of the Act will be satisfied if an individual statement is furnished to a participant in accordance with section 6057(e) of the Code and the regulations thereunder.

(k) *Definition of "Multiple Employer Plan".* For purposes of paragraphs (a) through (j) of this section, the term "multiple employer plan" shall mean a plan adopted by more than one employer, other than a plan adopted by employers which are under common control.

Part 2530—Rules and Regulations for Minimum Standards for Employee Pension Benefits Plans

2. By adding to Part 2530 new § 2530.209–3 to read as follows:

Subpart E—Individual Benefit and Recordkeeping

Sec.
2530.209–3 Individual Benefit Recordkeeping.

Authority: Secs. 105, 209 and 505 of the Act (Pub. L. 93–406; 88 Stat. 849, 865 and 894 (29 U.S.C. 1025, 1059 and 1135)).

Subpart E—Individual Benefit and Recordkeeping

§ 2530.209–3 Individual benefit recordkeeping for multiple employer plans.

(a) *Recordkeeping requirement.* For every multiple employer pension plan (as defined in paragraph (h) of this section) subject to Part 2 of Title I of the Act, records shall be maintained with respect to each employee covered under the plan. These records shall be sufficient to determine the benefits which are, or may become, due to such employee and shall include the name and address of each such employee.

(b) *Maintenance of records and furnishing of information.*—(1) *Maintenance of records.* The plan administrator shall maintain the records required to be maintained by a multiple employer plan under paragraph (a) of this section.

(2) *Reporting by Sponsoring Employer.* Each employer who is a sponsoring employer of a multiple employer plan shall furnish written Service Reports to the plan administrator on a regular basis. The Service Reports shall cover a reporting period of no longer than one quarter of a year. A reporting period of less than one quarter of a year may be established by agreement, and different reporting periods may be established for different employers or different classes of employers sponsoring the same plan. A Service Report shall be furnished to the plan administrator no later than 45 days after the end of the reporting period to which it relates. The Service Reports shall be furnished in accordance with any rules prescribed under paragraph (b)(6) of this section and shall be prepared on any forms and worksheets prescribed thereunder.

(3) *Contents of Service Reports.* A Service Report shall contain all information that relates to service for, or other employment relationship with, the employer during the reporting period which it covers and that is relevant to a determination of the benefit entitlements of—

(i) Any of the employer's employees who has met the plan's requirements for eligibility to participate in the plan (including any requirement regarding service in a job classification covered by the plan), whether or not such employee performs service in a job classification covered under the plan during the reporting period; and

(ii) Any of the employer's employees who performs service in a job classification covered under the plan during the reporting period, whether or not such employee has meet the plan's requirements for eligibility to participate during such reporting period.

(4) *Definition of "sponsoring employer".* For purposes of this paragraph, an employer shall be deemed to be a "sponsoring employer" of a plan for any reporting period where during such reporting period the employer or another party (other than another plan pursuant to a reciprocity arrangement) is required to make contributions to the plan in respect of work performed by such employer's employees (whether measured in service time or in output).

(5) *Duty of plan administrator to seek information.* The plan administrator shall make reasonable efforts to obtain complete and accurate information where a sponsoring employer of a multiple employer plan fails to furnish a Service Report to the plan administrator; or such an employer fails to include in a Service Report information required under paragraph (b)(3) of this section; or the plan administrator has reason to believe that the information furnished by such an employer is inaccurate.

(6) *Reasonable rules prescribed by plan administrator.* The plan administrator of a multiple employer plan may prescribe in writing reasonable rules concerning the format of reports, the manner of reporting, and reportable information. The plan administrator also may prescribe forms or worksheets to be used by employers for purposes of reporting under paragraph (b) of this section.

(c) *Sufficiency of records.* Records required to be maintained by a multiple employer plan under paragraph (a) of this section will be deemed to be sufficient if:

(1) They accurately reflect all the information contained in the Service Reports furnished to the plan administrator by participating employers under paragraph (b)(2) of this section, and the plan administrator has made reasonable attempts to obtain accurate and complete information under the circumstances described in paragraph (b)(5) of this section, and

(2) With respect to service before [effective date of regulation], if any, they include all records maintained by the administrator on and after February 9, 1979, for the purpose of determining employees' benefit entitlements under the provisions of the plan.

(3) *Loss or destruction of records.* Notwithstanding the preceding paragraphs, records shall not be deemed to be insufficient solely because they have been lost or destroyed due to circumstances beyond the control of the person responsible for their maintenance under paragraph (b)(1) of this section.

(d) *Period for which records must be retained.* The records which are required to be maintained under paragraph (a) of this section shall be retained in a manner described in paragraph (e) of this section as long as any possibility exists that they might be relevant to a determination of benefit entitlements. When it is no longer possible that records might be relevant to a determination of benefit entitlements, the records may be disposed of, unless they are required to be maintained for a longer period under any other law.

(e) *Preservation of records by plan administrator.*—(1) *General.* The records which are required to be maintained under paragraph (a) of this section shall be maintained in reasonable order in a safe and accessible place at the main offices of the plan administrator, or at recordkeeping offices established by the plan administrator and customarily used for the maintenance of records.

(2) *Reproduction of records; disposal of original documents.* Original documents may be disposed of at any time if microfilm, microfiche, or similarly reproduced records which are clear reproductions of the original documents are retained, and adequate projection or other viewing equipment is available for inspecting such reproductions.

(3) *Electronic data processing.* Nothing in this section precludes the use of punch cards, magnetic tape or other electronic information storage material for processing information.

(f) *Inspection and copying.* The records required to be maintained under paragraph (a) of this section with respect to any participant or beneficiary (including any original documents or

reproductions thereof maintained under paragraph (e) of this section) shall be made available free of charge to such participant or beneficiary, or his representative, in a reasonably accessible form for inspection and copying. The records shall be made available during normal business hours within 10 working days after receipt of a request. A reasonable charge may be imposed for copying records, not exceeding the actual cost of copying them.

(g) *Transfer of records.* In the event that a plan administrator ceases to be responsible under paragraph (b) of this section for maintaining records, such plan administrator shall transfer any records which continue to be potentially relevant to the determination of benefit entitlements to the appropriate successor plan administrator responsible for their maintenance. The plan administrator transferring such records is not required to retain copies of the records transferred. Nothing in this section, however, shall relieve a plan administrator from any responsibility or liability for violations of the requirements of paragraphs (a) through (h) of this section which occur during the time such plan administrator has control of and is responsible for maintaining, retaining or transferring the records as required by those sections.

(h) *Definition of "Multiple Employer Plan".* For purposes of this section, the term "multiple employer plan" shall mean a plan adopted by more than one employer, other than a plan adopted by employers which are under common control.

Signed at Washington, D.C. this 4th day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23855 Filed 8-5-80; 3:21 pm]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Reclamation and Enforcement; Public Disclosure of Comments Received From Federal Agencies on the Ohio State Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Announcement of public disclosure of comments on the Ohio Program from the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), and other Federal agencies.

SUMMARY: Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments of these agencies and is today announcing their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region III, 5th Floor, 46 E. Ohio Street, Indianapolis, Indiana 46204.

Office of Surface Mining, Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Division of Reclamation, Ohio Department of Natual Resources, Fountain Square, Building B, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT:

J. M Furman, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 46 E. Ohio Street, Room 527, Indianapolis, Indiana 46204, Telephone (317) 269-2629,

or

Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343-4225.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the Ohio Permanent regulatory program submitted by Ohio for his review on February 29, 1980. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Ohio program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following federal agencies were invited to comment on the Ohio program:

Department of Agriculture
- USDA State Land Use Committee
- Soil Conservation Service
- Forest Service
- Farmers Home Administration
- Scientific and Educational Administration-Agricultural Research
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation
Council of Environmental Quality
Department of Labor
- Mine Safety and Health Administration

U.S. Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Water and Power Resources Service (formerly Bureau of Reclamation)
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

Hoosier National Forest
Ohio River Basin Commission
U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received comments from the following offices:

Department of Agriculture
- Soil Conservation Service
- Forest Service
- Farmers Home Administration

Department of Labor
U.S. Environmental Protection Agency
Department of Energy
Department of the Interior
- Bureau of Mines
- Heritage Conservation and Recreation Service
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

These comments are available for review and copying during business hours, at the locations listed above under "Addresses".

Dated: July 31, 1980.

Edgar A. Imhoff,

Regional Director, Office of Surface Mining.

[FR Doc. 80-23991 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1563-7]

State of Idaho; Proposed Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking addresses State Implementation Plan (SIP) revisions submitted by the State of Idaho or called for by the Environmental Protection Agency (EPA) pursuant to the

requirements of Part D and Section 110 of the Clean Air Act (hereafter referred to as the Act). EPA is proposing to: (1) Approve the Transportation Control Plan (TCP) portion of the Boise-Ada County area carbon monoxide (CO) attainment plan (under Part D), (2) approve a revision to Idaho's indirect source review program (under Section 110), and (3) call for a SIP revision containing a motor vehicle inspection and maintenance (I/M) program for the Boise-Ada County area. Further, EPA is proposing to take separate action at a later date on Part D new source review procedures and the other geographical area-pollutant specific attainment plans which the State has submitted to EPA. These other area-specific plans address total suspended particulate control for Silver Valley, Pocatello, and Soda Springs.

DATE: Comments are due by September 8, 1980.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

Central Docket Section, (No. 10A–80–2), Environmental Protection Agency, 401 M Street SW., West Tower Lobby, Gallery I, Washington, D.C. 20460.

Environmental Protection Agency, Library, Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Idaho Operations Office, Environmental Protection Agency, 422 W. Washington Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Coordination & Planning Section, M/S 625, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442–1226. FTS: 399–1226.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The information in this notice is divided into two sections entitled "Background" and "Plan Review". The first section outlines the background leading to the development of the Idaho Part D SIP revisions in relation to the Clean Air Act Amendments of 1977. The "Plan Review" portion is divided into three major sub-sections. The first sub-section, "Transportation Control Plan (TCP) portion of the Boise-Ada County CO Attainment Plan," discusses the development, pursuant to Part D requirements, and proposed approvability of a strategy for attaining the CO ambient air quality standards for the Boise-Ada County area. The second sub-section, "Indirect Source Review Variance," describes a SIP revision, which while submitted for approval pursuant to Section 110 of the Act, is integral to the TCP portion of the Boise-Ada County CO attainment strategy. The last sub-section under "Plan Review" entitled "Inspection and Maintenance" presents EPA's basis for requiring an I/M program in the Boise-Ada County area and the schedule for developing and implementing an I/M program.

II. Background

A. Designation Process

Pursuant to the requirements of Section 107(d) of the Act, EPA published in the **Federal Register** on March 3, 1978 (43 FR 8962) and on September 11, 1978 (43 FR 40412) a designation of the attainment status of certain areas in the State of Idaho with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates, carbon monoxide, and sulfur dioxide. This designation process triggered required revisions to the SIP as discussed below.

B. Revision Process

The 1977 Amendments to the Act require States to make extensive revisions to their SIPs. These revisions fall into three major areas:

1. Provisions for attainment and maintenance of NAAQS in those areas where air quality standards are being violated (required in Part D of the Act).

2. Plans for Prevention of Significant Deterioration to protect those areas with clean air (required in Part C of the Act).

3. General SIP requirements which have statewide applicability (e.g., Section 128—State Boards).

This notice presents the results of EPA's review of the TCP portion of the Boise-Ada County CO attainment plan, which was developed by Ada Planning Association (APA) and Idaho Department of Health and Welfare (IDHW) pursuant to their responsibilites under Part D of the Act. The TCP portion of the Boise-Ada County area CO attainment plan was submitted to EPA along with certain other Part D plans and revisions in Jaunary 1980. EPA will be taking action on these other Part D submissions at a later date.

This notice also presents the results of EPA's review of the indirect source review variance which was submitted to EPA pursuant to Section 110 of the Act.

Finally, this notice contains EPA's call for a SIP revision which requires an I/M program to be implemented in the Boise area prior to December 31, 1982 for a decentralized approach and no later than December 31, 1983 for a centralized approach, in order to attain the eight hour CO standard prior to December 31, 1987.

C. Review and Approval Process

It is important to understand the overall nature of SIPs and EPA's review and approval role, with special focus on the Part D requirements of the Act. First, nonattainment designations are specific to pollutants and areas. Therefore, it is possible for the Part D SIP revisions to be adequate for one pollutant or geographical area but inadequate for others. It is EPA's policy to treat the separate revisions as severable to the maximum extent possible. Due to circumstances described below, this notice contains a series of proposed actions related only to the attainment of CO standards in the Boise area. The review of this proposal and any comments submitted should be equally specific.

In the case of Part D SIP revisions, EPA's review process can lead to three results:

1. Approval, outright, where the SIP or the portion under consideration meets all requirements;

2. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

3. Approval with conditions, where deficiencies exist, but where the effect of the deficiency is not judged to be significant and where the State is taking steps to correct the deficiency.

A discussion of conditional approval and its practical effect appears in supplements to the General Preamble published in the April 4, 1979, **Federal Register** (44 FR 20372); supplemented on July 2, 1979 (44 FR 38583), and November 23, 1979 (44 FR 67182). In essence, however, conditional approval is an option where minor deficiencies in a state plan can be remedied by submission of additional materials by a specified deadline. Please see the above **Federal Register** Notices for additional details.

D. Review Criteria

Specific criteria for an approvable Part D SIP are described in a General Preamble published in the April 4, 1979, **Federal Register** (44 FR 20372); supplemented on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). Additional criteria were published in the "EPA/DOT Transportation Planning Guidelines" and the "Transportation DIP Checklist." (These documents are available at the address noted above). General requirements for all SIPs are contained in 40 CFR Part 51.

A summary of the criteria used to evaluate the Boise-Ada County TCP are as follows:

1. Definition of nonattainment area and geopgraphic area covered by transportation control measures.

2. Accurate, comprehensive and current emissions inventory.

3. Estimation of emission reductions needed to demonstrate standard attainment by 1982 and 1987.

4. Designation and certification of a lead agency for nonattainment areas.

5. Identification of agency tasks and responsibilities.

6. Schedule for comprehensive analyses of alternatives and demonstration that analysis is underway or completed.

7. Schedule for adoption of reasonably available measures.

8. Commitment to justify decision not to adopt difficult, but reasonably available measures.

9. Process for public, interest group, and elected official consultation and involvement in: defining transportation-air quality issues, establishing the planning process, developing and analyzing alternatives.

10. Identification of estimated financial and manpower resources necessary to carry out the process.

11. Evidence that the SIP was adopted by the State after reasonable notice and public hearing.

12. Provisions for progress reporting throughout the planning and implementation period.

13. Assess the need to implement in I/M program.

14. A commitment to use available and funds to establish, expand or improve transportation measures to meet basic transportation needs as expeditiously as practicable.

15. Emission reduction estimates for adopted measures and/or packages of measures. Rough estimates of annual emission reductions through 1987 for packages of measures currently being developed and analyzed.

16. Commitment to: (1) Accelerate implementation of transportation improvements, (2) incremental phase-in of additional reasonable measures.

E. Matters Upon Which EPA Action is Proposed

1. The first phase of a two-phase CO attainment plan was developed locally by Ada Planning Associaiton with close EPA Region 10 coordination. It was then submitted to the IDHW, combined with other State-developed Part D SIP revisions, and forwarded to EPA under the Governor's signature on January 15, 1980. An advanced notice of proposed rulemaking announcing receipt of the SIP revisions was published in the January 31, 1980 **Federal Register** (45 FR 6959). EPA is today proposing approval of the TCP portion of the Boise-Ada County CO attainment plan submitted by the state pursuant to Part D requirements.

2. In addition, pursuant to Section 110 of the Act, EPA is proposing to approve a variance to the State indirect source review regulation which would allow construction of a large parking garage associated with a Boise downtown redevelopment project.

3. Furthermore, EPA is proposing to grant an extension of the CO attainment date for the Boise-Ada County Area from December 31, 1982 to December 31, 1987.

4. Finally EPA is calling for a SIP revision which includes an I/M program in the Boise-Ade County Area due to projected difficulties in meeting CO standards by the end of 1987.

F. SIP Submittals For Which Separate Action Will Be Taken

In addition to the TCP portion of the Boise-Ada County CO plan, the State of Idaho also submitted the following Part D SIP revisions:

1. Part D new source review procedures,

2. TSP attainment plans for the Silver Valley, Pocatello, and Soda Springs, and

EPA is not taking action on the above-listed revisions at this time due to ongoing negotiations with the State. Proposed rulemaking for these plan revisions will be treated in a separate **Federal Register** notice at a later date.

Until EPA takes final action to approve or conditionally approve the Part D CO attainment plan for the Boise-Ada County area which includes the new source review procedures submitted by the State, the ban on construction of new and modified major stationary sources required by Section 110(a)(2)(I) of the Act, will remain in effect. These restrictions apply only in the designated nonattainment areas and only to new or modified major stationary sources. The restriction does not affect existing sources (unless they are being modified) or sources which applied for permits to construct before July 1, 1979.

III. Plan Review

A. TCP portion of the Boise-Ada County CO Attainment Plan

1. *Background.*

In the fall of 1977, the IDHW proposed a carbon monoxide nonattainment area for Ada County which consisted of that area generally contained within the boundaries of the Boise Metropolitan Planning Area. In early February of 1978 the nonattainment area was expanded to include most of Ada County.

Numerous violations of the 10 milligrams per cubic meter (mg/m^3) eight hour CO standard have been recorded in the Boise-Ada County nonattainment area. CO monitoring data has been collected at the Odd Fellows Building on Ninth Street since July 1975. Data collected at this site from 1975 through 1978 indicate that CO concentrations were over 20.0 mg/m^3 for each year recorded. Based upon that data, the CO eight hour design concentration was determined to be 21.0 mg/m^3. In addition to the Odd Fellows building monitoring data there were other special monitoring studies conducted in the Boise area. During one such study EPA Region 10 collected monitoring data at 40 locations from the period of November 23 through December 22, 1977. The study results indicated that the CO problem is widespread and not restricted to the

downtown business district. At approximately 70 percent of the monitors CO standards were exceeded on a regular basis. The study also suggested that the Ninth Street monitor may not represent the worst site in the city.

As required by Section 174(a) of the Act, a lead planning organization consisting of local elected officials was designated by the Governor of the State of Idaho on February 6, 1978. As the designated lead planning organization, Ada Planning Association (APA) is responsible for coordination and preparation of the required CO plan. APA is developing the TCP portion of the Boise-Ada County CO attainment plan in two phases. The first phase of the plan consists of adopting measures to insure reasonable further progress, developing a schedule to study and adopt other necessary reasonably available control measures and to identify target emission reductions. This part of the plan was developed based on the criteria set forth elsewhere in this notice. It is this phase (the 1979 SIP) upon which we are proposing action today. The second phase (the 1982 SIP) will consist of a plan containing necessary commitments and adoptions of measures to insure attainment of the standards prior to December 31, 1987.

2. *Emission Reduction Required.*

With a combination of computer modeling and rollback modeling APA predicted that there will still be violations of the 8-hour CO standard in the Boise area by the end of 1982. It is also estimated that an additional 12 to 15 percent reduction in CO emissions beyond that which would be acheived through implementation of an I/M program and other committed measures, is necessary to meet the 8-hour CO standard by the end of 1987.

3. *Extension Request.*

Since attainment by the statutory December 31, 1982 date is not projected, a formal request for a post-1982 attainment date has been made by IDHW and APA. The Act enables the EPA Administrator to grant up to five year extension (to December 31, 1987) for compliance with the standards as long as the state submits a demonstration that attainment by 1982 cannot be achieved in the Boise area despite implementation of all reasonably available control measures.

EPA has reviewed the State and local demonstration and has determined that an extension of the attainment date from December 31, 1982 to December 31, 1987 is warranted.

4. *Control Strategy.*

The CO problem has been attributed almost entirely to emissions from mobile (transportation) sources. As demonstrated in the emission inventories contained in the Boise-Ada County CO plan, more than 90 percent of the CO problem originates from motor vehicles.

In light of the dominant motor vehicle contribution to the CO nonattainment problem, the APA control strategy focuses on transportation measures. Typical reasonably available control measures are listed in Section 108(f)(1)(A) of the Act. It should be noted that these measures are designed to reduce vehicle emissions in one of three basic ways: (a) by reducing trips and miles traveled; i.e., improved mass transit, carpooling, etc., or (b) by improving traffic speeds; i.e., improved traffic signalization, traffic flow improvements, parking restrictions, etc., or (c) by reducing the emissions from individual vehicles; i.e., an inspection and maintenance program and the Federal Motor Vehicle Emission Control Program.

Measures already implemented in the Boise-Ada county area, and in some cases scheduled for further improvements include:

a. Improved public transit including downtown free shuttle bus.
b. On-street parking controls.
c. Promotion of flexible work hours.
d. Traffic signalization improvements downtown.
e. Park and ride lots.
f. Growth management.
g. Bicycle lanes and storage.
h. Areawide carpool programs.

Measures which APA is now studying and which will be considered for future implementation are listed below:

a. Inspection and maintenance program.
b. Additional public transit improvements including establishment of a downtown bus terminal.
c. Exclusive bus and carpool lanes.
d. Additional traffic flow improvements.
e. Long-range transit improvements.
f. Pedestrian malls including the Boise redevelopment project in the central business district.
g. Additional park and ride lots.
h. Additional employer programs to encourage carpooling and vanpooling.
i. Vehicle idling controls.
j. Additional growth management.

5. *Proposed Action.*

Based on the criteria set forth elsewhere in this Notice, EPA is proposing to approve the 1979 TCP portion or the Boise-Ada County CO attainment plan as submitted without conditions. EPA is satisfied that all currently planned, reasonably available control measures are being implemented, and that, in addition, a commitment to evaluate and adopt control measures, which will result in attainment no later than December 31, 1987 has been made. APA, IDHW, and EPA are working closely together to insure that items contained in the next section will be addressed in the 1982 SIP submittal.

6. *Areas to be Addressed in Future SIP Submissions.*

The following items are problems that will be addressed in the 1982 SIP submission or in other sections of this notice:

a. It is critical for future work (the 1982 SIP) that the emission inventory be detailed, comprehensive and incorporate the use of the latest mobile source emissions factors. A more complete and refined analysis of parking lot activity emissions is necessary. This would include accounting for parking lot emissions from the Boise Redevelopment Agency (BRA) project. Specific projects that are in the adopted transportation plan must also be included in the projected emission inventories.

b. An inspection and maintenance program is discussed in detail later in the notice.

c. The CO plan that is submitted in 1982 must demonstrate reasonable further progress attaining the standards prior to December 31, 1987.

d. Population projections used in the 1982 SIP projections must be consistent with Bureau of Economic Affairs projections. The major intent of this future requirement is to insure that the population projections used in all EPA programs are consistent (CO attainment plans, water quality planning under the 208 program, and construction grants projects for wastewater treatment facilities).

e. Individual highway projects must conform with the SIP at both the system or comprehensive planning level (mesoscale) *and* the project level or EIS level (microscale). In order to construct these projects, the following criteria must be fulfilled:

(1) The project's regional impact must be accounted for in the SIP. For example, the project must be part of the Regional Transportation Plan that was analyzed in the alternative analysis (mesoscale).

(2) The project's impact must be evaluated for the microscale air quality impact. The project must not cause new or exacerbate existing violations of the standards, or delay the attainment of the standards (microscale).

In order to help facilitate project conformity with the SIP, a detailed listing and schedule for construction and opening of various major projects will be required.

B. *Indirect Source Review Variance.*

1. *Introduction.*

An indirect source review program provides for the pre-construction review of facilities which are likely to induce or attract significant vehicular traffic, thereby increasing the amount of mobile source generated air pollutants.

EPA approved the State of Idaho's indirect source review regulation in the **Federal Register** on January 30, 1975 (40 FR 4420). The regulation applies to any new parking facility or other indirect source with an associated parking area which has a parking capacity of 1,000 cars or more. Sources subject to this regulation such as the BRA project would have to obtain a "Permit to Construct" or be granted a variance from the regulations prior to commencing construction. Specific procedures for applying for a permit or variance are set forth in Section 1–1004 and Section 1–1007 of the "Rules and Regulations for the Control of Air Pollution in Idaho" and will not be discussed here.

On July 1, 1980 the State of Idaho submitted to EPA as a SIP revision a variance from its indirect source review program. EPA's action on this request for a SIP revision is governed by Sections 110(a)(3)(A) and 110(a)(5)(A)(iii) of the Act and the recent decision of the Second Circuit Court of Appeals in the case of *Manchester Environmental Coalition* v. *EPA*, —— F. 2d ——. (2nd Cir. 1979) (No. 79–4062). In the *Manchester* case the court held that Section 110(a)(5)(A)(iii) required EPA to insure that a state's indirect source SIP revision met both procedural and substantive requirements of Section 110. The court noted that under the Act most states were revising their SIPs to meet Part D and suggested that the appropriate procedure would be to examine a state's indirect source revision submittal along with its Part D SIP submittal, concluding that EPA approval of the state's Part D submission would be sufficient to allow the Agency to approve the state's indirect source revision as well. Therefore if the Idaho Part D SIP revision or the relevant portion thereof is approvable (or conditionally approvable) then EPA can approve the state's request for a SIP revision approving its indirect source variance.

2. *Background.*

The Boise City Comprehensive General Plan in 1964 provided for a major regional shopping center in the downtown area. In pursuit of this goal, the City Council established the Boise Redevelopment Agency in 1965 and in turn incorporated the concept of a regional shopping complex into the current Boise Metro Plan. In April 1979 the BRA and Winmar Corporation presented the current project design proposal intended to optimize the goals of various citizen committees.

An integral part of the project is a 3,060 space underground parking facility. Success of the proposed retail complex is dependent upon occupancy by major department stores which require large, adjacent parking facilities. Construction of the parking garage is subject to the State of Idaho permit procedures for Indirect Sources, Rule 1–1004, Rules and Regulations for the Control of Air Pollution. Pursuant to the Indirect Source Regulations, the BRA submitted an application for an indirect source permit in late 1977 with an addendum submitted in March 1978. On April 5, 1978, the Idaho Department of Health and Welfare issued a preliminary determination to deny the permit based upon a finding by the BRA that its proposed project would further degrade air quality in the Boise area.

In 1978, BRA unsuccessfully challenged, in State Court, the IDHW's finding that the BRA project was subject to indirect source regulation permit requirements.

On December 13, 1979, pursuant to Rule 1–1007, the BRA filed a petition for a variance from the permit requirements set forth in Rule 1–1004. The petition was supplemented on January 2 and January 7, 1980. In its petition the BRA contends that application of the indirect source permit requirements to the redevelopment project would impose an arbitrary or unreasonable hardship upon the Boise community. On March 12, 1980, a public hearing was held on the variance request. Over fifty persons presented oral or written testimony.

On April 24, 1980, IDHW granted the BRA a variance from Rule 1–1004. The Director of IDHW reasoned that rejection of the variance request could result in an expensive design change or project termination without any significant air quality benefit.

The Director further stated that it would then be unreasonable to require compliance with the permit regulation when clean air standards can be met without modifying the project or imposing a severe hardship on the community. The director noted that pursuant to the Act, the Ada Planning Association must adopt and implement whatever measures may be necessary to ensure that national CO standards are achieved by 1987. He concluded that because of the severity of Boise's air quality problem, the APA plan must be both aggressive and innovative. He additionally found that any additional traffic generated by the BRA project must be addressed by the control strategy developed by APA. Because APA was committed to developing such a strategy, the Director found the variance acceptable. The SIP containing the variance was then submitted to EPA on July 1, 1980.

3. *Description of the BRA Project.*

The BRA project is a shopping center and parking garage complex currently being proposed for construction in downtown Boise. It is considered to be an urban revewal project which would help reduce urban sprawl and encourage revitalization of the downtown area.

The BRA project is scheduled for an area bounded on the east by Capitol Boulevard, on the south by Front Street, on the west by Ninth Street, and on the north by Bannock Street. The retail complex will be contained in a two-level structure, designed to provide some vertical urban relief. The retail portion will contain approximately 765,000 square feet.

Parking spaces in the redevelopment project would be limited to new construction of four parking spaces for each 1,000 square feet of gross leasable area of retail space. This would allow construction of 3,060 spaces using the assumption of 765,000 square feet of retail space.

Approximately 650 parking spaces in the project area would be removed during the first phase of construction of the project, including removal of exising parking and on-street facilities. Therefore, the actual net increase in parking in the eight-square block area will be approximatly 2,410 spaces. The planned 3,060 spaces would be places in a manner yet to be determined.

Existing streets to be vacated include Main from Capitol Boulevard to Ninth; Idaho from Capitol Boulevard to Ninth; and Eighth from Main to Bannock. A portion of Idaho from Capitol to Eighth and a portion of Eight from Idaho to Bannock would remain open for vehicular access to project facilities. However, this access is not meant to facilitate through traffic.

4. *Rationale for Action.*

EPA is proposing to approve the SIP revision containing the BRA project variance from the State of Idaho's indirect source regulation. As already discussed, EPA is today proposing approval of the TCP portion of the Boise-Ada County CO attainment plan. Action on the new source review regulations which constitute the remaining portion of the CO attainment plan will take place in a separate **Federal Register** notice at a later date. However, given that there are no present or planned stationary sources emitting CO within the area impacted by the BRA project which will be subject to

these new source review regulations, and moreover, since emissions from the BRA project will be accounted for in the updated emission inventory and 1982 SIP revision, EPA is satisfied that approval of the variance from the State of Idaho's indirect source review program will not result in a SIP which is inadequate to attain and maintain NAAQS.

APA and IDAW have provided assurances that the project's impact on air quality will be accounted for in the transportation control plan currently being developed to attain the CO standards. In addition to the submittal of the variance request, EPA has received adequate commitments from APA and IDHW to ensure that the plan currently being developed will demonstrate attainment of the standards prior to December 31, 1987 even with the additional growth allowance. EPA recognizes that an inspection and maintenance program will be necessary to make an attainment demonstration an is calling for submission of a SIP revision containing an I/M program elsewhere in this notice. Specific rationale for approval of the SIP revision containing the BRA variance for the proposed action is discussed below:

a. Increased emissions generated by this facility will be adequately accounted for in the 1982 SIP revision containng the Boise-Ada County CO attainment plan. In effect, the BRA project indirect source variance is an amendment to the CO emission inventory since emissions from the parking activity associated with the project will be added to the exising emission inventory thus making it current, accurate and comprehensive.

b. The 1982 SIP revision containing the Boise CO attainment plan will only be approved if the emissions from this facility are adequately accounted for and if the plan demonstrates, to EPA's satisfaction, attainment of the standards prior to December 31, 1987.

c. The BRA project is consistent with national goals to promote urban renewal and reduce urban sprawl.

d. IDHW has determined that the project will be designed with air quality considerations as one of the prime design factors. A special parking garage design configuration maximizing internal flow and facilitating ingress and egress will be incorporated to help reduce automobile emissions. The garage will also have an elaborate exhaust fan system.

5. *Proposed Action.*

In order to approve the BRA indirect source variance which has been submitted to EPA, EPA must determine that the variance meets the requirements of Section 110 of the Act. The State is required to demonstate that approval of the SIP revision will result in protection of the NAAQS. Based on the State's demonstration as outlined above, EPA is satisfied that the SIP revision meets the substantive and procedureal requirements of Section 110 and is therefore proposing approval of the BRA indirect source variance.

C. Other Action (Boise-Ada County Inspection and Maintenance Program

1. *General Background.*

"Inspection and Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Operation of no-complying vehicles if prohibited. This is more effectively accomplished by requiring proof of compliance to purchase license plates or to register a vehicle. A windshield sticker system, much like that of many safety inspections programs, can be used if it can be demonstrated that equal effectiveness will be achieved.

Section 172 of the Act requires that State Implementation Plans which include nonattainment areas must meet certain criteria. For areas which demonstate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982 despite the implementation of all reasonably available control measures, an extension to 1987 is granted. The plan provisions shall "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program * * *."

EPA issued guidance on February 24, 1978, on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking (44 FR 20372, 20373, n 6). Though the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

• *Legal Authority.* States or local governments must have adopted the the necessary statutes, regulations, ordinances, etc., to estabish the I/M program (Section 172(b)(10)).

• *Commitment.* The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172(b)(10)).

• *Resources.* The necessary finances and resources to carry out the I/M program mut be identified and committed. (Section 172(b)(7)).

• Schedule. A specific schedule to establish the I/M program must be included in the State Implementation Plan (Section 172(b)(11)(B)). Interim milestones are specified in the July 17, 1978 memorandum in accordance with the general requirement of 40 CFR 51.15(c).

• Program Effectiveness. As set forth in the July 17, 1978 memo, the I/M program must achieve a 25 percent reduction for carbon monoxide. This reduction is measured by comparing the levels of emission projected to December 31, 1987, with and without the I/M program. This is not a specific requirement of the Act but is EPA's policy based on Section 172(b)(2) which states that "the plan provisions * * * shall * * * provide for the implementation of all reasonably available control measures * * *"

2. *Rationale Calling for an I/M Program in the Boise-Ada County Area.*

a. *Boise-Ada County CO Problem.* (1) Boise is a rapidly growing city. The current 1980 estimated population in the Boise nonattainment area is 170,000. By the year 1985 the population is projected to exceed 200,000 and will likely increase to 300,000 by the year 2000.

(2) Over the last few years the Boise/Ada County area has experienced numerouse violations of the CO standards. A summary of the CO violations is as follows:

Year	2d High (mg/m^3)	Days of violation
1975	20.4	28
1976	21.0	95
1977	20.7	67
1978	20.2	58

Also, special monitoring studies have revealed that the CO problem is widespread and that there are several locations with violations even higher than those reported in the normal monitoring data.

(3) Boise is an isolated small urban city. The CO problem is caused by its own mobile source emissions. Unlike small cities located close to urban centers, the problem in Boise is not caused by the pollution generated in larger neighboring cities.

(4) The meteorological conditions in the Boise/Ada County area are conducive to causing CO problems. Strong inversions are common during the winter months resulting in poor ventilation. CO emissions are then

trapped in these stagnant conditions causing violations of the standards.

b. *Justification for I/M in Boise-Ada County.* I/M is necessary in the Boise-Ada County area to insure reasonable further progress and eventual attainment of the CO standard. The following issues demostrate this need:

(1) Initial SIP Air Quality Projections: The initial air quality projections contained in the SIP indicate that Boise will not be able to attain the CO standard by 1987 without an I/M program. This estimate includes emission reduction credits associated with the implementation of improved transit, traffic flow improvements, carpools and idle limitations. Boise may not be able to attain the standards by the statutory date, accordingly, an aggressive CO attainmnet plan, including I/M, is necessary for the Boise area.

(2) Major Urban Renewal: Boise is currently planning a major urban renewal project. The project includes a shopping mall and a large parking garage for approximately 3,000 vehicles. The project would increase vehicular activity in the vicinity where the permanent CO monitor is already recording violations of the standard. The only feasible measure capable of offsetting the project's projected impact on air quality is an effective I/M program.

(3) Major Highway Projects: Currently there are two major projects being considered for construction in the Boise Central Business District. The State Street Connector and the Broadway-Chinden Corridor both would potentially increase vehicular activity in the Boise area. As proposed, the Broadway Chinden Corridor would be the main link between Interstate 80 and the downtown area, thus encouraging new automobile trips downtown. One way to mitigate these projects' air quality impacts would be to implement an I/M program.

(4) Major EPA Construction Grants: Major 201 wastewater treatment projects are underway or starting in the Boise nonattainment area. Certain of these, namely sewage treatment plant expansion and interceptor construction, have some growth-inducing features. Associated with this growth are additional air quality impacts. This is presently being studied by EPA and will be discussed in a Boise Urban Environmental Impact Statement.

In summary, the Boise-Ada County area is a rapidly growing isolated small urban area. Numerous violations of the CO standard have been recorded, and the area will not be able to attain standards by 1987 without an I/M program. Several projects are being contemplated for construction. The combined impact of these projects can only be mitigated through the implementation of an I/M program and other transportation control measures.

3. *EPA I/M Policy.* Current EPA policy is stated in a July 17, 1978 I/M policy memo from David Hawkins, Assistant Administrator for Air, Noise, and Radiation to the Regional Administrators specifies that for areas with populations less than 200,000 "EPA will not at this time automatically require I/M schedules in 1979 as a condition for SIP approval or an extension."

This policy should not be interpreted, however, to prevent the inclusion of an I/M strategy into the SIP for smaller urban areas if I/M can be shown to be reasonable and necessary to attain the standards. "Areas under 200,000 still have to attain and maintain NAAQS as expeditiously as practicable," but no later than December 31, 1987. EPA has indicated that the need for I/M in those small areas would be assessed after the submittal of the 1979 SIP revisions.

APA and IDHW have made a convincing case that Boise has a significant CO problem. Due to the projected dramatic population increase, projected difficulty in attaining the CO standards by December 31, 1987, and resulting increase in CO levels projected due to major projects, EPA agrees with the finding that an I/M program is necessary for the Boise/Ada County area.

4. *Proposed Action.* At this time EPA is proposing to call for a SIP revision including I/M to be submitted by July 1, 1981. The SIP revision must contain at a minimum a commitment from the appropriate jurisdiction to achieve a 25 percent reduction in CO emissions from gasoline fueled light duty vehicles by 1987 from an I/M program, in the other key elements discussed earlier in this section. Program implementation must be by December 31, 1982 for a decentralized approach and no later than December 31, 1983 for a centralized approach.

5. *Funding and Growth Limitations.* Failure to submit the needed legal authority, revised schedule as agreed to by EPA, and commitments as a SIP revision by July 1, 1981, will make the State liable to the funding and growth limitations specified in the Act. In order to avoid these statutorily-imposed limitations, the State must pass the appropriate legislation (I/M Bill) securing the needed legal authority to implement an I/M program in the Boise/Ada County area prior to March 31, 1981. Generally, the area affected will be the air quality control region (AQCR). In this specific case the AQCR includes Ada and Canyon Counties.

If funding limitations are necessary, procedures for applying them would be consistent with those published in the **Federal Register** on April 10, 1980 (45 FR 24692). These procedures will not be discussed in detail here.

Section 316 of the Act also allows the Administrator of the Environmental Protection Agency to withhold, condition or restrict grants for the construction of sewage treatment works in nonattainment areas where the State is not making reasonable further progress towards attainment of all NAAQS.

Interested parties are invited to comment on all aspects of the approvability of the Idaho SIP. In particular, comments are requested on the appropriateness of the findings on issues discussed above, the suggested corrective actions, and the approvability of the SIP with respect to the applicable requirements.

Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice. Public comments received by (30 days after publication), will be considered in EPA's final decision on the SIP.

All comments received will be available for inspection at the Region 10 Office, 1200 Sixth Avenue, Seattle, Washington 98101.

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; I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended. [Sections 110(a) and 1972 of the Clean Air Act (42 U.S.C. 7410(a) and 7502).]

EPA finds that good cause exists for providing a 30 days comment period for the following reasons.

(1) EPA has a responsibility under the Clean Air Act to take action on the Part D portions of a SIP by July 1, 1979 or as soon thereafter as possible

(2) The public has had an opportunity to review and comment on the Part D and 110 SIP revisions January 31, 1980 and July 1, 1980 respectively.

Dated: July 23, 1980.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 80-23810 Filed 8-7-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Parts 52 and 81

[FRL 1564-6]

Approval and Promulgation of Implementation Plans for Connecticut; Attainment Status Designations; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 2, 1980 (45 CFR 45080) the Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking for the State of Connecticut's revisions to its State Implementation Plan (SIP) to meet the Part D requirements of the 1977 Amendments to the Clean Air Act, that Notice indicated that public comments on EPA's proposal would be accepted through August 1. Today's Notice extends the public comment period ten (10) additional days.

DATES: Written comments to EPA's Boston regional office should be postmarked no later than Monday, August 11, 1980 in order to be considered in the final rulemaking.

ADDRESSES: All written comments should be addressed to: Harley F. Laing, Acting Chief, Air Branch, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Harley F. Laing, Acting Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203. Telephone 617—223-6883.

SUPPLEMENTARY INFORMATION: The deadline for written comments has been extended because of the significant interest the Connecticut revisions and EPA's proposed rulemaking have generated. The extension will give persons who may not have been able to attend the public meeting in Hartford on July 30 (announced in the July 2, 1980 Notice) an additional opportunity to comment on EPA's proposal. In addition, discussion at that meeting may generate issues or concerns not previously addressed on which individuals may wish to submit comments.

Dated: July 31, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-24020 Filed 8-7-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 81

[FRL 1564-47]

Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to change the ozone attainment status designation of Vanderburgh County from nonattainment to attainment/unclassifiable. Indiana requested this redesignation on February 11, 1980. The proposed redesignation is based on the previous two years of ambient ozone data.

DATE: Comments on this proposed redesignation are due by October 7, 1980.

ADDRESS: Copies of the technical support document are available for public inspection at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Indiana Board of Health, Air Pollution Control Division, 1330 West Michigan Street, Indianapolis, Indiana 46206

Evansville Environmental Protection Agency, Administration Building, Room 207, Civic Center Complex, Evansville, Indiana 47708

Written comments should be sent to: Gary Gulerzian, Chief, Regulatory Analysis Section (5AHMD), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Regulatory Analysis Section (5AHMD), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act, as amended in 1977, required the USEPA to designate those areas of States which were not attaining the National Ambient Air Quality Standards (NAAQS). On the recommendation of the State of Indiana, the USEPA designated Vanderburgh County as "Does not meet the primary standard" for photochemical oxidants on March 3 1978, (43 FR 8962, 40 CFR 81.315). This designation was based on the 0.080 part per million (ppm) oxidant NAAQS in effect at that time.

On February 8, 1779, the USEPA changed the ozone NAAQS from a one hour photochemical oxidant standard of 0.080 ppm, not to be exceeded than once a year, to an hourly ozone standard of 0.120 ppm, not to exceeded on the average of more than one day per year (40 CFR 50.9).

Because of the revision in the NAAQS, on September 5, 1979, the Indiana Air Pollution Control Board voted to change Vanderburgh County's ozone attainment designation in Indiana regulation APC-22 from nonattainment to attainment/unclassifiable. The Indiana Air Pollution Control Board (IAPCB) based its designation change on ozone data from Vanderburgh County showed no violations of the 0.120 standard in 1977 and 1978. At the time the IAPCB acted, the USEPA's criteria for redesignation were stated in a June 12, 1978 memorandum from Richard G. Rhoads, Director of Control Programs Development Division. This memorandum specified that eight quarters of ambient air quality data were generally required showing no violations before an attainment designation could be approved. Although Indiana relied on eight quarters of data showing no violations in Vanderburgh County, data from nearby Henderson County, Kentucky contained recorded violations of the ozone standard in 1977. Because of the proximity of the Henderson County monitoring site (approximately five miles south of Vanderburgh County), the USEPA believes that the Henderson County monitoring data must be considered in any redesignation of Vanderburgh County. In order to obtain the necessary eight quarters of data showing no violations, Indiana deferred submittal of its redesignation request until the close of the 1979 ozone season. During the 1979 ozone season, there were no recorded violations of the standard in either Vanderburgh or Henderson Counties.

On February 11, 1980, the State of Indiana submitted its request for redesignation of Vanderburgh County to the USEPA. Technical support accompanying the submittal demonstrated that there were no violations of the 0.120 ozone standard in Vanderbugh County in the three years from 1977 to 1979. Technical support contained in separate submittal from the

State of Kentucky requesting redesignation of Henderson County, indicated that there were no violations for 1978 to 1979. Kentucky's redesignation request will be the subject of a separate **Federal Register** notice. Shortly before the State's submittal, the USEPA issued a memorandum revising the criterial for ozone redesignations. According to the December 7, 1979 memorandum by Richard G. Rhoads, the last three years of ambient data must be used whenever it is available. In addition, the memorandum contained a "grandfather clause" which specifies that these criteria apply prospectively so that States are not required to reconsider their current ozone designations. All further designations, however, would have to be based on the criteria in the "Guideline for the Interpretation of Ozone Air Quality Standards (EPA 450/4–79–003]." Utilizing this guideline, the Henderson County, Kentucky site has an average of 1.5 exceedance per year in the 1977 to 1979 period.

Thus, under the policy stated in the June 12, 1979, Rhoads' memorandum, Vanderburgh County should be reclassified as attainment for ozone, but under the "Guidelines for the Interpretation of Ozone Air Quality Standards" it should remain nonattainment. Because the State redesignated Vanderburgh County prior to the issuance of the Rhoads' December 7, 1979 memorandum and because of the "Grandfather Clause" in the memorandum, the USEPA is proposing today rulemaking based on the June 12, 1979 memorandum. This rulemaking proposes redesignating Vanderburgh County's ozone attainment designation in 40 CFR 81.315 from "Does Not Meet Primary Standards" to "Cannot Be Classified or Better than National Standards." If violations of the ozone standard are monitored in either Henderson or Vanderburgh Counties during the 1980 ozone season, such that the average annual violation for the 1978 through 1980 period exceeds 1.00, then this proposal to redesignate Vanderburgh County will be withdrawn. The USEPA is soliciting public comment as to the appropriate attainment designation for Vanderburgh County and on the USEPA's proposed action.

Under Executive Order 12044 (43 FR 12681), the USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations", signed March 29, 1979 by the Administrator, and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Notice of Proposed Rulemaking is issued under the authority of Sections 107 and 301(a) of the Clean Air Act, as amended.

Dated: July 11, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80–23995 Filed 8–7–80; 8:45 am]

BILLING CODE 6560–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

41 CFR Part 101–17

Assignment and Utilization of Space; Improved Use of Federal Facilities and Space

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: GSA proposes to provide Federal agencies with guidelines to use in establishing programs to improve their utilization of space and with criteria for developing and implementing programs to achieve economies in space utilization. This action is being taken at the direction of the Office of Management and Budget in keeping with the President's efforts to significantly reduce the cost of Government operations. The proposed regulation is intended to reduce the total space utilization rate, which will result in significant annual cost savings.

DATE: Comments must be received by: September 22, 1980.

ADDRESSES: Comments should be addressed to: General Services Administration (PRM), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul H. Herndon III, Director, Space Management Division (202–566–1875).

SUPPLEMENTARY INFORMATION: This regulation deletes a reference to the Office of Operating Programs that no longer exists. In addition, the listing of GSA regional offices is amended to indicate the new National Capital Region, which includes the Standard Metropolitan Statistical Area of Washington, and to change the location of GSA Region 3 to Philadelphia, Pennsylvania (serving Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). The proposed regulation updates current organizational alignment to ensure that space requests are routed to the correct office. This proposal also provides for the use of space allocation standards in lieu of occupancy guides and provides procedures for Federal agencies for the development of work station requirements. By policy memorandum of November 14, 1975 (subject: Accelerated Space Utilization Program—Phase II), the Commissioner, Public Buildings Service, rescinded the work station allowances contained in all occupancy guides. Since then the concept of space allocation standards has been developed to replace the occupancy guides. This proposal reflects these changes and formalizes current GSA policy on providing space for work stations. It is further proposed to provide criteria for Federal agencies to use in developing and implementing programs to achieve economies in space utilization. This proposal also outlines the major elements necessary to establish effective and responsible programs by agencies for improving the use of Federal space and, with the active participation and cooperation of Federal agencies, for reducing the total space-utilization rate to realize cost savings and/or cost avoidance.

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, GSA proposes to amend 41 CFR Part 101–17 as follows:

1. The table of contents for Part 101–17 is amended by changing the title to § 101–17.302 and adding the followng entries:

Sec.

101–17.202–1 Agency space utilization programs.

101–17.302 Use of space allocation standards.

101–17.302–1 Development of work station requirements.

Subpart 101–17.1—Assignment of Space

2. Section 101–17.101(a) is revised to read as follows:

§ 101–17.101 Requests for space.

(a) Except as provided in § 101–17.101–2, Federal agencies shall satisfy their space needs (additions and deletions as identified in § 101–17.202–1 (d) and (e)) by submitting a Standard Form 81, Request for Space, to the GSA regional office responsible for the geographic area in which the space is

required. A listing of GSA regional offices and the areas they serve is shown in § 101–17.4801.

* * * * *

Subpart 101–17.2—Utilization of Space

3. Section 101–17.202 is revised and 101–17.202–1 is added to read as follows:

§ 101–17.202 Responsibility of agencies.

It is the responsibility of Federal agencies to assist and cooperate with GSA in the assignment and utilization of space, including the furnishing of data relative to the use of space occupied, personnel work stations housed or to be housed, and establishing agency programs to improve space use. It is the further responsibility of Federal agencies to ensure efficient and economical space utilization by continuously studying and surveying space occupied under GSA assignment and other space which is controlled by the agencies. It is the responsibility of agencies to report to GSA any space which is excess to their needs and which might be assigned to other agencies.

§ 101–17.202–1 Agency space utilization programs.

Agencies shall establish internal programs for the improvement of space use. In developing and implementing the programs, the following minimum program elements should be included:

(a) Development of work station and administrative support requirements as described in § 101–17.302–1 shall be undertaken to prescribe efficient overall utilization and to develop space allocation standards in coordination with GSA to replace occupancy guides;

(b) Dissemination of internal guidelines for improving space utilization through space planning and work station design and the establishment of related training programs;

(c) A continuous review of outstanding space requests to ensure that they have been submitted to GSA in accordance with the requirements of §§ 101–17.302–1, 101–17.304, or established space allocation standards;

(d) A continuous survey of existing space to: (1) Determine present utilization practices; (2) identify space that exceeds that needed for efficient performance of program requirements; and (3) determine the economic feasibility of releasing this space to GSA for possible reassignment; and

(e) A continuous review of anticipated personnel and program changes to determine expected space requirements and provide accurate utilization data.

Subpart 101–17.3—Space Standards, Criteria, and Guidelines

4. Section 101–17.302 is revised and 101–17.302–1 is added as follows:

§ 101–17.302 Use of space allocation standards.

Space allocation standards are defined in § 101–17.003–32. The objective is to promote more efficient operation and better utilization through development of work stations and administrative support space standards. These standards may vary to consider layout and circulation as defined in §§ 101–17.003–30 and 101–17.003–31.

§ 101–17.302–1 Development of work station requirements.

Development of work station requirements shall include:

(a) Defining and grouping distinct job categories within the organization;

(b) Determining the function of these job categories and their physical needs;

(c) Translating physical needs of these job categories into compact and efficient individual furniture work station standards and determining the square footage associated with each standard; and

(d) Consolidating the square-footage needs into work station groups. The sum of individual work station square-footage standards or work station groups and support space requirements, plus circulation and layout factors, becomes the basis for the request for space.

5. Section 101–17.303 is amended by revising paragraph (a) to read as follows:

§ 101–17.303 Use of space allocation allowances.

(a) In the absence of either the documented work station analysis described in § 101–17.302–1 or an approved space allocation standard, the space allowances listed in §§ 101–17.304–1 and 101–17.304–2 shall be used in space planning for agencies and components thereof.

* * * * *

Subpart 101–17.48—GSA Regional Offices

6. Section 101–17.4801 is amended by adding the National Capital Region and redefining Region 3 to read as follows:

§ 101–17.4801 GSA regional offices.

GSA Region, Area Served, and Mailing Address

National Capital—Standard Metropolitan Statistical Area of Washington, DC, General Services Administration, National Capital Region, Washington, DC 20407.

1—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, General Services Administration, John W. McCormack, Post Office and Courthouse, Boston, MA 02109.

2—New Jersey, New York, Puerto Rico, and the Virgin Islands. General Services Administration, 26 Federal Plaza, New York, NY 10007.

3—Delaware, Pennsylvania, West Virginia, and Maryland and Virginia (except National Capital Region), General Services Administration, 9th and Market Streets Philadelphia, PA 19106.

4—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, General Services Administration, 75 Spring Street Atlanta, GA 30303.

5—Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, General Services Administration, 230 South Dearborn Street, Chicago, Il 60604.

6—Iowa, Kansas, Missouri, and Nebraska, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.

7—Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.

8—Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.

9—Arizona, California, Hawaii, Nevada, and Guam, General Services Administration, 525 Market Street, San Francisco, CA 94105.

10—Alaska, Idaho, Oregon, and Washington, General Services Administration, GSA Center, Auburn, WA 98002.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c))

Dated: July 29, 1980.

A. R. Marschall,

Acting Commissioner, Public Buildings Service.

[FR Doc. 80–23997 Filed 8–7–80; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[BC Docket No. 80–430; RM–3577]

FM Broadcast Station in Greybull, Wyo.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to assign a Class C or Class A channel to Greybull, Wyoming, as its first FM assignment in response to a petition filed by Robert D. Zellmer.

DATES: Comments must be filed on or before September 29, 1980, and reply comments on or before October 20, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Greybull, Wyoming), BC Docket No. 80-430, RM-3577.

Adopted: July 30, 1980.

Released: August 5, 1980.

1. *Petition, Proposal, Comments.* (a) A petition for rulemaking [1] was filed by Robert D. Zellmer, of AM Station KMMZ in Greybull, Wyoming ("petitioner"), proposing the assignment of Channel 262 to Greybull, Wyoming, as that community's first FM assignment.

(b) Channel 262 could be assigned to Greybull, Wyoming, in compliance with the minimum distance separation requirements.

(c) Petitioner states he will apply for the channel, if assigned.

2. *Demographic Data.*—(a) *Location.* Greybull is located in Big Horn County approximately 456 kilometers (285 miles) northwest of Cheyenne, Wyoming.

(b) *Population.* Greybull—1,953 [2]; Big Horn County—10,202.

(c) *Local Aural Broadcast Service.* AM Station KMMZ—1140 kHz, daytime-only.

3. *Economic Considerations.* Petitioner has not provided economic data concerning Greybull, Wyoming.

4. *Preclusion.* A preclusion study was done for Channel 262 in Greybull, Wyoming, with the assumption that the transmitter would be located in the center of the city. Proposals concerning Rock Springs, Wyoming (Rm-3117) and Trementon, Utah (RM-3595) which are now pending, were not taken into consideration. The assignment of Channel 262 to Greybull will cause preclusion on all seven channels to all or parts of the following twenty-eight *counties:*

Wyoming: Sheridan, Big Horn, Park, Hot Springs, Nashakie, Johnson, Fremont, Natrona, Sweetwater, Sublette, Teton
Montana: Big Horn, Rosebud, Yellowstone, Stillwater, Carbon, Custer, Treasure, Musselshell, Golden Valley, Fergus, Wheatland, Sweet Grass, Meagher, Park, Gallatin, Madison
Idaho: Fremont

Petitioner should provide information regarding channels available to these precluded areas.

5. Based on the large preclusion caused by a Class C channel assignment for Greybull, Wyoming, and the small population of Greybull, a Class A assignment may be more in order. A staff study has indicated that Channel 261A can be assigned to Greybull. Petitioner has stated that if his request for Channel 262 is denied, then he would apply for Channel 261A if assigned.

6. Generally, in order to justify the assignment of a Class C channel to a small community, a showing of first and second aural broadcast services is needed.[3] Petition has asked that he not be required to submit these showings. However, he has failed to give reasons for not providing the study. He should either provide the necessary showing of the need for a wide coverage channel or give reasons as to his inability to do so.

7. Accordingly, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to Greybull, Wyoming, as follows:

City	Channel No.	
	Present	Proposed
Greybull, Wyo		262 or 261A.

8. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before September 29, 1980, and reply comments on or before October 20, 1980.

10. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

[1] Public Notice of the petition was given on February 20, 1980, Report No. 1215.

[2] Population figures are taken from the 1970 U.S. Census.

[3] See *Roanoke Rapids, N.C.*, 9 F.C.C. 672 (1967) and *Anamosa, Iowa*, 46 F.C.C. 2d 520 (1974).

accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-23970 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-429; RM-3514]

FM Broadcast Station in Ogallala, Nebr.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking and order to show cause.

SUMMARY: This action proposes to add two Class C FM channels in place of the two existing Class A channels at Ogallala, Nebraska, and modify the licenses of both Class A licensees to specify the class C channels. Significant first and second FM and nighttime aural services could be provided thereby.

DATES: Comments must be filed on or before September 29, 1980, and reply comments on or before October 20, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker or Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Ogallala, Nebraska), BC Docket No. 80-429, RM-3514.

Adopted: July 30, 1980.

Released: August 6, 1980.

1. *Petition, Proposals, Comments.* (a) The Commission has before it a petition filed by Ogallala Broadcasting Co., Inc. ("petitioner"),[1] license of Station KOGA-FM (Channel 224A), Ogalalla, Nebraska. The petition requests the substitution of Channel 259 for Channel 224A at Ogallala.

(b) Channel 259 can be assigned to Ogallala in conformity with the minimum distance separation requirements, and without deletion of any other channels assigned to Ogallala, including Channel 224A.

(c) No pleadings other than the petition have been filed.

2. *Community Data*—(a) *Location:* Ogallala, seat of Keith County, is located in western Nebraska, approximately 483 kilometers (300 miles) west of Omaha, and 322 kilometers (200 miles) northwest of Denver, Colorado.

(b) *Population.* Ogalalla—4,976;[2] Keith County—8,487.

(c) *Present Aural Service.* FM Station KMCX[3] (Channel 228A); Station KOGA—FM (Channel 224A); and fulltime AM Station KOGA.

3. *First and Second Service.* Petitioner submitted a *Roanoke Rapids/Anamosa*[4] study purporting to indicate first and second nighttime and FM service to be derived from a Class C facility operating with 50 kW at an antenna height of 73 meters (240 feet) HAAT.[5] Petitioner tells us that expansion from Class A to Class C facilities would provide first FM service to 3,494 persons in a 2,846 square kilometer (1,099 square miles) area; no additional second FM service; first nighttime aural service to 931 persons in a 1,484 square kilometer (573 square miles) area; and second nighttime aural service to 2,563 persons in a 1,362 square kilometer (526 square miles) area.[6]

4. *Preclusion.* Assignment of Channel 259 to Ogallala would cause preclusion on the co-channel (259) and all adjacent channels (256, 257A, 258, 260, 261A and 262). The following communities of over 1,000 population, having no local aural service, would experience preclusion: *Nebraska:* Crawford (population 1,291), Rushville (population 1,137), Burwell (population 1,341), Gothenburge (population 3,154), Oshkosh (population 1,067), Grand (population 1,099), Curtis (population 1,166), Cambridge (population 1,145), Arapahoe (population 1,147), Benkelman (population 1,349) and Chappell (population 1,204); *South Dakota*: Pine Ridge (population 2,768) and Martin (population 1,248); *Kansas:* Atwood (population 1,658), Hoxie (population 1,419) and Oakley (population 2,327); and *Colorado*: Julesburg (population 1,578) and Holyoke (population 1,640). Petitioner tells us that alternative channels are available for each of these communities.

5. In order to avoid the intermixture which would be created by our assigning a Class C channel in place of Channel 224A and leaving Station KMCX operating on Channel 228A, the Commission will, as petitioner suggests, give Station KMCX the opportunity to modify its operation from Channel 228A to Channel 286. See *Mitchell, South Dakota,* 62 F.C.C. 2d 70 (1976).[7] Channel 286 could be assigned to Ogallala in conformity with the minimum distance separation requirements. Under *Circleville, Ohio* (8 F.C.C. 2d 159 (1967)), petitioner would be required to reimburse Station KMCX for the reasonable expenses incurred in connection with modifying frequencies only. See *Mitchell, supra.* In addition, we would require the proponent of the assignment of Channel 286 to Ogallala to submit a preclusion study, including alternative channels for any precluded communities of over 1,000 population which have no local aural service at present.

6. We believe that it is in the public interest to propose to assign two Class C channels to Ogallala, in light of the significant first and second FM and nighttime aural services such assignments could provide, see *Sault Ste. Marie, Michigan,* 44 F.C.C. 2d 786 (1974). This comports with our policy of assigning Class C channels in sparsely populated rural areas which would otherwise not receive adequate broadcast coverage. In light of the preclusion data before us at present, we do not believe that factor to be an impediment to this assignment. We shall therefore propose the substitution of Channel 259 for Channel 224A at Ogallala, and order Station KMCX to show cause why it should not be required to modify its operation to Channel 286. However, we note that should another interest in the Class C channel assignments proposed herein be expressed at Ogallala, we must consider possible alternatives to the deletion of the Class A channels and proposed modification of these two licenses to Class C channels. See *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976). These could include assignment of a third Class C channel, or assignment of the

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[1] Public Notice was given on October 31, 1979, Report No. 1198.

[2] Population figures are based on 1970 U.S. Census data.

[3] Formerly Station KIBC.

[4] *Roanoke Rapids, Goldsboro, North Carolina,* 9 F.C.C. 2d 672 (1967); *Anamosa and Iowa City, Iowa,* 46 F.C.C. 2d 520 (1974).

[5] Petitioner's *Roanoke Rapids/Anamosa* showing was not entirely accurate; however, we deem it to be suitable for approximating the amount of first and second service to be gained from its proposal.

[6] We note that the present Class A facility operating on Channel 224A, Station KOGA-FM, provides second FM service to 7,489 persons but no first FM or first or second nighttime aural services.

[7] Channels 251 and 270 are the subject of Rule Makings 3578 and 3623, respectively, and the assignment of either channel to Ogallala would conflict with those proceedings. This, however, does not entirely preclude us from considering their assignment to Ogallala in connection with the instant proceeding should the need arise. See para. 6, *infra.*

two Class C channels without deletion of either or both of the Class A assignments.[8]

7. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, it is proposed to amend Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, as follows:

City	Channel No.	
	Present	Proposed
Ogallala, Nebr.	224A, 228A	259, 286

8. It is ordered, That, pursuant to Section 316(a) of the Communications Act of 1934, as amended, and with the understanding that it will receive reasonable reimbursement of expenses incurred in changing the channel on which it has a license, Station KMCX shall show cause why its license should not be modified to specify operation on Channel 286 as proposed herein instead of the present Channel 228A.

9. Pursuant to § 1.87 of the Commission's Rules and Regulations, the licensee of Station KMCX, Ogallala, Nebraska, may not later than September 29, 1980, request that a hearing be held on the proposed modification. Pursuant to Section 1.87(f), if the right to request a hearing is waived, KMCX may, not later than September 29, 1980, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. In this case, the Commission may call on KMCX to furnish additional information, designate the matter for hearing, or issue, without further proceeding, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, KMCX will be deemed to consent to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before September 29, 1980, and reply comments on or before October 20, 1980.

12. It is further ordered, That the Secretary of the Commission shall send a copy of this *Order* by certified mail, return receipt requested, to Industrial Business Corp., Box 733, Ogallala, Nebraska 69153, the party to whom the *Order to Show Cause* is directed.

13. For further information concerning this proceeding, contact Molly Pauker or Mark N. Lipp, Broadcast Bureau, (202) 632–6302 or (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reploy comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-23971 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[8] At this point in the proceeding, we make no prediction as to whether this will become necessary or which alternative we would favor, in the event that competition for Class C channels in Ogallala arises.

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47 CFR Part 73

[BC Docket No. 80-428; RM-3558]

FM Broacast Station in Hugoton, Kans.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class C channel to Hugoton, Kansas, in response to a petition filed by Grant County Broadcasting Co., Inc. The proposed channel could be used to bring a first local aural broadcast service to Hugoton in addition to significant first and second FM and nighttime aural services to the surrounding area.

DATES: Comments must be filed on or before September 29, 1980, and reply comments on or before October 20, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:
In the matter of amendment of § 73.202(b), *Table of Assignents*, FM Broadcast Stations. (Hugoton, Kansas), BC Docket No. 80–428, RM–3558.

Adopted: July 30, 1980.

Released: August 5, 1980.

1. *Petitioner, Proposal, Comments.*—(a) a petition for rule making [1] was filed by Grant County Broadcasting Co., Inc. ("petitioner"), licensee of fulltime AM Station KULY, Ulysses, Kansas, proposing the asignment of Class C FM Channel 294 to Hugoton, Kansas.

(b) Channel 294 can be assigned to Hugoton in compliance with the minimum distance separation requirements.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location:* Hugoton, seat of Stevens County, is located in the southwest corner of Kansas, approximately 536 kilometers (335 miles) southwest of Topeka, Kansas.

(b) *Population.* Hugoton—2,739; Stevens County—4,198. [2]

(c) *Local Aural Broadcast Service.* None.

3. *Economic Considerations.*—Petitioner asserts that Hugoton's economy is based on agriculture, primarily wheat and corn. It claims that although the 1970 U.S. Census shows the population of Hugoton to be 2,739, current statistics from the Stevens County Clerk places the community's population at 3,157. Petitioner notes that Hugoton is served by a weekly newspaper. Petitioner has submitted demographic information with respect to Hugoton to demonstrate the need for a first FM assignment there.

4. *Preclusion Study.* Assuming the transmitter is located in the center of Hugoton, preclusion would occur on the co-channel and all six adjacent channels in all or parts of the following *counties:*

Colorado: Los Animas, Bent, Otero, Kiowa, Cheyenne, Kit Carson, Baca, Prowers
Kansas: Stanton, Hamilton, Kearney, Finney, Gray, Haskell, Grant, Morton, Stevens, Seward, Meade, Barton, Greeley, Wichita, Scott, Wallace, Logan, Gove, Lane, Treago, Graham, Sheridan, Thomas, Stafford, Sherman, Cheyenne, Rawlins, Decatur, Norton, Rooks, Ellis, Ness, Rush, Hodgman, Pawnee
Texas: Sherman, Hansford, Ochiltree, Dallam, Roberts, Gray, Wheeler, Hutchinson, Hartley, Moore
Oklahoma: Cimarron, Texas, Beaver
New Mexico: Union, Colfax, Harding, Quay

Petitioner states that towns with populations over 1,000 in the precluded areas have at least one alternate channel for assignment.

5. Generally, a community as small as Hugton Would be assigned a Class A channel. However, an exception is made where the Class C proposal could bring a significant amount of first or second FM service or when a Class C channel represents the best means of serving a sparsely populated area. In its *Roanoke Rapids/Anamosa* study, petitioner indicates that a first FM service would be provided to 12,440 persons in a 5,216 kilometer (2,037 square miles) area, a second FM service to 4,070 persons in a 1,285 square kilomter (502 square miles) area, a first nighttime aural service to 2,646 persons in a 1,514 squre kilometer (591 square miles) area, and a second nighttime aural service to 13,880 persons in a 5,450 square kilometer (2,129 square miles) area. These figures were calculated assuming the Channel 294 transmitter site was located 16 kilometers (10 miles) north of Hugoton, operating parameters of 100 kW at 91 meters (300 feet). In calculating the nighttime aural service figures, petitioner used existing FM station parameters. Since some of the existing stations are operating with less than reasonable facilities, the nighttime aural service figures would be reduced.

6. Accordingly, in view of the first and second FM and nighttime aural service which can be provided, comments are invited on the following proposal to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to the community of Hugoton, Kansas:

Channel No.	City	
	Present	Proposed
Hugoton, Kans		294

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before September 29, 1980, and reply comments on or before October 20, 1980.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,
Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other

[1] Public Notice of the petition was given on February 1, 1980, Report No. 1211.

[2] Population figures are taken from the 1970 U.S. Census.

appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-23972 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-427; RM-3588]

FM Broadcast Station in Petersburg, Ill.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to assign Channel 249A to Petersburg, Illinois, as its first FM assignment in response to a petition filed by New Salem Enterprises, Inc.

DATES: Comments must be filed on or before September 29, 1980, and reply comments on or before October 20, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Petersburg, Illinois), BC Docket No. 80-427, RM-3588.

Adopted: July 30, 1980.

Released: August 4, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by New Salem Enterprises, Inc. ("petitioner"), proposing the assignment of FM Channel 249A to Petersburg, Illinois, as the community's first FM assignment.

(b) Channel 249A could be assigned to Petersburg in compliance with the minimum distance separation requirements provided the transmitter site is located approximately 9 kilometers (5.5 miles) northeast of Petersburg.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Demographic Data.*—Petersburg, Illinois, the seat of Menard County, is located approximately 29 kilometers (18 miles) northwest of Springfield, Illinois.

(b) *Population:* Petersburg—2,632: [2] Menard County—9,685.

(c) *Local Aural Broadcast Service:* None.

3. *Economic Considerations.* Petitioner states that the county is primarily agricultural. Ideal Industries, Inc. (the largest wire nut factory in the world) is located in Petersburg.

4. In view of the fact that the proposed FM channel assignment would provide for a first local aural broadcast service to Petersburg, the Commission believes it appropriate to propose amending the FM, Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to Petersburg, Illinois, as follows:

City	Channel No.	
	Present	Proposed
Petersburg, Ill.		249A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 29, 1980, and reply comments on or before October 20, 1980.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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[1] Public Notice of the petition was given on February 27, 1980, Report No. 1218.

[2] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments, service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for

examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-23973 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Revision of the Special Rule on the American Alligator

AGENCY: Fish and Wildlife, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise the special rule on the American alligator, 50 CFR 17.42(a), promulgated under authority of the Endangered Species Act of 1973. Fabricators, who are engaged in the business of manufacturing products from American alligator leather, would no longer be required to obtain a permit issued under the special rule, yet buyers and tanners engaged in trade in American alligators would remain highly regulated to insure that fabricators receive only lawfully taken American alligators. the sale of meat and parts, except hides, from lawfully taken American alligators would no longer be restricted to the State where the taking occurs, but would be allowed nationwide if such sale is in accordance with the laws and regulations of: (1) the State in which the taking occurs and (2) the State in which the sale occurs.

DATES: Comments on the proposed rule are due on or before September 8, 1980.

ADDRESSES: Comments may be mailed to Director (LE), U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, U.S. Fish and Wildlife Service, Suite 300, 1375 K Street, NW., Washington, D.C. 20005, between 7:45 a.m. and 4:15 p.m. Comments should bear the identifying notation REG 17-02-100. All materials received may also be inspected at the Service's office in Suite 300, 1375 K Street, NW.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Divison of Law Enforcement, U.S. Fish and Wildlife Service, Suite 300, 1375 K Street NW., Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1979 (44 FR 59080), under authority of the Endangered Species Act of 1973 (hereinafter ESA), 16 U.S.C. 1533(d), the Service revised the special rule on the American alligator (*Alligator mississippiensis*), 50 CFR 17.42(a), to allow highly regulated worldwide trade in lawfully taken American alligator hides. Buyers, tanners, and fabricators who handle American alligator hides are required to obtain a permit issued under the special rule. Subsequently, the Service has been requested by the States of Louisiana and Florida to review these permit requirements, and eliminate the need for fabricators to obtain a permit, if possible.

The purpose of the special rule is to eliminate certain restrictions on trade in lawfully taken American alligators which are not necessary for the conservation of either the American alligator or other crocodilians. In the process of becoming manufactured products, American alligator hides, as well as the hides of other crocodilians, are funneled through a limited number of tanners worldwide who are capable of fullly tanning marketable hides. At the end of this bottleneck numerous fabricators exist capable of manufacturing marketable products from those hides. Eliminating the permit requirement for fabricators would enable the Service to concentrate its enforcement efforts where they are likely to be most effective—at the point where American alligator hides are tanned. Each American alligator hide must bear a State tag. whether tanned or untanned. In conjunction with these State tags attached by the state in which the taking occurs, which insure that harvest regulations have been followed and identify legally taken hides, the Service would closely regulate the activities of buyers and tanners of hides, so that only lawfully taken hides are tanned. If only lawfully taken hides are tanned, then presumptively manufactured products of American alligator leather are from those lawfully taken hides.

The Service also have been requested by the State of Louisiana to allow the nationwide sale of meat and parts other than hides from lawfully taken American alligators. In addition to the State laws and regulations controlling the sale of meat or parts other than hides at the State level which would have to be complied with under the special rule, the nationwide sale of meat also would be regulated by the Lacy Act (18 U.S.C. 43-44), and regulations of the Department of Agriculture. The sale of parts other than hides would be regulated similarly, except regulations of the Department of Agriculture would not apply in most cases.

Description of the Proposed Rule

Proposed changes in the special rule are described below generally in the order they appear in the special rule.

1. *Definitions.* The definitions of "captivity" and "fabricator" are deleted. A definition of "captivity" applicable to all of the regulations of Part 17 now appears in 50 CFR 17.3 which is almost identical to the one in the special rule. Retaining the definition in the special rule is only redundant. The definition of "fabricator" is deleted because only buyers and tanners are required to obtain a permit under the special rule. Fabricators are still an integral part of trade in American alligator hides, but the rule is drafted to eliminate the need for a particular definition of their activities.

Both "buyer" and "tanner" are redefined to depict more accurately their activities, which are subject to the special rule, and to exclude a purchaser of fully tanned hides from either definition.

2. *Prohibitions.* Additional conditions are added to the taking of American alligators from the wild wherever they are listed under 50 CFR 17.11 as threatened—similarity of appearance. These measures, which have been adopted by the State of Louisiana for some time, the only State with an annual harvest, require that: (1) the hides are tagged by the State where the taking occurs with a noncorrodible numbered tag, (2) the tag number, length of skin, type of skin (whether belly or hornback), and date and place of the specimen's taking are recorded by the State, and (3) a tag or label with certain required information is affixed to the outside of any package or container used to ship American alligator hides, meat, or parts. A similar set of conditions is also placed on the sale of American alligators taken by Federal or State officials under paragraphs (a)(2)(i) (A) or (B) of the special rule.

These additional conditions are necessary to insure the imposition of certain controls at the State level, in the State of Louisiana and in any State which may in the future be given authority to harvest American alligators. The State tag attached to each lawfully taken hide by the State in which the taking occurs has proven to be the backbone of the special rule. The State tag, which must remain on all hides until they are removed by fabricators, constantly verifies that the hide has been lawfully taken as it moves through buyers and tanners to fabricators. Hides cannot be exported, imported, or traded without the State tag. Manufactured products of lawfully taken American

alligators would move freely and would not be required to be marked or labeled. However, the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter Convention or CITES) apply to the importation or exportation of American alligator hides or products. Items combining both American alligator and other wildlife products would have to satisfy all applicable laws and regulations regarding their trade.

The meat and parts other than hides from lawfully taken American alligators may be sold or otherwise transferred anywhere in the United States, if such meat and parts other than hides are sold in accordance with the laws and regulations of both: (1) the State in which the taking occur, and (2) the State in which sold or transferred. This provision allows the State where the taking occurs to determine initially whether to allow the sale of meat and part other than hides, and further allows other States to prohibit or restrict such sale, particularly States which have a resident population of American alligators, but do not allow the sale of meat and parts other than hides from their own lawfully taken American Alligators. As noted earlier, a number of controls exist on such sale: State regulatory schemes controlling trade in meat and animal parts, local health laws regarding the handling and sale of meat, Department of Agriculture regulations regarding the handling and sale of meat and certain parts, and the Lacey Act.

Although the Service has not required any particular form of State control over the sale of meat and parts other than hides from lawfully taken American alligators, the Service continues to remain opposed to unregulated sale. The Service will review the measures to allow the sale of meat and parts other than hides adopted by States in which American alligators are taken, and may impose the following conditions: (1) persons buying or reselling meat or parts must have a State license or permit, (2) current records of transactions in meat or parts must be maintained which include information required by 50 CFR 13.46, (3) State officials, upon notice and subject to applicable limitations of law, must have an opportunity to examine a permittee's/licensee's inventory of meat or parts and records, and an opportunity to copy such records, and (4) meat sold or otherwise transferred in interstate commerce must be prepackaged and bear an identifying insignia or notation.

3. *Permits.* Fabricators are not required to obtain a permit under the special rule for the reasons noted above, unless they also are acting as a buyer or tanner, and then only those activities conducted as a buyer or tanner are regulated.

Buyers and tanners remain subject to the permit requirements, which are basically unaltered. The application criteria for buyer or tanner permits issued under the special rule require additional information about an applicant's business which is necessary for the Service to properly monitor a permitted.

The conditions imposed on a buyer or tanner permit also remain nearly identical to those in effect. Recordkeeping for buyers and tanners has been simplified by eliminating the need to record the State tag numbers. Other information must still be kept, including the name and address of the person to whom the hides are transferred, and the number of hides involved. Foreign buyers and tanners are required as a condition of their permit to maintain an agent in the United States upon whom legal process may be served, which complements the application requirement that an agent be identified at the time the application is submitted.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Division of Law Enforcement, 1375 K Street, N.W., Suite 300, Washington, D.C., and may be examined, by appointment, during regular business hours. Single copies also are available upon request. Comments on the draft environmental assessment should be mailed or delivered to the address given at the beginning of this proposal during the comment period on the proposed rule.

Public Comments Invited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are inivited to submit written comments regarding the proposed rule or the draft environmental assessment. These comments and any additional information received will be considered by the Director in adopting a final rule. Correspondence should be mailed or delivered to the address given at the beginning of this proposal.

The primary author of this proposed rule is John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife Service.

Note.—The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

§ 13.12 [Amended]

1. Amend § 13.12(b) by amending "American alligator—buyer, tanner, or fabricator * * * 17.42(a)" to read "American alligator—buyer or tanner * * * 17.42(a)."

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

2. Revise § 17.42(a) to read as follows:

§ 17.42 Special rules—reptiles.

(a) *American alligator (Alligator mississippiensis).*—(1) *Definitions.* For the purposes of this paragraph (a):

(i) "American alligator" shall mean any member of the speicies *Alligator mississippienis,* and any part, offspring, dead body, part of a dead body, or product of such species occurring in captivity wherever found or in the wild wherever listed under § 17.11 of this subchapter as threatened—similarity of appearance, or in the wild in Florida and in certain coastal areas of Georgia, Louisiana, South Carolina, and Texas, contained within the following boundaries:

From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 to Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with U.S. Interstate Highway 95 near Walterboro, South Carolina; thence south on U.S. Interstate Highway 95 (including incomplete portions) to junction with U.S. Highway 82; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south along this border to the Florida border and following the Florida border west and south to its termination at the Gulf of Mexico. From the Mississippi-Louisiana border at the Gulf of Mexico north along this border to its junction with U.S. Interstate Highway 12; thence west on U.S. Interstate Highway 12 (including incomplete portions) to Baton Rouge, Louisiana; thence north and west along corporate limits of Baton Rouge to U.S. Highway 190; thence west on U.S. Highway 190 to junction with Louisiana State Highway 12 at Ragley, Louisiana; thence west on Louisiana State Highway 12 to the Beauregard-Calcasieu Parish border, thence north and west along this border to the Texas-Louisiana State border; thence south on this border to Texas State Highway 12; thence west on Texas State Highway 12 to Vidor, Texas; thence west on U.S. Highway

90 to the Houston, Texas, corporate limits; thence north, west and south along Houston corporate limits to junction on the west with U.S. Highway 59; thence south and west on U.S. Highway 59 to Victoria, Texas; thence south on U.S. Highway 77 to corporate limits of Corpus Christi, Texas; thence southeast along the southern Corpus Christi corporate limits to Laguna Madre; thence south along the west shore of Laguana Madre to the Nueces-Kleberg County line; thence east along the Nueces-Kleberg County line of the Gulf of Mexico.

(ii) "Buyer" shall mean a person engaged in buying raw, green, salted, or otherwise untanned hides of American alligators.

(iii) "Tanner" shall mean a person engaged in processing raw, green, salted, or crusted hides of American alligators into leather.

(2) *Prohibitions.* The following prohibitions apply to the American alligator, except as provided by permits available under paragraph (a)(3).

(i) *Taking.* No person may take American alligators, except:

(A) Any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by the agency for such purposes, may, when acting in the course of official duties, take American alligators without a permit if such action is necessary to:

(*1*) Aid a sick, injured, or orphaned specimen;

(*2*) Dispose of a dead specimen;

(*3*) Salvage a dead specimen which may be useful for scientific study; or

(*4*) Remove a specimen which constitutes a demonstrable but non-immediate threat to human safety. The taking must be done in a humane manner, and may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed in a remote area. Any taking pursuant to this paragraph (a)(2)(i)(A) must be reported in writing to the Director (OES), Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, within five (5) days.

(B) Any employee or agent of the Service or of a State conservation agency which is operating under a cooperative agreement with the Service which covers American alligators in accordance with section 6(c) of the Act (See 50 CFR Part 81 for rules implementing a cooperative agreement), may, when acting in the course of official duties, take American alligators to carry out scientific research or conservaiton programs.

(C) Any person may take American alligators in the wild wherever listed under § 17.11 of this subchapter as threatened—similarity of appearance in accordance with the laws and regulations of the State in which the taking occurs, subject to the following conditions:

(*1*) The raw, green, salted, or otherwise untanned hides of such alligators are sold or otherwise transferred only to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3):

(*2*) The meat and other parts, except hides, are sold or otherwise transferred in accordance with the State laws and regulations of the State in which the taking occurs and the State in which sold or transferred;

(*3*) The hides are tagged by the State where the taking occurs with a noncorrodible numbered tag;

(*4*) The tag number, length of skin, type of skin (whether belly or hornback) and date and place of the specimen's taking are recorded by the State; and

(*5*) A tag or label is affixed to the outside of any package or container used to ship American alligators which:

(*i*) Identifies its contents as American alligator hides, meat, or parts,

(*ii*) Indicates their quantity, and

(*iii*) Provides the name and address of the consignor and consignee, unless the package or container is clearly and conspicuously marked with a symbol in accordance with the terms of a valid permit issued under § 14.83 of this subchapter.

(D) When American alligators are taken by Federal or State officials in accordance with paragraphs (a)(2)(i) (A) or (B) the hides, meat, and parts may be sold by their respective agencies, subject to the following conditions:

(*1*) The raw, green, salted, or otherwise untanned hides are sold or otherwise transferred only to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3);

(*2*) The meat and other parts, except hides, are sold or otherwise transferred in accordance with the State laws and regulations of the State in which the taking occurs and the State in which sold or transferred;

(*3*) The hides are tagged by the State where the taking occurs with a noncorrodible numbered tag;

(*4*) The tag number, length of skin, type of skin (whether belly or hornback) and date and place of the specimen's taking are recorded by the State; and

(*5*) A tag or label is affixed to the outside of any package or container used to ship American alligators which:

(*i*) Identifies its contents as American alligator hides, meat, or parts,

(*ii*) Indicates their quantity, and

(*iii*) Provides the name and address of the consignor and consignee, unless the package or container is clearly and conspicuously marked with a symbol in accordance with the terms of a valid permit issued under § 14.83 of this subchapter.

(ii) *Unlawfully taken alligators.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, American alligators taken unlawfully.

(iii) *Import or export.* No person may import or export any American alligator, except that hides which bear the noncorrodible numbered tag attached by the State where the taking occurred and manufactured products of lawfully taken American alligators may be imported or exported in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249 (see 50 CFR Part 23 for rules implementing the Convention).

(iv) *Commercial transactions.* No person may deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any American alligator, except that:

(A) Fully tanned hides which bear the noncorrodible numbered tag attached by the State where the taking occurred and manufactured products of lawfully taken American alligators may be delivered, received, carried, transported, or shipped in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce.

(B) Meat and other parts, except hides, from lawfully taken American alligators which are sold or otherwise transferred in accordance with the State laws and regulations of the State in which the taking occurs and the State in which sold or transferred may be delivered, received, carried, transported, or shipped in interstate commerce, by any means whatsoever and in the course of a commercial activity, and may be sold or offered for sale in interstate commerce.

(3) *Permits.*

(i) *General.* Permits are available under § 17.32 (Permits—general) of this subchapter for all of the prohibited activities referred to in paragraph (a)(2). All the terms and provisions of § 17.32 shall apply to such permits.

(ii) *Similarity of appearance.* Permits are not available under § 17.52 (Permits—similarity of appearance) of this subchapter for any of the prohibited activities referred to in paragraph (a)(2).

(iii) *Buyer or tanner.* Upon receipt of a complete application, the Director may

issue a permit in accordance with the issuance criteria of this paragraph (a)(3)(iii) for a buyer or tanner, authorizing the permittee to engage in any of the prohibited activities referred to in paragraph (a)(2).

(A) *Application requirements.* Applications for permits under this paragraph (a)(3)(iii) must be submitted to the Director by the person who wishes to engage in the activities of a buyer or tanner. Each application must be submitted on an official application form (Form 3–200) provided by the Service, and must include, as an attachment, all of the following information:

(*1*) The category or categories (buyer and/or tanner) for which the permit is desired;

(*2*) A description of the applicant's business organization including:

(*i*) The location, mailing address, and description of the physical plant in which the activities under the permit will occur,

(*ii*) Experience with American alligators, if any, over the previous five years,

(*iii*) The names and addresses of all shareholders, partners, directors, officers, or other parties in interest in the business organization,

(*iv*) The name and address of any business organization affiliated with the applicant's business organization;

(*v*) The location where books or records concerning any recordkeeping required by paragraph (a)(3) will be kept.

(*vi*) The location where inventories of American alligator hides and hides of any other species of the Order Crocodilia will be stored, and

(*vii*) The name, address, and telephone number of the person authorized to make books or records, or inventories available for examination by Service officials;

(*3*) A description, including samples, of the applicant's present or proposed system of inventory control and bookkeeping capable of insuring accurate accounting for the following handled by the applicant:

(*i*) All American alligator hides, and

(*ii*) All hides of any other species of the Order Crocodilia;

(*4*) A statement detailing any criminal or civil violations of any State, Federal, or foreign law by the applicant within the previous five years for taking or trafficking in wildlife, and if the applicant is a business organization, by any shareholder, partner, director, officer, principal, employee, agent, or other party in interest in the business organization or any other business organization affiliated with such business organization;

(*5*) A report in English of the applicant's dealings during the preceding five years with those species of the Order Crocodilia which at any time have been listed on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to the extent records of such dealings are available;

(*6*) Foreign applicants must disclose the nature and location of all property in the United States in which the applicant has an interest; and

(*7*) Foreign applicants must provide the name and address of an agent located in the United States upon whom legal process may be served; each applicant must include a certified copy of the power of attorney appointing such an agent and a certified copy of the written consent of such agent so appointed.

(B) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(3)(iii)(A), the Director will decide whether or not a buyer or tanner permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the applicant's reliability and apparent ability and willingness to maintain and disclose accurate inventory and bookkeeping records of all American alligator hides, and all hides of any other species of the Order Crocodilia dealt with by the applicant. In addition, the Director may consider the opinions and views of scientists, law enforcement officials, or other persons or organizations having expertise concerning trade in any species of the Order Crocodilia.

(C) *Special conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, permits issued under paragraph (a)(3)(iii) are subject to the following special conditions:

(*1*) Permittees may not buy or tan any American alligator hide except one which was imported, exported, taken, sold, offered for sale, delivered, carried, transported, or shipped in accordance with paragraph (a)(2);

(*2*) Permittees may sell, offer for sale, deliver, carry, transport, or ship raw, green, salted, or otherwise untanned American alligator hides only to holders of valid Federal permits issued under paragraph (a)(3)(iii);

(*3*) Permittees may not violate any State, Federal, or foreign laws concerning any hide, part, or product of any species of the Order Crocodilia;

(*4*) Permittees must maintain complete and accurate inventory control and bookkeeping records in accordance with the provisions of § 13.46 of this subchapter for all transactions in American alligators and other species of the Order Crocodilia. For all such transactions, permittees also must maintain on file copies of any permits or other documents required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora or any other State, Federal, or foreign law;

(*5*) Permittees must file a written report in English with the Director by March 31 of each year concerning all transactions during the preceding calendar year ending December 31 with American alligators and other species of the Order Crocodilia listed on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (such report shall include the number of hides, parts, and products by species; the supplier's name and address; and the country where taken from the wild, if known);

(*6*) Permittees may not transport or ship any American alligator hides unless a tag or label is affixed to the outside of any package or container used to transport or ship the hides which:

(*i*) Identifies its contents as American alligator,

(*ii*) Indicates the quantity, and

(*iii*) Provides the name and address of the consignor and consignee, unless the package or container is clearly and conspicuously marked with a symbol in accordance with the terms of a valid permit issued under § 14.83 of this subchapter;

(*7*) A buyer and/or tanner must leave all State tags on the hides; and

(*8*) Foreign permittees must maintain an agent in the United States upon whom legal process may be served; in the event of the death or inability to serve, or the resignation or removal of such person, the permittee shall immediately appoint a successor.

(D) *Duration of permits.* The duration of permits issued under this paragraph (a)(3)(iii) shall be designated on the face of the permit.

(iv) *American alligators in captivity.* Upon receipt of a complete application, the Director may issue a permit authorizing the permittee to engage in any of the prohibited activities referred to in paragraph (a)(2) with live American alligators which have been born in captivity or lawfully placed in captivity.

(A) *Application requirements.* Applications for permits under this paragraph (a)(3)(iv) must be submitted to the Director by the person who wishes to engage in the prohibited activity in accordance with the application requirements of § 17.32(a) of

this subchapter. In addition, the application must include, as an attachment, documentary evidence or other appropriate information where available, and sworn affidavits to show that the American alligators for which a permit is sought have been held in captivity and that they were either born in captivity or lawfully placed in captivity.

(B) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(3)(iv)(A), the director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the information submitted by the applicant appears reliable, and the applicant's reliability and apparent ability and willingness to maintain and disclose accurate inventory and bookkeeping records of all American alligators, and any other species of the Order Crocodilia dealt with by the applicant. In addition, the Director may consider the opinions and views of scientists, law enforcement officials, or other persons or organizations having expertise concerning trade in any species of the Order Crocodilia.

(C) *Special conditions.* All permits issued under this paragraph (a)(3)(iv) shall be subject to the general conditions set forth in Part 13 of this subchapter. In addition, any permit which authorizes the taking of American alligators is subject to the following special conditions:

(*1*) The raw, green, salted, or othewise untanned hides of such alligators are sold or otherwise transferred only to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3);

(*2*) The meat and other parts, except hides, may be sold or otherwise transferred in accordance with the State laws and regulations of the State in which the taking occurs and the State in which sold or transferred;

(*3*) The hides are tagged by the State where held in captivity with a noncorrodible numbered tag;

(*4*) The tag number, length of skin, type of skin (whether belly or hornback) and date and place of the specimen's taking are recorded by the State;

(*5*) A tag or label is affixed to the outside of any package or container used to ship American alligators which:

(*i*) Identifies its contents as American alligator hides, meat, or parts,

(*ii*) Indicates their quantity, and

(*iii*) Provides the name and address of the consignor and consignee, unless the package or container is clearly and conspicuously marked with a symbol in accordance with the terms of a valid permit issued under § 14.83 of this subchapter.

(*6*) Complete and accurate inventory control, bookkeeping, and other appropriate records must be maintained in accordance with the provisions of § 13.46 of this subchapter concerning any taking or transaction in American alligators; and

(*7*) The permittee must file a written report with the Director by March 31 of each year concerning all activities conducted pursuant to the permit for the preceding calendar year ending December 31.

(D) *Duration of permits.* The duration of permits issued under this paragraph (a)(3)(iv) shall be designated on the face of the permit.

Dated: August 8, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-24125 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna Regulations; Intent To Prepare Environmental Impact Statement

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of intent to prepare environmental impact statement (EIS).

SUMMARY: The National Marine Fisheries Service (NMFS) invites all interested persons to participate in the preparation of an EIS concerning appropriate management measures for the Atlantic bluefin tuna fishery throughout its range. This process is required under Sec. 1501.7 of the regulations [43 FR 55978] implementing the National Environmental Policy Act.

DATES: The public meeting to help determine the scope of the EIS will be held on Wednesday, August 20, 1980, from 10 a.m. to 4 p.m. Written comments on the scope of the EIS must be received no later than August 29, 1980.

ADDRESS: The August 20 scoping meeting will be held at the National Wildlife Federation, 1412 Sixteenth Street, N.W., Washington, D.C. Written comments on the scope of the EIS should be addressed to Mr. Allen Peterson, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Jerome or Mr. Arnet R. Taylor, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Telephone: (617) 281-3600 or FTS 8-837-9325.

SUPPLEMENTARY INFORMATION:

Description of action. The NMFS is considering changes to 50 CFR Part 285, Subpart B, pertaining to the Atlantic Bluefin tuna fishery. The NMFS believes there is a need to develop regulations that address the growing interest by U.S. vessels to longline Atlantic bluefin tuna in the Gulf of Mexico. The NMFS's concern is that the present regulations are directed toward the historic U.S. fishery in the Northwest Atlantic, and there appears to be a need for new incidental catch provisions for the domestic Gulf fishery. Suggestions from the public are requested on this matter.

Public participation in the EIS process. In order to facilitate public participation, the NMFS has tentative plans for four future meetings on the draft EIS in Boston, Massachusetts; Fort Pierce, Florida; New Orleans, Louisiana; and Corpus Christi, Texas. Specific dates for the meetings will be announced following the scoping meeting.

Timing. The NMFS anticipates that the draft EIS will be available to the public by the end of October 1980, which is also when proposed regulations are expected to be published. A final EIS and publication of final regulations is planned for January 1981.

Signed at Washington, D.C. this 5th day of August 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-24027 Filed 8-7-80; 8:45 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 155
Friday, August 8, 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

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Fort Peck Assiniboine and Sioux Indian Tribes in Montana

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Peck Assiniboine and Sioux Indian Tribes in Montana has been materially increased and become acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of Assiniboine and Sioux Indian Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of these tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through January 31, 1981, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on July 31, 1980.

John W. Goodwin,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-23788 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Cajun Electric Power Cooperative, Inc. and Sam Rayburn G & T, Inc.

Notice is hereby given that the Rural Electrification Administration (REA) has issued a Final Supplemental Environmental Impact Statement (FSEIS) in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, in connection with possible financing assistance to Cajun Electric Power Cooperative, Inc., (Cajun) P.O. Box 578, New Roads, Louisiana 70760 and to Sam Rayburn G & T, Inc., (Sam Rayburn) c/o Jasper-Newton Electric Cooperative, Inc., 812 South Margaret Avenue, Kirbyville, Texas 75956.

This possible financing assistance would provide for undivided ownership by Cajun of 30 percent (282 MW) and by Sam Rayburn of 7 percent (66 MW) in the 940 MWe (net) River Bend Nuclear Power Station Unit 1, presently under construction in West Feliciana Parish, Louisiana. Cajun also proposes to own a portion of the associated transmission facilities.

The U.S. Atomic Energy Commission (currently the Nuclear Regulatory Commission-NRC) issued a Final Environmental Statement (FES) related to the River Bend Nuclear Power Station Units 1 and 2 in September 1974. It is REA's decision to adopt the previously issued NRC–FES and to issue a Supplemental Environmental Impact Statement to provide information on certain environmental aspects of the project which are normally addressed by REA but were not included in the NRC–FES. REA's FSEIS also provides information related specifically to the proposed financing assistance to Cajun and Sam Rayburn for participation in River Bend Unit 1.

Additional information may be obtained by request submitted to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

The FSEIS may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 5829, or at the headquarters of Cajun, Highway 1, New Roads, Louisiana, or Sam Rayburn at the address given above. Limited supplies of the FSEIS and the NRC–FES are available for mailing, upon request to REA.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 1st day of August 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-23990 Filed 8-7-80; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended August 1, 1980, CAB has received the applications listed below, which request the issuance, amendment, or renewel of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answer to conforming applications of those filed in conjunction with a motion to modify scope and due within 42 days after the original application was filed. If you are in doubt as to the type of application

which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transporation cases).

Subpart Q Applications

Dated filed	Docket No.	Description
July 28, 1980	38531	Evergreen International Airlines, Inc., 3185 Crestview Drive, Newberg, Oregon 97132. Application of Evergreen International Airlines, Inc. requests the Board pursuant to Subpart Q of the Board's Procedural Regulations for a certificate of public convenience and necessity for an indefinite term to perform scheduled foreign air transportation of persons, property and mail between New York-Newark and Puerto Plata, Dominican Republic. Conforming Applications and Answers are due August 25, 1980.
July 28, 1980	38535	Pan American World Airways, Inc., Pan Am Building, 200 Park Avenue, New York, New York 10766. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations to amend Segment 4 of its certificate of public convenience and necessity for Route 132 to authorize it to engage in foreign air transportation of persons, property, and mail as follow: 4. Between the coterminal points Los Angeles and San Francisco-Oakland-San Jose, CA, Seattle-Tacoma, WA, Portland, OR, Chicago-Rockford, IL, Detroit, MI, Houston, TX, Washington, DC-Baltimore, MD, Philadelphia, PA, New York, NY-Newark, NJ, Boston, MA, Bangor, ME; Dove Air Force Base, DE; and McGuire Air Force Base, NJ; Intermediate points within the following areas: Ireland, including the intermediate point Dublin, United Kingdom, including Northern Ireland, The intermediate point Paris, France, Belgium, The Netherlands, Germany, Poland, The intermediate point Leningrad, U.S.S.R., Czechoslovakia, Austria, Hungry, The intermediate point Rome, Italy, Yugoslavia, Rumania, Bulgaria, Turkey, Lebanon, Syria, Iraq, Iran, *Bahrain*, Afghanistan, Pakistan, and India;[1] and the terminal point Moscow, U.S.S.R. [New language italicized] Conforming Applications and Answers are due August 25, 1980.
July 28, 1980	38441	Air California, 3636 Birch Street, Newport Beach, California 92660. Corrected Application of Air California pursuant to Subpart Q for the issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation of persons, property, and mail between the terminal point Eugene Oregon, on the one hand, and the alternate terminal points Portland, Oregon; Seattle, Washington; Los Angeles and San Francisco, California, on the other hand. Conforming Applications and Answers are due on August 12, 1980.
July 28, 1980	38539	Nighthawk Flying Club, Inc., Mr. Brian Vacchino, President, Box 595, Municipal Airport, Iroquois Falls "A", Ontario, Canada P0K 1G0. Application of Nighthawk Flying Club, Inc. requests the Board pursuant to Subpart Q of the Board's Procedural Regulations for a foreign air carrier permit authorizing it to engage in small aircraft charter operations between Canada and the United States pursuant to the nonscheduled air service agreement. Answers are due on August 27, 1980.
July 28, 1960	38541	Air Florida, Inc., Mr. Eli Timoner, President Chief Operating Officer, 3900 N.W. 79th Avenue, Miami, Florida 33166. Application of Air Florida, Inc. requests the Board pursuant to Subpart Q of the Board's Procedural Regulations, the provisions of Section 401(b) of the Act, and Parts 201 and 302 of the Board's Regulations, for a certificate of public convenience and necessity for Route 197-F authorizing it to engage in foreign air transportation with respect to passengers, property, and mail, as follows: Between a point or points in the United States (other than Boston, Sarasota/Bradenton, Orange County and West Plam Beach), on the one hand, and Shannon, Ireland, on the other. Conforming Applications and Answers are due on August 27, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-23945 Filed 8-6-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38185]

Lone Star Airways, Inc. Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on September 3, 1980, at 10 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., August 4, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-23949 Filed 8-7-80; 8:45 am]

BILLING CODE 6320-01-M

Schedule for Awarding SES Bonuses

The Civil Aeronautics Board plans to award bonuses to Senior Executive Service members on or about August 29, 1980.

For further information contact: Michael Sherwin, Director, Office of Human Resources, Civil Aeronautics Board, (202) 673-6140.

Dated: August 5, 1980.

Wilma Kriviski,

Assistant to the Director.

[FR Doc. 80-23946 Filed 8-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38534]

Spanish Main International Airlines Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to Judge Pope.

Dated at Washington, D.C., August 4, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-23947 Filed 8-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38495]

Universal Airlines, Inc. Fitness Investigations; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argrakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., August 4, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-23948 Filed 8-7-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially Section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and

Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00127. Applicant: Brooke Army Medical Center, Fort Sam Houston, San Antonio, TX 78234. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for visualizing the fine structure of tissue architecture, cells, and component structures during studies of the following materials: (1) Surgical and autopsy specimens obtained from patients, (2) Clinical microscopy and cytology specimens such as peripheral blood pellets, bone marrow aspirates, and urine sediments, (3) Tissue culture specimens, and (4) Tissue specimens of non-human origin (mouse, rat, dog, etc.). In addition, the article will be used for educational purposes in a Pathology Resident Training program which lasts for four years. Article ordered: December 28, 1978.

Docket No. 80–00129. Applicant: Saint Barnabas Medical Center, Old Short Hills Road, Livingston, New Jersey 07039. Article: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for the study of human tissue obtained from the patient's diseased organs in investigations to determine the histologic (pathologic) diagnosis. Article ordered: June 21, 1979.

Docket No. 80–00132. Applicant: The University of Texas Health Science Center, 7703 Floyd Curl Drive, San Antonio, TX 78284. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of biological specimens obtained from laboratory animals at the time of death following various experimental manipulations. Research projects to be conducted will include: (1) Investigation of the precise mechanisms of control of oviduct smooth muscle in three species, including human. Experiments will be correlated with the functional capacity of the oviduct to transport gametes, by studying post-ovulatory animals and those treated with drugs and hormones which modify the rate of ovum transport. The long term objective is to understand the mechanism of control of developing a contraceptive which acts by interfering with this process. (2) Experiments to acquire information concerning the mechanism(s) by which these ovarian steroids exert their influence on ovum transport. This information should be of value in contraception by suggesting techniques to move the fertilized egg into the uterus prematurely and might also be useful in the therapy of some types of infertility. Article ordered: November 20, 1979.

Docket No. 80–00134. Applicant: Veterans Administration Medical Center, 1310 24th Avenue, South, Nashville, TN 37203. Article: Electron Microscope, Model H–600–3 and Accessories. Manufacturer: Hitachi Perkin-Elmer Ltd., Japan. Intended use of article: The article is intended to be used for studies of biological materials in their native state and after suitable incubations with hormones and drugs. Materials also include samples from tissue culture. Among the numerous experiments to be conducted are the effects of growth promoting substances on organ and tissue cultures as well as tissues removed from whole experimental animals injected with various growth-promoting substances. Investigations of the immune nature of cellular reactions utilizing peroxidase labeled antibodies will also be performed. The article will also be used to study preparations of liver melochandria and muscle sarcoplasmic reticularis. In addition, the article will be used for educational purposes by pathology residents, senior medical students and investigators or research technologists. Article ordered: September 10, 1979.

Docket No. 80–00143. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 94720. Article: Electron Microscope, 1.5 MEV. Manufacturer: Kratos Incorporated, United Kingdom. Intended use of article: The article is intended to be used in performing the following experiments: (1) Direct observation of gas-solid interaction in an environmental chamber, e.g., oxidation or corrosion of metals, reduction of oxides, gasification processes in coals, (2) Examination of biological tissues in a hydrated state, (3) Direct observation and simulation of radiation damage in materials for fusion and fission reactor applications, and (4) Studies of thick sections of ceramics used in high temperature or waste-storage applications. Article ordered: August 22, 1977.

Docket No. 80–00144. Applicant: LSU Medical Center-Shreveport, 1501 Kings Highway, Shreveport, LA 71103. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use of article: The article is intended to be used for studies of human and animal surgical and autopsy tissue with the following objectives: (1) Investigation of the reactions of various tissues to injury. (2) Delineation of normal fine structural appearance. (3) More precise identification of undifferentiated tumors. The article will also be used in the course General Pathology/Systemic Pathology to teach basic pathologic processes to sophomore medical students. Article ordered: November 19, 1979.

Docket No. 80–00147. Applicant: Pennsylvania Hospital, Eighth and Spruce Streets, Philadelphia, PA 19107. Article: Electron Microscope, EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used primarily for study of biological specimens of human origin, i.e. kidney and muscle biopsies for diagnosis, tumor tissue for ultrastructural study to diagnose tumor type in doubtful cases, brain biopsy specimens for identification of virus particles in cases of encephalitis, and identification of some agents that cause occupational disease, such as asbestos fibers. The properties of the biological specimens to be studied are ultrastructural features such as the detailed microanatomy of renal glomerulus cell membranes, and organelles such as mitochondria, lysosomes, ribosomes, specific granules, Golgi apparatus, desmosomes, microfilaments and microtubules. The article will also be used in a training program to provide both theoretical and practical experience in diagnostic pathology. Article ordered: November 29, 1979.

Docket No. 80–00148. Applicant: University of Pennsylvania School of Medicine, 36th and Hamilton Walk, Philadelphia, PA 19104. Article: Electron Microscope, Model JEM–100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for continued investigation of the mechanism of action of insulin in adipocytes from its initial binding to the hormone receptor on the plasma membrane through and including its alteration of lipolysis, protein synthesis, calcium binding and distribution, plasma membrane ATPase activity and membrane phosphorylation. Article ordered: December 10, 1979.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article to which the foregoing applications relate is a

conventional transmission electron microscope (CTEM). The description of the intended research and-or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-23890 Filed 8-7-80; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00149. applicant: U.S. Naval Research Laboratory, Washington, D.C. 20375. Article: Electron Microscope, Model JEM 200CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for simultaneous microstructural, chemical, and crystallographic analyses at resolution in the range of 0.2 to 20 nm. These needs include:

(1) Identifications of chemical distributions and associated microstructures in ion-implanted materials;

(2) Determinations of crystal structures and chemical distribution associated with grain boundaries in ceramic materials;

(3) Structure-chemistry-property relationships in granular super-conducting fibers;

(4) Studies of phase instabilities in alloys exposed in harsh service environments; and

(5) Studies of the deformation structures surrounding crack tips in alloys and their relationships to fracture mechanisms.

Article ordered: September 25, 1979.

Docket No. 80-00153. Applicant: University of California, Los Angeles, Molecular Biology Institute, 405 Hilgard Avenue, Los Angeles, CA 90024. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in collaborative research on the structure, organization, regulation and function of nucleic acids and nucleic acid complexes.

Research projects will include: (1) Genome organization and RNA processing—studies on the arrangement of histone genes in sea urchins, on the arrangement of immunoglobulin genes, the organization of adenovirus genes and their relation to message production and processing, various aspects of gene organization of SV 40 virus genetic organization of Vibrio-cholera, replication of the bacterial virus M-13 and the genetic organization of bacteriophage T-4 and cyanobacterial genes.

(2) Gene expression—involving RNA transcription from Drosophila chromosomes, organization and expression of genes coding for globin and for tumor cell products, the expression of mitochondrial DNA from trypanosomes, the expression of SV40 DNA and related human viruses, and the expression of messenger RNA from the arabinose operon of *E. coli.*

(3) Tertiary structure of nucleic acids and nucleoproteins—involving the comparative structure of ribosomes from different sources, message location on the ribosome particle, the structure and arrangement of DNA in nucleosomes, the maturation of M-13 virus involving coat protein, cell membrane and viral DNA, and the structure of antibodies. In addition, the article will be used in the course Structural Molecular Biology by graduate students to obtain research competence in electron microscopy. Article ordered: December 20, 1979.

Docket No. 80-00154. Applicant: Indiana University School of Medicine, Department of Anatomy, 1100 West Michigan, Indianapolis, Indiana 46223. Article: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used by faculty, post-doctoral fellows, graduate students and trained technicians to study ultrastructural features of human and experimental animal tissues in various research projects.

These research projects include: (1) Mechanisms of myelination and demyelination with respect to the position of PNS myelin proteins.

(2) Ultastructural organization of monoaminergic dendrite bundles in medullary raphe nuclei and locus coeruleus of developing mammalian brains.

(3) Mobility of lecthin receptors and agglutination in developing intestinal absorptive cells.

(4) Cytoskeletal and functional interactions between pulmonary endothelial cells and alveolar macrophages in response to varying states of hyperoxia.

(5) Comparison and correlation of the effect of diabetic neuropathy vs. crush injury on peripheral nerves.

(6) Ultrastructural analysis of the effect of diabetes on microvascular supply to skeletal muscle.

(7) Ultrastructural changes in capillary permeability, correlated with microelectrode studies of K^+ ion exchange.

(8) The regulation of Ca^{2+} in relation to exoplasmic transport.

(9) Ultrastructural studies of normal and otosclerotic middle ear ossicles.

(10) Ultrastructural evaluation of a new water-soluble embedment medium for electron microscopy.

In addition, the article will be used to train graduate students in techniques of electron microscopy sufficient to enable them to understand and to professionally perform all aspects of electron microscopy, including preparation of tissues, operation of the microscope, and interpretation of scientific data revealed by electron micropgraphs. Article ordered: December 3, 1979.

Docket No. 80-00161. Applicant: Sinai Hosptial of Detroit, 6767 W. Outer Drive, Detroit, Michigan 48235. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for expanded studied directed towards investigation of the possible role of lysosomes in steriodogenesis by conducting various cytochemistry experiments. The article will also be used for a threefold educational purpose:

(1) Training of students in electron microscopy and in basic research methodology,

(2) Exposure of students already interested in election microscopy to the practicalities of research in this field, and

(3) Preparation and presentation of material at pathology conferences. Article ordered: December 11, 1979.

Docket No. 80–00164. Application: The University of Michigan, Division of Biological Sciences, 3115 Natural Sciences, Ann Arbor, Michigan 48109. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for research project which utilitizes *Drosophila melanogaster* as a model system to investigate ultrastructural changes in cells and tissues of normal and mutant individuals during aging. The research will involve the study in detail of changes mediated by mutant individuals during aging. The research will involve the study in detail of changes mediated by mutant genes at the chromosomal level and the effects of these changes on cytoplasmic organelles, cell surfaces and membranes. Article ordered: November 13, 1979.

Docket No. 80–00165. Applicant: University of Chicago, Microbiology Department, 920 East 58th Street, Cummings Life Science Center, Chicago, Illinois 60637. Article: Electron Microscope, Model EM and 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for conducting studies of deoxyribose nucleic acid (DNA) molecules, both native duplex and heteroduplex preparations in many diverse experiments of a molecular genetic nature. The article will also be used for research training of graduate students and postdoctoral trainees by means of participation in current actual research programs. Article ordered: December 4, 1979.

Docket No. 80–00167. Applicant: The University of Texas at Austin, Department of Zoology, Austin, Texas 78712. Article: Electron Microscope, Model H–300. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used for teaching of Zoology 339 and Zoo 382–L2 (Histological and Cytological Techniques). Both courses cover basic light microscope techniques and slide preparation, histochemical analysis, electron microscopy of thin sections of negatively stained materials, and scanning electron microscopy, Article ordered: June 8, 1979.

Docket No. 80–00168. Applicant: Massachusetts Eye and Ear Infirmary, Department of Otolaryngology, 243 Charles Street, Boston, MA 02114. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: Jeol Ltd., Japan. Intended use of article: The article is intended to be used for the study of the normal and pathological anatomy of tissues of the ear, nose, and throat. The experiments to be conducted include the study of the anatomy of the spiral ganglion and organ of Corti of animal and human. Of particular interest are the neural connections and synaptic morphology of these areas. The inner ears of animals with endolymphatic hydrops will be studied after drug application. Other areas of interest include the ultrastructure of abnormalities of nasal and bronchial cilia and neoplasms that occur in the head and neck area. In addition, the article will be used in the training of research and medical students. Article ordered: December 27, 1979.

Docket No. 80–00170. Applicant: Sandia Laboratories, Division 5111, Albuquerque, New Mexico 87185. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: Jeol Ltd., Japan. Intended use of article: The article is intended to be used to examine crystalline and non-crystalline solids, including iron and aluminum, which have been ion implanted with a second species. These will be examined (a) just after implantation, (b) after furnace annealing, and (c) after pulsed electron beam or pulsed laser irradiation. Experiments will include transmission electron microscopy to look at lattice defects and second phase particles in thinned sections of material. Electron diffraction will be used to identify precipitated phases. Scanning transmission electron microscopy (STEM) will also be used to image defects and to provide a small diameter electron beam for micro-diffraction of areas as small as 200 A. Secondary electron detection will be used to study changes in the surface of the samples resulting from ion implantation or pulsed irradiation. Article ordered: December 21, 1979.

Docket No. 80–00171. Applicant: Presbyterian Hospital, Inc., N.E. 13th at Lincoln Blvd., Oklahoma City, Oklahoma 73104. Article: Electron Microscope, Model EM 109 and Accessories. Intended use of article: The article is intended to be used in a clinical setting to provide differential diagnosis of tumors and kidney disease, as well as other less common applications. This will allow appropriate therapy to be instituted which will give maximum patient benefit. Article ordered: October 31, 1979.

Docket No. 80–00172. Applicant: Sandia Laboratories, P.O. Box 5800, Albuquerque, New Mexico 87185. Article: Electron Microscope, Model JEM 200CX and Accessories. Manufacturer: Jeol Ltd., Japan. Intended use of article: The article is intended to be used in materials research projects supporting both nuclear weapons component design and development and energy development programs. These research projects cover a wide range of advanced materials, including high strength metals and alloys, superalloys, complex glass, ceramic, and glass-ceramics, semiconductor materials, and polymer composites. Specific projects conducted will include the following:

(1) Research on high strength uranium alloys for weapons applications—studies to characterize phase transformations and deformation substructures resulting from thermomechanical processing of U-Ti and U-Mo alloys.

(2) Research on Fe- and Ni-based superalloys for weapons applications—time-temperature-transformation studies to characterize the microstructures in these alloys resulting from isothermal heat treatment.

(3) Research on glass ceramics for weapons components—studies to develop optimum glass-ceramic chemistries and heat treatments for glass-to-metal applications.

(4) Research on epoxy encapsulants for weapons components—studies to understand the mechanism for improved toughness in rubber-strength epoxies.

Other research projects will include characterization of thin film deposits on various substrates for photovoltaic applications, investigations of fired, thick-film resistor and conductor inks on alumina substrates for microelectronic applications, and characterization of the microstructures of complex, multicomponent, multi-phase ceramics for simulated radioactive waste forms. Article ordered: December 12, 1979.

Docket No. 80–173. Applicant: Yale University School of Medicine, 330 Cedar Street, New Haven, CT 06510. Article: Electron Microscope, Model H–600–3 with Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for investigations of secretion of the aqueous fluid of the eye and regulation of the introcular pressure in order to obtain knowledge of how the pressure in the normal eye is regulated so that glaucoma can be prevented. Article ordered: January 3, 1980.

Comments: No comments have been received with respect to any of the

foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Program Staff.

[FR. Doc. 80-23891 Filed 8-7-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Availability of the Action Plan for the Implementation of the Emergency Striped Bass Research Study

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of Availability of the Action Plan for the Implementation of the Emergency Striped Bass Research Study.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service announce the availability of an Action Plan for the Implementation of the Emergency Striped Bass Research Study as authorized under the amended Anadromous Fish Conservation Act (Pub. L. 96-118). Copies of this document will be available August 15, 1980 and can be acquired by writing or calling (1) The Regional Director, U.S. Fish and Wildlife Service, 1 Gateway Center, Newton Corner, Mass. 02158, Telephone: (617) 829-9208; or (2) the Regional Director, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Mass. 01930, Telephone: (617) 281-3600.

Signed this 5th day of August, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-23985 Filed 8-7-80; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

Announcement of Conference on U.S. International Standardization, Testing, Certification and Related Matters, and Their Implications Under Trade Agreements Act of 1979

AGENCY: Assistant Secretary of Commerce for Productivity, Technology, and Innovation.

The Department of Commerce plans to hold a two-day conference on October 15-16, 1980, to explore major national policy issues and concerns regarding actions by the U.S. Government and U.S. private sector entities in International Standardization (including testing and certification) and their impact on our country's international trade. Conference location will be the auditorium of the U.S. Department of Commerce in Washington, D.C. This conference should be of substantial interest to U.S. trade associations, chief executive officers, international marketing managers, certain federal agencies, and U.S. standards, testing, and certification organizations.

A list of over 40 prospective issues was developed for the Conference with the aid of interested private sector and government representatives and later refined into the following agenda:

Wednesday, Oct. 15, 1980

9:00-9:10 Call to Order and Introductions by Dr. Howard I. Forman, Deputy Assistant Secretary of Commerce for Product Standards Policy.

9:10-9:30 Keynote address by Dr. Jordan J. Baruch, Assistant Secretary of Commerce for Productivity, Technology, and Innovation.

9:30-9:45 Introductory remarks by Moderator, Richard O. Simpson, President, LITEK International, Inc.

9:45-10:15 Comparative analysis of international standards activities, procedures and practices of United States and its leading trading partners.

William A. McAdams, President, International Electrotechnical Commission (formerly Manager, Industry Standards, General Electric Company).

10:15-10:45 Discussion of Mr. McAdams paper.

10:45-11:15 Coffee break.

11:15-11:45 Current major problems in international standardization affairs. L. John Rankine, Director of Standards and Data Security, IBM Corporation (invited).

11:45-12:15 Discussion of Mr. Rankine's paper.

12:15-1:45 Lunch.

1:45-2:15 Proposed restructuring of ANSI International Standards Council to deal with international standardization requirements of United States.

Dr. Leon Podolsky, Formerly President, U.S. National Committee/International Electrotechnical Commission.

2:15-2:45 Discussion of Dr. Podolsky's paper.

2:45-3:15 Proposed optional mechanisms for dealing with international standardization requirements of United States (including treaty and non-treaty organizations).

Dr. Frank LaQue, formerly President of American Society for Testing and Materials, American National Standards Institute, and International Organization for Standardization.

3:15-3:45 Discussion of Dr. LaQue's paper.

3:45-4:15 Coffee break.

4:15-5:00 Specific problems of Department of Agriculture and some Federal Regulatory Agencies.

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Food Safety and Quality Service, Department of Agriculture.

Henry E. Thomas, Director, Standards and Regulations Division, United States Environmental Protection Agency.

William F. Randolph, Deputy Associate Commissioner for Compliance, Food and Drug Administration.

5:00-5:30 Discussion of papers by Messrs. Kimbrell, Thomas, and Randolph.

Thursday, Oct. 16, 1980

9:00-9:30 Impact of international standardization (including metrication) on U.S. industry and its related costs.

Alexander Buel Trowbridge, Jr., President, National Association of Manufacturers (invited).

9:30-10:00 Discussion of Mr. Trowbridge's paper.

10:00-10:30 International involvement of U.S. standards: The impact upon U.S. standards-writing bodies of the adoption of their standards as de facto international standards.

Dr. William E. Cooper, Consulting Engineer, Teledyne Engineering Services.

10:30-11:00 Discussion of Dr. Cooper's paper.

11:00-11:30 Coffee break.

11:30-12:00 Implications of certification arrangements (including world-wide certification bodies such as IECQ system for electronic components; regional certification bodies; etc.).

Robert W. Peach, Director, Quality Control, Sears, Roebuck and Company.

12:00-12:30 Discussion of Mr. Peach's paper.

12:30-2:00 Lunch.

2:00-3:00 Free and open discussion of papers and preceding dialogues.

3:00-3:30 Proposals for future work, studies, other actions.

3:30–4:00 Wrap-up by Moderator.
4:00 Adjournment.

Due to space limitations (about 500 seats), admittance to the Conference will be by invitation only. A concerted effort will be made to invite participation from all major affected interests in an equitable number to assure a fully representative Conference. All organizations and persons wishing to attend the Conference should inform Dr. Howard I. Forman in writing or by telephone (address and telephone number appear at the end of this notice) by September 10, 1980, and should state the number of seats requested. Formal invitations will be sent out in mid-September.

It is planned that a paper will be presented at the Conference for discussion purposes for each topic appearing on the agenda. The papers and comments thereon will be included in the published proceedings. In addition, and in order to encourage the expression of different viewpoints on each agenda topic, other interested persons are strongly encouraged to submit papers for the record on any agenda topic. Further, and in view of the fact that there will be a limit to the number of topics which can be discussed during the two days of the Conference (with the corresponding possibility of excluding some important issues from discussion), all interested persons are encouraged to submit papers on any matter which is relevant to the Conference even though it is not on the agenda.

All acceptable papers, including those not actually selected for presentation at the Conference, will be incorporated in the published proceedings. The "acceptability" of papers for the record refers primarily to their quality, rigor, factual content, and relevancy. Papers so qualifying will not be excluded because of the nautre of the viewpoints presented. Finally, and following the issuance of the report of the Conference, an opportunity will be provided for any person to submit comments on any paper appearing in the record, whether or not the paper was discussed at the Conference. Such comments will also be made part of the final Conference record.

A subsequent Federal Register notice will provide further details concerning arrangements for the Conference, including registration.

FOR FURTHER INFORMATION CONTACT:
Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–3221.

Dated: August 5, 1980.

Jordan J. Baruch,
Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 80-23944 Filed 8-7-80; 8:45 am]
BILLING CODE 3510-13-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 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 10, 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) 557–1145.

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 commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 7530

Paper Set, Manifold and Carbon
7530–00–401–6910
7530–01–072–2536
7530–01–072–2537
7530–00–205–0511
7530–01–072–2538
7530–01–072–2539
7530–00–880–9154
(Requirements for GSA Regions 1,2,3,4,5,8,9,10 and National Capitol Region)

C. W. Fletcher,
Executive Director.

[FR Doc. 80-23910 Filed 8-7-80; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1980; Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from procurement list.

SUMMARY: This action deletes from Procurement List 1980 a commodity produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 8, 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) 557–1145.

SUPPLEMENTARY INFORMATION:

On June 20, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (45 FR 41691) of proposed deletion from Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity is hereby deleted from Procurement List 1980:

Class 7110

Blackboard
7110–00–843–7916

C. W. Fletcher,
Executive Director.

[FR Doc. 80-23911 Filed 8-7-80; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[6450-01]

Meeting of the Coordinating Subcommittee of the Committee on Emergency Preparedness of the National Petroleum Council

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of meeting.

SUMMARY: The National Petroleum Council (NPC), an advisory committee to the Department of Energy, provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the NPC's Committee on Emergency Preparedness has been requested by the Secretary to undertake an analysis of issues bearing on emergency preparedness planning

and the ability of the refining industry to respond to energy emergencies. NPC's Technical Subcommittee will prepare a proposal for the scope, organization, and timetable of the study for review by the Committee on Emergency Preparedness.

DATE AND LOCATION: The Technical Subcommittee of the NPC's Committee on Emergency Preparedness will meet on Friday, August 22, 1980, at 10:00 a.m., in NPC's Conference Room, Suite 601, 1625 K Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Mr. Finn K. Neilsen, Acting Deputy Assistant Administrator, Office of Energy Contingency Planning, 2000 M Street, N.W., Washington, D.C. 20461, Room 3000, telephone (202) 653–4180.

Ms. Joan Walsh Cassedy, National Petroleum Council, 1625 K Street, N.W., Washington, D.C. 20006, telephone (202) 393–6100.

SUPPLEMENTARY INFORMATION:

Items for consideration at the meeting will include:

1. The scope of the study to be conducted in response to the Secretary of Energy's request for an analysis of issues bearing on emergency preparedness planning.

2. An organizational structure for the study.

3. A timetable for completion of the study.

4. Any other matters pertinent to the overall assignment for the Secretary.

All meetings are open to the public. The Chairman of the Subcommittee is empowered to conduct the meetings in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements at the meeting should inform Joan Walsh Cassedy, National Petroleum Council (202) 393–6100, prior to the meeting, and provision will be made for their appearance on the agenda. A transcript of the Technical Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:000 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 4, 1980.

Barton R. House,

Deputy Administrator for Operations and Emergency Management, Economic Regulatory Administration.

[FR Doc 80–23977 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–01–M

Gasoline Marketing Advisory Committee; Change in Meeting Time and Dates

Notice is hereby given of a change in meeting time and dates of the Gasoline Marketing Advisory Committee. The Committee will meet Thursday, August 21, 1980, from 1:00 p.m. to 5:00 p.m., and Friday, August 22, 1980, from 9:00 a.m. to approximately 5:00 p.m., rather than Wednesday, August 20, 1980, and Thursday, August 21, 1980, from 9:00 a.m. to 5:00 p.m., as previously announced. A notice of meeting was published in the issue of July 28, 1980 (45 FR 49972). For further information contact the Advisory Committee Management Office at 202–252–5187.

Issued at Washington, D.C. on August 4, 1980.

Tina Hobson,

Advisory Committee Management Officer.

[FR Doc. 80–23895 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–80–016; OFC Case No. 55029–9012–04–12]

St. Regis Paper Co.; Order Granting Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration Department of Energy.

ACTION: Order granting an exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On April 10, 1980, St. Regis Paper Company (St. Regis) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order which would grant a permanent exemption for a new major fuel burning installation (MFBI) from certain provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibit the use of petroleum or natural gas as a primary energy source in certain new MFBI's. Interim Rules establishing criteria for petitioning for exemptions from the prohibitions of FUA were published by ERA on May 15 and 17, 1979 (10 CFR, Part 500, *et seq.*) (44 FR 28530 and 44 FR 28950) (Interim Rules).

St. Regis requested a permanent fuel mixture exemption under 10 CFR 505.28 for a field-erected boiler to be constructed at its Pensacola-Kraft Center Mill, Cantonment, Florida in order to use in a mixture with wood waste (an alternate fuel) an amount of natural gas not to exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit. The MFBI, designated as No. 4 Bark/Power Boiler by St. Regis, will have a design heat input rate capability of 690 million Btu's per hour and a steam generating capacity of 420,000 pounds per hour.

Preceding this determination and the issuance of this order, and in accordance with the procedural requirements of FUA and ERA's implementing Interim Rules, ERA accepted St. Regis' petition on May 8, 1980, and published notice of its acceptance in the **Federal Register** on May 15, 1980 (45 FR 32038). The Notice of Acceptance provided a 45-day comment period during which interested persons could submit written comment on the petition for exemption and could request a public hearing. No comments were received. No hearing was requested. On July 18, 1980, ERA published in the **Federal Register** a Notice of Availability of the Tentative Staff Determination made on St. Regis' petition and provided a 14-day period for interested persons to submit written comment (45 FR 48183). No comments were received. No hearings were requested. As required by sections 701 (f) and (g) of the Act, ERA provided a copy of St. Regis' petition, to the Environmental Protection Agency and the Federal Trade Commission for their comment.

Pursuant to section 212(d) of the Act, and subject to specified terms and conditions stated herein, this order grants a permanent fuels mixture exemption to St. Regis to permit the use of natural gas in a mixture with wood waste in the No. 4 Bark/Power Boiler. As specified in the terms ad conditions, the total amount of natural gas used in the exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

In accordance with section 702(a) of the Act, this order shall not take effect earlier than the 60th calendar day after publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128,

Washington, D.C. 20461, Phone (202) 653–3679.
Robert Goodie, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3119, Washington, D.C. 20461, Phone (202) 653–3675.
Douglas Mitchell, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–2967.

The public file containing a copy of all documents and supporting materials on this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street, NW., Washington, D.C., Monday through Friday, 8:00 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published Interim Rules on May 15 and 17, 1979 (10 CFR Parts 500 *et seq.*) (44 FR 28530 and 44 FR 28950), to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). Title II of FUA prohibits the use of natural gas or petroleum in certain new MFBI's unless an exemption for such use has been granted.

Under the provisions of § 505.28 of the Interim Rules, St. Regis Paper Company (St. Regis) filed a petition with ERA on April 10, 1980, requesting a permanent exemption from the prohibitions of Title II of FUA for a field-erected boilder to be constructed at its Pensacola-Kraft Center Mill, Cantonment, Florida. St. Regis requested a permanent fuels mixture exemption for the new MFBI (designated as No. 4 Bark/Power Boiler by St. Regis) in order to burn a fuels mixture of wood waste (an alternate fuel) and natural gas. St. Regis certified in its petition that the total amount of natural gas that is proposed to be used in the No. 4 Bark/Power Boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

ERA's staff reviewed the information contained in the record of this proceeding and based on that review made a Tentative Staff Determination on July 2, 1980, which recommended that an order be issued which would grant a permanent fuels mixture exemption to St. Regis which would permit the use of natural gas in a mixture with wood waste in the No. 4 Bark/Power Boiler, provided that the total amount of natural gas used in the unit does not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that MFBI. A Notice of Availability of the Tentative Staff Determination was published in the **Federal Register** on July 18, 1980 (45 FR 48183). A 14 day comment period provided in that notice expired on August 1, 1980. No comments were received.

Based upon its analysis of the entire record of this proceeding, ERA has determined that St. Regis has adequately demonstrated, pursuant to section 212(d)(1)(A) of the Act, that it will use a mixture of natural gas and an alternate fuel (wood waste) as the primary energy source in the No. 4 Bark/Power Boiler, and, by its certification that the total amount of natural gas used in the MFBI will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit, has satisfied the evidentiary requirement of subparagraph (B) of that section

Pursuant to section 212(d) of the Act, and subject to the terms and conditions stated below, ERA hereby grants St. Regis a permanent fuels mixture exemption to permit the use of natural gas in a mixture with wood waste in the No. 4 Bark/Power Boiler. As specified in the terms and conditions, the total amount of natural gas used in the exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit. In granting this exemption, ERA has taken into account the purposes for which the minimum percentage of natural gas provided by a fuels mixture exemption is to be used, i.e. to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Accordingly, ERA will not exclude from the definition of primary energy source any fuel used in the No. 4 Bark/Power Boiler for the purposes of unit ignition, startup, testing, flame stabilization and control uses.

TERMS AND CONDITIONS: Section 214(a) of the Act gives ERA the authority to attach terms and conditions to any order granting an exemption. Based upon analysis of the information contained in the record of this proceeding, this order is granted subject to the following terms and conditions:

1. No petroleum, as that term is defined in Section 103(a)(4) of the Act, shall be used in the No. 4 Bark/Power Boiler.

2. The amount of natural gas used in the No. 4 Bark/Power Boiler shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the unit.

3. In accordance with the reporting requirement in § 505.28(d), St. Regis will submit an annual report to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461, each year on the anniversary of the effective date of the exemption, containing the following:

A certification that the amount of natural gas used in No. 4 Bark/Power Boiler did not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit. The certification must be executed by a duly authorized representative of the company. The OFC Case Number assigned this proceeding, 55029–9012–04–12, shall be cited on the annual reports.

The exemption granted by this order shall not become effective earlier than the 60th calendar day after the date of publication of this order in the **Federal Register.**

Pursuant to section 702(c) of the Act, any person aggrieved by this order may at any time before October 7, 1980, petition for judicial review in accordance with the procedures outlined in 10 CFR 501.69.

On the basis of the analysis provided by the Office of Fuels Conversion, and reviewed by the Office of Environment, with consultation from the Office of the General Counsel, DOE has concluded that the granting of this exemption will not be a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Issued in Washington, D.C., on August 2, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–23896 Filed 8–7–80; 8:45 am]
BILLING CODE 6450–01–M

Brown Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account

established pursuant to the Consent Order.

DATES: Effective date: July 22, 1980. Comments by: September 8, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administrations, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, (303) 234–3195.

SUPPLEMENTARY INFORMATION: On July 22, 1980, the Office of Enforcement of the ERA executed a Consent Order with Brown Oil Company (BOC) of Dillon, Montana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

BOC, with its home office located in Dillion, Montana, is a firm engaed in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, wihtout substantially changing their form, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of BOC, the Office of Enforcement of ERA and BOC entered into a Consent Order, the significant terms of which are as follows:

1. Total overcharge during the audit period (July 1, 1979 through September 30, 1979) on all covered gasoline products was: $9,625.85.

a. Wholesale Reseller Overcharge: $3,205.96

b. Retail End-User Overcharge: $6,419.89.

2. BOC violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price Regulations by exceeding its "Maximum legal selling price" for the covered gasoline products sold to BOC's wholesale and retail customers.

3. BOC has agreed to refund the total overcharge on or before July 31, 1980.

4. BOC has agreed to pay a civil penalty of $1,000.00.

5. The provisions of 10 CFR 205.199J, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, BOC agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1.a. above, the sum of $3,205.96 plus interest, on or before July 31, 1980. Refund of those overcharges will be in the form of certified check(s) made payable to the United States Department of Energy and will be dlivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

Furthermore, BOC agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of transactions specified in I.1.b. above, the sum of $6,419.89, plus interest, on or before July 31, 1980. Refund of those overcharges shall be in the form of individual refund payments equal to the overcharge of each customer, plus applicable interest.

III. Submissions of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount specified in I.1.a. above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedureal aspects of this Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, Economic Regulatory Administration, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent Order, with proprietary information deleted, by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Brown Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on September 8, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colorado, on the 31st day of July 1980.

Robert Templeton,

Acting District Manager, Economic Regulatory Administration, Rocky Mountain District.

Concurrence by:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80–23980 Filed 8–7–80: 8:45 am]

BILLING CODE 6450–01–M

da Vinci Co., Inc.; Final Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Final Action taken on a Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy announces final action of a Consent Order.

EFFECTIVE DATE: August 8, 1980.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

SUPPLEMENTAL INFORMATION: On March 8, 1980, the ERA of the DOE executed a proposed Consent Order with da Vinci of Shawnee, Oklahoma and a **Federal Register** notice was published on May 21, 1980. Under 10 CFR 205.199I(c), a proposed Consent Order becomes

effective only after the ERA has published notice of its execution and solicits and considers public comments with respect to its terms. Therefore, the ERA published a Notice of Proposed Consent Order and invited interested persons to comment on the proposed Order. At the conclusion of the thirty-day comment period, the ERA had received no notices of claims against the refund amount of the consent Order and there were no objections received to the Consent Order. Accordingly, the ERA has concluded that the Consent Order as executed between the ERA and da Vinci is an appropriate resolution of the compliance proceeding which it described and it shall become final and effective as proposed, without modification, upon publication of this Notice. Procedures and requirements for documenting proof of claim are being developed. Refunded overcharges received, if any, will remain in a suitable government escrow account pending the determination of their proper disposition.

Issued in Dallas, Texas on the 31st day of July, 1980.

Wayne I. Tucker,

District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-2398 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-008; ERA Case No. 51007-0638-21, 22, 23, 24-22]

Florida Power Corp.; Decision and Order Granting Exemption

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues this Decision and Order granting four permanent peakload exemptions from the prohibition against the use of petroleum by new powerplants contained in Section 201 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

BACKGROUND: On June 14, 1979, Florida Power Corporation (FPC) filed four petitions with the Economic Regulatory Administration for exemptions to use petroleum as a primary energy source in four planned 63,000 KW oil-fired combustion turbine powerplants at its Suwannee Station (Suwannee CT-1 through CT-4) in Suwannee County, Florida. ERA accepted the petitions on October 12, 1979, and published notice of their acceptance, together with a statement of the reasons set forth in the petitions for requesting the exemptions, in the **Federal Register** on October 22, 1979 (44 FR 60789). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to Section 701 of FUA. Interested parties were also afforded an opportunity to request a public hearing. The comment period ended December 6, 1979. No comments were submitted. No hearing was requested.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Determination was prepared which recommended that ERA issue an order which would grant FPC four permanent peakload powerplant exemptions to use petroleum in Suwannee CT-1 through CT-4 subject to certain terms and conditions. A notice of availability of the Tentative Staff Determination was published in the **Federal Register** on June 2, 1980 (45 FR 37257). The publication of the Notice of Availability opened a 14-day public comment period which ended June 16, 1980.

On June 16, 1980, public comments were received from the Garrett Corporation (Garrett). Garrett did not contest the Tentative Staff Determination; however, Garrett submitted comments pertaining to the startup capabilities of regenerators (powerplants which have regenerators, have a higher thermal efficiency than simple cycle combustion turbine units) intending to clarify certain information submitted by FPC.

Garrett asserts that FPC's response dated August 30, 1979, to ERA's request for additional information, is based upon FPC's experience with older regenerative units not designed for peaking operation. FPC had stated that thermal stresses on the associated heat recovery equipment lengthened unit startup time to full load and that such units are not then classed as peaking units. Garrett, a manufacturer of regenerative equipment, provided information based upon its testing program of advanced design equipment asserting that the problems identified by FPC have been overcome for new regenerators. On the basis of our reveiw of the entire record of this proceeding, ERA has determined to grant the four exemptions. This order grants FPC four permanent peakload powerplant exemptions to use petroleum in Suwannee CT-1, CT-2, CT-3 and CT-4 subject to the terms and conditions contained in this order.

DOE's Office of Environment has determined that granting these permanent exemptions is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Therefore, no environmental impact statement or environmental assessment was required prior to issuance of this order.

DATES: This order will not take effect earlier than October 7, 1980.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, DC 20461, Phone (202) 653-4055.

Louis T. Krezanosky, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128, Washington, DC 20461, Phone (202) 653-3659.

Marx M. Elmer, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6G-087, Washington, DC 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: Florida Power Corporation (FPC) plans to install four 63,000 KW oil-fired combustion turbine units to be called Suwannee River Peaking Units CT-1, CT-2, CT-3, and CT-4 (Suwannee CT-1 through CT-4) at its Suwannee Station site in Suwannee County, Florida.

Based upon estimates by FPC for the 1980-1990 period, the new units are expected to consume approximately 171,000 barrels of low sulfur distillate oil per year (467 bbl/day). Suwannee CT-1, CT-2, and CT-3 are scheduled for commercial operation in October 1980. CT-4 is scheduled for commercial operation in May 1981.

FPC submitted a sworn statement as Exhibit A to each of the four petitions signed by Mr. Ned B. Spake, Vice President, Environment and New Technology of FPC as required by 10 CFR Part 503.41(b)(1). In his statements, Mr. Spake certifies that each of the oil-fired combustion turbines (Suwannee CT-1 through CT-4) will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of each plant. He also certified that the maximum design capacity of each unit is 63,000 KW and that the maximum generation that each unit will be allowed during any 12-month period is the design capacity times 1,500 hours or 94,500,000 KWH.

FPC also furnished the information required by 10 CFR 502.11 (Petroleum and natural gas consumption), 502.12 (Conservation measures), and 502.13 (Environmental impact analysis). On January 4, 1980, FPC submitted additional environmental information requested by ERA.

The Garrett Corporation (Garrett) submitted comments which it believes

are necessary to clarify FPC statements submitted on August 30, 1979, in response to an ERA request for additional information. FPC had stated that thermal stresses on the associated heat recovery equipment lengthened startup time to full load and that such units are not then classed as peaking units. Garrett does not question the sincerity of FPC comments, but believes ". . . that they were made on the basis of experience with heat recovery equipment (regenerators) that does not reflect the current state-of-the-art." Garrett asserts that it and other manufacturers of regenerators have developed equipment designed to overcome the problems associated with the units upon which FPC's remarks are based. Garrett provided a technical report on its development and testing program for the record.

ERA, by this order, grants FPC permanent exemptions from the prohibitions of FUA with respect to the use of petroleum in Suwannee CT–1 through CT–4, provided that each powerplant is operated solely as a peakload powerplant subject to the terms and conditions stated below:

Terms and Conditions

§ 214(a) of the Act gives ERA the authority to include in any order granting an exemption, appropriate terms and conditions.

Based upon information submitted by FPC and upon the results of ERA's analysis, this order is granted on the following terms and conditions:

A. FPC shall not produce more than 94,500,000 KWH during any 12-month period with any of the proposed units, Suwannee CT–1 through CT–4. FPC shall limit operation of each of the proposed units to peakload hours which on FPC's system are 7:00 a.m. to 10:00 a.m. and 4:00 p.m. to 8:00 p.m. Monday–Friday, in the winter months December through March, and 10:00 a.m. to 10:00 p.m., Monday–Friday, in the summer months June through September. FPC shall notify ERA of significant changes in its load pattern which require a modification in peakload hours.

B. FPC shall comply with the reporting requirements set forth in 10 CFR Part 503.41(e). In addition, whenever FPC operates any or all of the proposed units, Suwannee CT–1 through CT–4, in non-specified peakload hours (hours not specified in condition A above), FPC shall report annually the reason(s) for such operation.

C. This order shall not take effect earlier than October 7, 1980.

Issued in Washington, D.C. on August 1, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–23984 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–01–M

Natomas North America, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: July 29, 1980.

COMMENTS BY: On or before September 8, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, phone: 214/767–7745.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, phone 214/767–7745.

SUPPLEMENTARY INFORMATION: On July 29, 1980 the Office of Enforcement of the ERA executed a Consent Order with Natomas North America, Inc. of Houston, Texas. Under 10 CFR 205.199J(b), the Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Natomas North America, Inc., with its office located in Houston, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and Natomas North America, Inc., entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was January 1, 1975 through December 31, 1978, and it included all sales of crude oil which were made during that period.

2. Allegedly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and Natomas North America, Inc. have agreed to a settlement in the amount of $253,680. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Natomas North America, Inc.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily indentifiable, the refund will be made through the DOE in accordance with CFR Part 205, Subpart V as provided below.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Natomas North America, Inc. agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I(1) above, the sum of $253,680 on or before August 30, 1980. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

Note.—Of the above amount, $200,680 has been previously refunded and credit allowed leaving a balance of $53,000 to be paid to the Department of Energy.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either

been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Southwest District, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Natomas North America Consent Order. We will consider all comments we receive by 4:30 p.m., local time on September 8, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on 31st day of July, 1980.

Wayne I. Tucker,

District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-23979 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI77-412]

Opinion No. 90: Opinion and Order Granting Rehearing in Part and Denying Rehearing in Part; Phillips Petroleum Co.

Issued July 25, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Opinion and Order Granting Rehearing in Part and Amending Certificate Conditions.

SUMMARY: By Order issued December 9, 1977, in this Docket, the Commission provided that, for certain costs incurred by the purchasing interstate pipeline to be included in its rates, the pipeline would be required to prove that those costs have not been compensated for in the applicable national rate ceiling. A similar condition has been issued in subsequent certificates. By this Opinion, the Commission amends that condition to provide that at such time as the pipeline proposes to recover the costs in its rates, the pipeline may be required to prove that the activity which engendered those costs is prudent. To this end, the provisions of new § 2.102 (issued under Order No. 94, Docket No. RM80-47) may be used. In addition, the Commission grants rehearing in Part for the numerous cases petitioning for same in Docket No. CI77-412 and related dockets.

I. Background

On April 14, 1977, Phillips Petroleum Company (Phillips) requested authorization in Docket No. CI77-412 to initiate sales of gas at the applicable national rate to United Gas Pipe Line Company (United) from the Waveland Field, Hancock County, Mississippi, pursuant to a March 16, 1977, contract. By a separate agreement, also dated March 16, 1977, Phillips agreed to construct and operate, on United's behalf, treating facilities for the Waveland Field gas and United agreed to assume ownership of such facilities upon issuance of appropriate authorization.

By order issued on December 9, 1977, the Commission [1] granted Phillips a permanent certificate in Docket No. CI77-412 and stated in the order (mimeo, page 2)

> * * * issuance of the certificate to Phillips and acceptance of the related rate schedule does not constitute approval of such acquisition. The Commission will not authorize this type of transaction since the national rate ceiling prescribed in Opinion No. 770-A, [sic] as amended, includes compensation for costs related to the processing of gas. If United seeks approval for the inclusion of the cost of these facilities in its rates, it will be required to prove that these costs have not been compensated for in the applicable national rate ceiling.

Additionally, Ordering Paragraph (G) of the December 9, 1977, order stated (mimeo, pages 4 and 6)

> (G) Phillips and United are advised that, insofar as the subject sale involves the subsequent acquisition by United of the Waveland Field Gas Treating Facilities, issuance of the certificate and acceptance of the related rate schedule does not constitute approval of such acquisition. At such time as United seeks to include the costs associated with that acquisition in its rates, it will be required to prove that these costs have not been compensated for in the applicable national ceiling rate.

Phillips filed an application for rehearing and reconsideration of the December 9, 1977, order on January 9, 1978. United filed a petition to intervene out of time in Docket No. CI77-412 on January 4, 1978, and a petition for rehearing on January 9, 1978. On February 9, 1978, the Commission granted rehearing solely for the purposes of further consideration. Applications for rehearing and petitions to intervene were filed by Northwest Pipeline Corporation, Texas Eastern Transmission Corporation, and Transwestern Pipeline Company on May 24, 1978, and by Southern Natural Gas Company on June 6, 1978.[2]

While the Commission is specifically concerned with dehydration costs in this proceeding, the issue of the shifting of costs from producers to pipelines is a generic issue of far greater impact than the narrow issue of dehydration costs with which we are ostensibly concerned here. These other costs include compression, gathering, processing and

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[1] This proceeding was commenced before the Federal Power Commission (the FPC). By the joint regulation of October 1, 1977 (10 CFR § 1000.1) and Section 705(b) of the Department of Energy Organization Act, Public Law 95-91, 91 Stat. 565 (August 4, 1977), it was transferred to the FERC. The term "Commission" when used in the context of an action prior to October 1, 1977, refers to the FPC; the term when used otherwise, refers to the FERC.

[2] All petitions to intervene in this docket and in the other dockets which are dependent on the outcome of this docket are granted below.

treating costs. The Commission has been concerned with these other costs in a large number of other producer certificate and rate cases which arise under the Natural Gas Act.[3] The Commission has included the condition which is at issue in this case in the authorizations issued in these other proceedings and has conditioned the outcome of these other proceedings on the outcome of this proceeding. With this as background, we turn to discussion and resolution of the broad issues raised by the applications for rehearing.

II. Position of the Parties

1. The producers argue that the costs of processing, treating, compressing and gathering natural gas are not compensated for in the base national rate.

2. The pipelines argue that the certificate condition is an unlawful attempt to impose indirect regulation of producer rates on them without establishing a standard for determining when they can include such costs in their rates.

3. Both pipelines and producers argue that the certificate condition is contrary to the provisions of the contracts.

III. Discussion

The just and reasonable producer rate structure which was established by the Commission under the Natural Gas Act in the area rate and national rate proceedings essentially consists of two components: a base rate, which was designed to compensate the producer for the costs of producing the gas, and adjustments or add-ons to the base rate, which were designed to compensate the producer for certain other costs which the producer may incur and which were related to production and gathering activities.

With respect to the adjustments or add-ons to the base rate, these adjustments or add-ons are prescribed in Opinion Nos. 749[4] and 770–A.[5] The adjustment or add-on provisions are codified in our regulations in paragraphs (b) through (e) of § 2.56 (for natural gas subject to the provisions of Opinion No. 770–A), and in paragraphs (c) through (f) of § 2.56b (for natural gas subject to the provisions of Opinion No. 749). These provisions, with nuances not relevant here, are substantially similar. To cite to one is to cite to the other. These provisions allowed recovery of severance taxes and specified a charge for gathering and for delivery of offshore gas to an onshore area. A Btu adjustment was specified; and §§ 2.56a(c)(2) and 2.56b(d)(2) of the regulations state the following with respect to other quality adjustments:

(2) *Other quality adjustments.* All quality standards and the resulting adjustments to the rates prescribed in paragraph (a) [or, for § 2.56b(d), paragraph (a)(2)] of this section shall be made in accordance with the provisions of the particular gas sales contract except that all Btu adjustments shall be governed by paragraph (a)(1) [sic] [or, for § 2.56b(d) paragraph (d)(1)] of this section.

This structure, inherent in the area and national rate opinions, has been carried forward in the provisions of the Natural Gas Policy Act of 1978 (the NGPA), 15 U.S.C. 3301 *et seq.* As the amendments to the regulations implementing section 110 of the NGPA make clear,[6] the maximum lawful prices in sections 102 through 109 of the NGPA were intended, at a minimum, to compensate producers for costs associated with the production of natural gas. Allowances or add-ons to these maximum lawful prices are governed by the provisions of section 110 of the NGPA and the Commission's rules and regulations thereunder; and, with the exception of the Btu adjustment, the scope of the provisions for adjustments and add-ons for severance taxes and production-related costs, which are covered by section 110 of the NGPA, is similar to the scope of the provisions for adjustments and add-ons which are specified in paragraphs (b) through (e) of § 2.56a and in paragraphs (c) through (f) of § 2.56b for natural gas covered by the Commission's area and national rate opinions. Also, in our regulations implementing sections 104 and 106(a) of the NGPA, (the provisions of the NGPA covering natural gas which is subject to our area and national rate opinions), the Commission indicated that the base area and national rates, not the adjusted area and national rates, were the rates which should be escalated for inflation in accordance with the provisions of section 104 and section 106(a).[7]

The NGPA is also critical to our decision here for other reasons. Section 601(a)(1)(B) of that Act specifies that the first sale of natural gas which is committed or dedicated to interstate commerce on November 8, 1978, and which is finally determined to qualify for section 102(c), section 103(c), or sections 107(c)(1) through (4) of the NGPA, is not subject to the Commission's Natural Gas Act jurisdiction. Many of the producer certificates which were conditioned upon the outcome of this proceeding are no longer in effect as a result of final well determinations, and the underlying producer sales have been removed from the Commission's Natural Gas Act jurisdiction by operation of section 601(a)(1)(B) of the NGPA. Moreover, some natual gas which remains subject to the Commission's Natural Gas Act producer certificate and rate jurisdiction may now qualify for a maximum lawful price which is higher than that specified in sections 104 and 106(a) of the NGPA. For example, natural gas which qualifies for the maximum lawful price in section 102(d) and section 108 of the NGPA falls in this category. Although the pricing of such natural gas is technically not covered by § 2.56a or § 2.56b, such producer sales remain subject to our jurisdiction under the Natural Gas Act.

These considerations require that the Commission tailor its action on rehearing in this proceeding to reflect the policies we have adopted to implement section 110 of the NGPA. Many of the producer certificates subject to the condition imposed in this and other proceedings are no longer in force or may cease to apply at some future date by operation of section 601(a)(1) (A) or (B) of the NGPA. However, to the extent that such producer sales remain subject to the price regulation under Title I of the NGPA, they are subject to the provisions of section 110 of that Act and our regulations implementing that section to determine the treatment of production-related costs.

Turning to the specific issues presented in this proceeding, we conclude that the base national and area rates were intended, at a minimum, to compensate producers for all costs which are associated with the production of natural gas. Natural gas production costs may not be shifted from the producer to the pipeline without circumventing the base area and national rates established by the

[3] *See, e.g.* United Gas Pipeline Company; Findings and Order After Statutory Hearing Issuing Certificate of Public Convenience and Necessity, Docket No. CP77–558 (issued Dec. 20, 1977); Michigan Wisconsin Pipeline Company, Docket No. CP77–577 (issued Dec. 30, 1977). *See generally* the attached Appendix to this Order.

[4] 54 FPC 3090 (1975). Opinion No. 749 established a national flowing gas rate for wells commenced, and contracts entered into, prior to January 1, 1973. Codified at 18 CFR 2.56b.

[5] 42 FR 2954 (issued Jan. 14, 1973). Opinion No. 770–A established a national flowing gas rate for wells commenced on or after January 1, 1973 and certain other sales. Codified at 18 CFR 2.56a.

[6] Order No. 94, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act", Docket No. RM80–47 (issued July 25, 1980). Order No. 94 is being issued simultaneously with this Opinion.

[7] The one exception was the *Permian* area rate which included severance taxes.

Commission. Pipelines which were willing to incur production costs and pay the base area and national rates would have an advantage over other pipelines in attaching new gas supplies.[8] The shifting of production costs would, in effect, eliminate the ceiling rate and render meaningless the prohibitions of § 2.56a(f) and § 2.56b(g) of our regulations. Moreover, allowing producers to shift costs associated with the production of natural gas limits the investment ordering results and cost minimization incentives inherent in an area or national ceiling rate and, thus, alters the risk-to-reward balance inherent in those rates. These concepts underlie not only the Commission's area and national rate decisions, but also the maximum lawful prices specified in sections 102 through 109 of the NGPA.

The costs with which we are concerned here, however, are generally not costs associated with the production of natural gas. As noted above, these costs were considered as adjustments or add-ons to the base area and national rates. Under section 110 of the NGPA, these costs are defined as "production-related costs" for which the Commission, in its discretion, may authorize an allowance in excess of the statutorily prescribed maximum lawful price.

From what we have said before, it follows that, but for the NGPA, the producer could receive an allowance or add-on to the base area or national rate to the extent that the producer qualifies for an allowance or add-on under the provisions of § 2.56a or § 2.56b of our regulations. A producer was authorized to charge this allowance as a result of a Commission authorization issued in a producer certificate or rate proceeding.

With respect to all allowances, except those governed by the other quality adjustments provisions in §§ 2.56a(c)(2) and 2.56b(d)(2), the process of determining whether a producer would be allowed to add on charges for severance taxes, gathering, or offshore-to-onshore delivery was relatively straight-forward. The important point in this regard, however, is that the Commission did approve and authorize the producer to charge for these additional services, and the propriety of these charges was a matter which the Commission routinely considered in producer certificate and rate proceedings. Indeed, prior to and subsequent to the passage of the NGPA, the Commission has, under the Natural Gas Act, considered the producer's qualification for gathering and severance tax charges and the level or amount of the add-on to the base rate for these services and costs.

The language in §§ 2.56a(c)(2) and 2.56b(d)(2) does not constitute an exception to this policy of authorizing the level of rates and charges for producer sales under the Natural Gas Act nor, in our view, could it. As noted above, the language of these two sections is virtually identical. Section 2.56a(c)(2), for example, reads:

> (2) *Other quality adjustments.* All quality standards and the resulting adjustments to the rates prescribed in paragraph (a) of this section shall be made in accordance with the provisions of the particular gas sales contract except that all Btu adjustments shall be governed by paragraph (a)(1) [sic] of this section.

This passage does not, as the applications for rehearing contend, leave the matter of quality standards, and resulting adjustments to the base area and national ceiling rates, to the unfettered discretion of the producer and pipeline as specified in the contract. The bargain struck between producer and pipeline on this matter is, and was meant to be, subject to the Commission's review in producer certificate and rate proceedings. As the Supreme Court has stated in a related context:

> The Court of Appeals rejected what it apparently understood was "the Commission's basic contention all along * * * that the 'just and reasonable' standard was not mandatory and that the FPC can simply choose not to regulate rates." 154 U.S. App. D.C. at 175, 474 F.2d, at 422. Whatever the position of the Commission heretofore has been, it wisely does not challenge that aspect of the Court of Appeals judgment. Section 4 and 5 of the Act require that all gas rates be just and reasonable; and the Court held in *Phillips* that this very prescription applies to the rates of all gas producers. The Commission may have great discretion as to how to insure just and reasonable rates, but it is plain enough to us that the Act does not empower it to exempt small producer rates from compliance with that standard. *FPC* v. *Texaco, Inc.*, 417 U.S. 380, 394 (1974).

The Commission cannot, consistent with its duties under the Natural Gas Act and the NGPA, leave the matter of quality adjustments (and resulting adjustments to the base area and national rates) to the discretion of the parties as expressed in the contractual provisions governing the sale. The Commission retains authority to proscribe or limit the effect of these contractual arrangements. *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968); *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 391–92 (1959). The fact that §§ 2.56a(c)(2) and 2.56b(d)(2) provide that other quality adjustments will be specified in the sales contract does not constitute a limit on, or a waiver of, the Commission's authority to review and approve these arrangements.

Our interpretation of these sections is not a novel reading of applicable Commission precedent in producer rate matters. In the area rate proceedings the Commission, upon occasion, had specified that certain conditions of gas delivery from producers to pipelines would be left, in the first instance, to contractual negotiation. Opinion No. 546–A is the only previous occasion when the Commission addressed the effect of provisions such as those specified in §§ 2.56a and 2.56b. In that opinion, the first area rate proceeding where these matters were left to contractual negotiation, the Commission stated:

> Accordingly, we shall amend ordering paragraph (A), § 154.105(d)(vii) to read:
>
> (vii) *Deliver Pressure*—The gas shall be delivered at a pressure sufficient to enter the buyer's pipeline, except that when the natural flowing pressure of seller's wells declines to, or below, the level sufficient for such delivery nothing herein shall require seller to deliver gas at a pressure higher than specified by contract.
>
> The foregoing pressure standard will apply as a rule only to third-vintage contracts. *But application and refinement of the general principles enunciated herein may be considered in any certificate proceeding, including proceedings relating to second-vintage contracts. If experience in applying these principles in certificate proceedings indicates a need, the Commission will revise its general rule.* Opinion No. 546–A, *Area Rate Proceeding (Southern Louisiana, et al.)* Docket Nos. AR61–2, *et al.*, 41 F.P.C. 301, 322 (1969) (emphasis added).[9]

This language indicates the Commission's intention to monitor, review, and approve, deny, or modify contractual arrangements. It does not indicate an intention to defer without exception to the bargain struck between producer and pipeline as expresed in the contract.

In this proceeding, and in the majority of proceedings for which application to rehear this issue has been made,[10] the producer is not proposing to charge an allowance or add-on to the base area or national rate for compressing, treating,

[8] Our experience in administering the advance payments program supports this conclusion.

[9] Although Opinion Nos. 546 and 546–A were subsequently superseded by Opinion Nos. 598 and 598–A (wherein the Commission approved a contested settlement agreement), this fact does not, in our view, limit the importance of the quoted discussion.

[10] *See* the attached Appendix for a listing of these proceedings.

processing, or gathering natural gas. The producer is proposing to charge the base area or national rate (now the maximum lawful price under the NGPA) with other appropriate allowances. In such cases, the contract either (1) expressly provides that the pipeline will bear certain production-related costs, (2) is silent concerning which party will incur those costs, or (3) specifies that the incurrence of those costs will be subject to future negotiations between the parties to the contract. In some cases, no costs have yet been incurred by the pipeline purchaser under the contract. In other cases, particularly cases involving flowing gas subject to the provisions of purchaser under the contract. In other cases, particularly cases involving flowing gas subject to the provisions of Opinion No. 749, costs may already have been incurred by the producer or pipeline but the parties seek to modify the contract in order to change the pattern of incurrence of these costs or to specify the party who will be responsible for additional costs for which no provision in the contract has been made. The condition at issue here has been imposed in all producer certificate proceedings since December 9, 1977, in related pipeline certificate proceedings, and in producer rate proceedings where modifications to the contracts, on file with the Commission as part of the producers' tariffs, have been proposed which affect the apportionment of these costs between pipeline and producer.

Unlike the costs which are included in the base area and national rates, the Commission has not had a hard and fast policy on pipeline incurrence of the costs of compressing, gathering, processing, and treating natural gas. Pipelines, in some instances, have "gone to the wellhead" and have incurred the gathering and other costs associated with that bargain.

The Commission recognizes that the ability of the producer to shift costs to the pipeline allows the producer to avoid costs for which the Commission would not permit an allowance or for which a Commission-approved allowance would recover less than full costs. The ability of the producer to shift costs to the pipeline in this manner would increase the total price paid by the customers of the interstate pipeline and by the ultimate consumers. The ability of the pipeline to incur these costs, however, could also result in a reduction in prices paid by the customers of the pipelines and by ultimate consumers. This can occur if the pipeline incurs costs which are less than an allowance paid to a producer in the event that the producer incurred the cost, or which are more than matched by other revenues that can be credited against these costs. There are other situations where the allocation of responsibility for costs between pipelines and producers provides mutual benefits to both parties or where the effect of cost shifting is unclear or changes over time.

These results flow from the fact that pipelines have historically been regulated on the basis of individual company costs-of-service while producers have been regulated under the Natual Gas Act on the basis of area and national rates which reflect average costs. This cost/price dichotomy underlies and distinguishes producer and pipeline regulation.

For these reasons, the consequences of a decision by a pipeline to incur costs of compressing, gathering, processing and treating natural gas are of concern to this Commission. Just as producer rates and contractual arrangements are reviewed by the Commission in producer certificate and rate proceedings, the Commission must also assure that only costs prudently incurred by the purchasing pipeline are reflected in the pipeline's rates. This tenet of regulation is fully applicable here, particularly given our concerns with the alchemy which results where a potential allowance or add-on for a producer becomes, instead, a cost to the pipeline.

The pipelines argue nonetheless that the Commission cannot disallow the recovery of costs for compressing, processing, treating, and gathering natural gas which the sales contract with the producer, either explicitly or implicitly, provides that the pipeline should bear. Nowhere in our regulations can support for this proposition be derived, least of all the provisions of §§ 2.56a or 2.56b. These sections speak to producer rates, not to pipeline costs. Moreover, while the "Other Quality Adjustments" subsections of these two sections reference the contractual rights and responsibilities of both parties to the agreement, the exclusive focus in all the other subsections of §§ 2.56a and 2.56b on the producer's rates, and qualifications for these rates, removes whatever shield the pipelines would attempt to derive from our regulations to avoid Commission review and scrutiny of costs incurred for compressing, gathering, processing, or treating natural gas. Finally, and most importantly, the protection which the pipelines would derive from our regulations our regulations for contractual arrangements which are entered into between pipeline and producer does not, as we have noted, provide assurances for producers or affect the Commission responsibilities to insure proper ceiling rates for sales by producers. These responsibilities are, if anything, augmented and not reduced if the pipeline incurs the costs with which we are concerned here.

The pipelines also argue that the Commission may not review the prudency of the pipeline's incurrence of costs of compressing, processing, treating, and gathering natural gas in a rate proceeding brought under section 4 or section 5 of the Natural Gas Act involving that interstate pipeline; but must instead pass on the allocation of these costs between the producer and pipeline when the Commission acts in the related producer certificate or rate proceeding. Under this argument, a failure by the Commission to object to the producer's non-incurrence of costs (and the related rate which is designed to allowed for recovery of these costs), necessarily entails approval of the pipeline's incurrence of these costs which the producer does not incur. This argument attempts to prove too much.

While the contractual arrangements between producer and pipeline often assign responsibilities and costs to the pipeline, the focus in a producer certificate and rate proceeding is on the producer, its service, and its related rates. Given this focus in a producer certificate and rate proceeding, the Commission should, consistent with its responsibilities, consider the pipeline's decision to incur the costs of compressing, treating, processing, and gathering natural gas and in the context of a Section 4 or section 5 pipeline rate proceeding. Moreover, even absent a condition in the producer authorization, the Commission would retain its full authority to allow or disallow recovery of any costs incurred by the pipeline in a pipeline rate case.

Indeed, the focus in a producer certificate or producer rate proceeding on the producer's rate makes it somewhat inappropriate to use that proceeding as the forum for examining pipeline costs. Nothing in the area or national rate opinions alters this conclusion. On the contrary, as we have discussed above, the pipeline's incurrence of costs of compressing, processing, treating, and gathering natural gas is outside the scope of § 2.56a or § 2.56b. A pipeline's decision to incur these costs essentially removes the issues raised by that decision to a forum where these costs and the pipeline's rates, which are predicated on these costs, can be examined.

Examining the pipeline's incurrence of costs of compressing, processing, treating, and gathering natural gas in a pipeline rate case is proper for other reasons. In a producer certificate or rate proceeding, the extent of the pipeline's commitment in agreeing to incur these costs may be unclear, and the level of expenditures which will be required to fulfill that commitment, now and in the future, may be unknown. Contractual provisions may not precisely address, or may not address at all, the apportionment of certain costs between producer and pipeline. In other cases, a decision by the pipeline to bear certain costs, now or in the future, may not actually require expenditures in the future. In still other cases, circumstances encountered after the contract is entered into may require that the pipeline bear certain costs, the expenditure of which was not contemplated when the contract was entered into. Moreover examination into the particulars of an individual contract between producer and pipeline may fail to disclose area or field practices and considerations which support the pipeline's decision to bear certain costs. Finally, judicious use of resources, and the history of this proceeding, would indicate that the public interest is better served by examining these issues on a pipeline-by-pipeline basis rather than in a myriad of certificate and producer rate proceedings.

For these reasons, the Commission concludes that it is not required to pass on the propriety of a pipeline's decision to incur costs of compressing, treating, processing, and gathering natural gas in the context of a producer certificate or producer rate proceeding. Moreover, a producer certificate or producer rate proceeding is not a particularly appropriate forum for examining issues raised by a pipeline's decision to incur these costs. A pipeline rate proceeding provides a better framework for the examination of costs and the prudency of their incurrence by the pipeline.

While a pipeline rate proceeding is the preferred forum for examining the prudency of a pipeline's incurrence of costs of compressing, processing, treating and gathering natural gas, the pipelines argue nonetheless that the Commission may not defer consideration of these issues to a pipeline rate proceeding. To do so, they argue, would put recovery of these costs at risk and would constitute "indirect regulation" of producer rates which, the pipelines argue, is proscribed by the Natural Gas Act.

On the contrary, it is the pipeline's voluntary decision to incur these costs, rather than requiring the producer to bear these costs or negotiating a rate with the producer which reflects producer incurrence of these costs, which puts these costs at risk and, quite properly, makes recovery of these costs an issue in pipeline rate proceedings. More importantly, since the decision by a pipeline to incur costs often has unknown consequences (both as to the extent and the level of the expenditures which will be required), and since these factors raise issues which could not be examined, in the first instance, in a producer certificate or producer rate proceeding, the pipelines' argument, taken to its logical limit, becomes an argument for no regulation.

While the Commission can defer all review of a pipeline's incurrence of costs for compressing, processing, treating, and gathering natural gas to a pipeline rate proceeding and while the Commission believes that a pipeline rate proceeding provides the most appropriate forum for evaluating these costs, as the condition imposed in these cases specifies, Commission review and analysis of contracts between producers and pipelines at issue here indicates that the certificates should be conditioned so as to provide the pipelines with general guidance concerning which costs of compressing, processing, treating, and gathering natural gas can properly be reflected in the pipeline's rates.

The original certificate condition which we imposed in this and other proceedings was a reflection of our concern with the recent erosion of customary practices in producing areas concerning the apportionment of costs and responsibilities between pipeline and producer in the interstate market. In this case, the erosion manifests itself in the agreement by United to incur the costs of dehydration. These costs would be incurred by United in order to achieve a level of natural gas quality which, our review of contracts on file with the Commission indicates, producers have, virtually without exception, agreed to provide without adjustment or add-on to the base area or national rate. The sale of natural gas which meets minimum quality standards results in a situation where the potential for reestablishing the dual market is minimized and, more importantly, provides appropriate incentives, all other things being equal, for producers to explore and develop natural gas reserves of high quality. As our regulations implementing section 110 of the NGPA make clear[11] the costs which United proposes to incur are costs for which Phillips would not be able to obtain an allowance or add-on for production-related costs under those implementing regulations. The Commission is concerned that when and if a pipeline incurs such costs, the costs incurred are prudent. This concern extends to any costs incurred by interstate pipelines to meet the minimum quality standards specified in § 271.1104(c)(4)(i) of our regulations which implement section 110 of the NGPA. Similar concerns would also be present if the producer and pipeline propose to amend an outstanding contract to shift costs that the producer had agreed to incur or which the producer had actually been incurring for a period of time.

These and other concerns with production-related costs and with cost shifting between producers and pipelines are more fully discussed in the rule issued today to amend the interim regulations implementing section 110.[12] As part of that effort, the Commission has this day promulgated a new § 2.101 of the Statements of General Policy and Interpretations under the Natural Gas Act. That policy statement provides that, if an interstate pipeline purchases natural gas in a first sale then, in any proceeding bought under the Natural Gas Act to determine the lawfulness of the rates and charges of such pipeline, any activity undertaken by, or on behalf of, the pipeline which results in the pipeline incurring production-related costs shall be deemed prudent if the costs so incurred are for certain types of compression or are of the type that, had the seller of the gas borne them, the seller could have made application for their recovery under the provisions of Subpart K of Part 271 (as amended).[13]

This policy statement, and the related discussion of our amendments to the interim regulations implementing section 110, provides the guidance which the pipelines have requested in their applications for rehearing.[14] Accordingly, the Commission will modify the condition issued in this proceeding to read as follows:

(G) At such time as the pipeline proposes to recover in its rates any costs incurred by it to compress, process, treat, or gather natural gas purchased by it, the pipeline will be required to prove that the activity which engendered those costs is prudent. In

[11] *See* note 6 *supra.*

[12] *Id.*

[13] The policy of § 2.102 defines the terms "prudent compression", "first sale" and "production-related cost"; the latter term having the same meaning as that defined under § 271.102(b)(17) of the regulations.

[14] As we have discussed above, the Commission is under no legal obligation to provide this guidance.

determining prudence, the Commission will apply the statement of policy set out under § 2.102 of its regulations.

This requirement will be a continuing one in rate proceedings involving a given pipeline brought under Sections 4 and 5 of the Natural Gas Act. In order to facilitate review of costs incurred to compress, process, treat, or gather natural gas, the pipeline may be required to specifically idenfity such costs for each producer contract, grouped by field or area as may be appropriate to aid analysis and to provide a short statement indicating why incurrence of these costs in proper under the standards specified in § 2.101(a).

The policy would apply only to rate proceedings now pending before the Commission for proceedings commenced after the effective date of this order. In those cases where the pipeline has already incurred costs which are governed by the outcome of this proceeding, inquiry into the propriety of the pipeline's incurrence of those costs will be undertaken in the first general section 4 or section 5 rate proceeding involving that pipeline which is filed after this opinion is issued. Since the Commission has indicated its concern with the propriety of cost incurrence by interstate pipelines at the time of issuance of these producer authorizations, and since no specific showing of prudency concerning the incurrence of these costs has been made in a pipeline rate proceeding, all costs which are governed by the outcome of this proceeding will be considered in the respective pipeline's first section 4 or section 5 rate proceeding initiated after the date of this opinion.

Apart from the situation of a pipeline incurring production-related costs, a case may arise in which a seller of natural gas attempts to have a purchasing pipeline pay for the costs to produce the gas to the wellhead. That is, the seller attempts to shift to a purchaser part or all of the costs for which the base rates of the Natural Gas Act or the NGPA were designed to compensate the seller. Under Order No. 94, an add-on to the maximum lawful price, such production costs cannot be applied for. In the same manner, such a shift of costs in sales made under the Natural Gas Act would violate the area or nationwide rate ceilings. For a pipeline to purchase gas in a transaction that violates the applicable ceiling prices of either the NGPA or the Natural Gas Act is *per se* imprudent. To allow a pipeline to reflect such costs in its rates is to condone a circumvention of Title I of the NGPA.

Because the focus of the condition which we have included in these authorizations differs from the condition we originally included, and because the amendments to the interim regulations which implement section 110 are still subject to comment and reconsideration, rehearing applications to this opinion will be considered by the Commission. This course of action will assure consideration of any action which may be appropriate on reconsideration of regulations implementing section 110 of the NGPA.

The Commission finds: (1) Participation by the persons seeking intervention in this proceeding and in the other proceedings which depend on the outcome of this proceeding may be in the public interest.

(2) It is appropriate and in the public interest that the applications for rehearing in this proceeding and in the other proceedings which depend on the outcome of this proceeding be granted in part and denined in part as provided below.

The Commission orders: (A) All persons seeking to intervene in this proceeding and in the proceedings which depend on the outcome of this proceeding are permitted to intervene subject to the rules and regulations of the Commission; *provided, however,* that the participation of these intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and *provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered in this proceeding.

(B) The orders issued in this proceeding and in the other proceedings which depend on the outcome of this proceeding are amended by adding the following condition:

( ) At such time as the pipeline proposes to recover in its rates any costs incurred by it to compress, process, treat, or gather natural gas purchased by it, the pipeline may be required to prove that the activity which engendered those costs is prudent. In determining prudence, the Commission will apply the statement of policy set out under § 2.102 of its regulations.

(C) The orders issued in this proceeding and in the other proceedings which depend on the outcome of this proceeding are amended to delete the condition which would require the pipeline to show that the costs of compressing, processing, treating, or gathering natural gas have not been compensated for in the applicable national ceiling.

By the Commission.

(Copies of the Appendix referenced in the text of this Opinion are available at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426 during regular business hours.)

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-23892 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3240]

Briar-Hydro; Application for Preliminary Permit

August 1, 1980

Take notice that Briar-Hydro (Applicant) filed on July 1, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3240 to be known as the Rolfe Canal Project located on the Contoocook River in Merrimack County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. James Steenbeke, Jr., R.F.D. #5, Penacook, New Hampshire 03303.

Project Description—The proposed project would consist of existing project works including: (1) a concrete gravity diversion dam, 300 feet long and 10 feet high; (2) a reservoir of negligible storage capacity behind the diversion dam; (3) a headwall dam, about 30 feet long and 6 feet high, with a fixed crested weir, located at the entrance of (4) the Rolfe Canal; (5) a granite masonry power generation dam, 130 feet long and 17 feet high at the lower end of the canal; and new project works to include (6) a headgate structure and headrace to be constructed adjacent to and immediately upstream of the south (right) abutment of the power generation dam; (7) a powerhouse with an installed capacity of 1400 kW; (8) a tailrace; and (9) other appurtenances. Applicant estimates annual generation would average about 7,500,000 kWh.

Purpose of Project—Project energy would be sold to the Concord Electric Company, the local utility company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform feasibility studies to include field exploration, hydraulic and hydrologic studies, environmental impact studies, and preparation of preliminary engineering plans. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of

an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $45,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before October 13, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than December 15, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (b), (*as amended,* 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before October 13, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-23956 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2409]

Calaveras County Water District; Meeting

August 5, 1980.

The public should take notice that pursuant to a request filed by Calaveras County Water District, a meeting will be held on Friday, August 22, 1980, at 10:00 a.m. at the Federal Energy Regulatory Commission in Room 8402, 825 N. Capitol Street, N.E., Washington, D.C. Calaveras County Water District is the applicant for a major license to construct and operate the proposed North Fork Stanislaus River Project, FERC No. 2409.

The purpose of the meeting will be to discuss the status of the application and any issues that may remain following the issuance of the final environmental impact statement that was prepared by the staff of the Federal Energy Regulatory Commission for Project No. 2409. All parties to the proceeding concerning Project No. 2409 are invited to attend. A transcript of the meeting will be made and copies of that transcript may be viewed at the Commission's San Francisco Regional Office, 333 Market Street, San Francisco, California or at the Commission's Office of Public Information, 825 N. Capitol Street, Washington, D.C.

Kenneth F. Plumb,

Secretary.

[FR Doc. 23952 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2531]

Central Maine Power Co.; Application for Amendment of License

July 25, 1980.

Take notice that on July 1, 1980, Central Maine Power Company (Applicant) filed an application for amendment of its license for its West Buxton Project, FERC No. 2531, located on the Saco River in West Buxton, York County, Maine. Correspondence with the Applicant should be directed to: Charles E. Monty, Vice President, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

Applicant requests that its license be amended to permit the installation of two 750-kW generators at the upper project powerhouse. The upper project powerhouse at the West Buxton Project contains two waterwheels that have been inoperable since 1938, when their associated generators were destroyed by fire. Applicant proposes to install two used generators from its Brunswick-Topsham Project, FERC No. 2284, which is currently being redeveloped. Operation of the additional generators at the project would generate up to 4,000,000 kWh annually, saving the equivalent of 6,600 barrels of oil or 1,850 tons of coal.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rule. Any protest or petition to intervene must be filed on or before September 8, 1980. The Commission's address is: 825 N. Capitol Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-23957 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-422]

Central Vermont Public Service Corp.; Order Accepting for Filing and Suspending Filed Rates and Granting Motion To Collect Proposed Settlement Rates in Lieu of Filed Rates

Issued July 31, 1980.

On May 30, 1980, Central Vermont Public Service Corporation (Company) filed proposed revisions to its FERC Electric Tariff Original Volume No. 1, R-7 and R-7A. The proposed rates would result in an increase of approximately $883,469 (11.1%) for firm power service to seven of its wholesale

customers, proposed to become effective August 1, 1980. Subsequently, on July 8, 1980, the Company submitted proposed interim rates pursuant to a settlement agreement, which would reduce the amount of the original increase request by $152,952 to $685,617 (9.1%).[1] An August 1, 1980 effective date was requested for the proposed interim settlement rates.

Notice of the filing was issued on June 4, 1980, with comments, protests, or petitions to intervene due on or before June 27, 1980. Petitions to intervene were filed on June 27, 1980 by the Town of Springfield, Vermont (Springfield) and the New Hampshire Electric Cooperatives (Coop). In its petition Coop requests the Commission to approve the settlement rates to become effective August 1, 1980, or implement the rates effective August 2, 1980, subject to refund pending Commission review of the rates. On July 28, 1980, Springfield filed a response to the Company's motion for approval of the settlement agreement. Springfield's response supports the settlement rates submitted by the Company and requests that the settlement rates be allowed to become effective as of August 1, 1980.

The Commission finds that the originally filed R–7 and R–7A rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall accept the originally submitted rates for filing and suspend them as ordered below.

We find that special circumstances exist in this case to warrant a nominal one day suspension. The parties, as a part of the settlement agreement, have agreed that the interim rate be collected subject to refund, in lieu of a possible extended suspension, pending final Commission action on the settlement. Accordingly, we shall suspend the originally filed (R–7 and R–7A) rates for one day to become effective, subject to refund, on August 2, 1980. However, pursuant to § 35.1(e) of the regulations, we find that good cause exists to permit the collection of the proposed settlement rates (R–8 and R–8A), subject to refund, in lieu of the originally tendered rates, until such time as we may act on the settlement agreement. If we should disapprove the settlement, the Company may thereafter collect the originally filed R–7 and R–7A rates prospectively only. *See Public Service Company of Oklahoma*, Docket No. ER 78–511, Order of December 27, 1978.

[1] These proposed settlement rates have been designated R–8 and R–8A.

The Commission finds that participation by Springfield and Coop may be in the public interest, and accordingly we shall grant their petitions to intervene.

The Commission orders:

(A) The proposed R–7 and R–7A rates originally filed by Central Vermont Public Service Corporation are hereby accepted for filing and suspended for one day to become effective August 2, 1980, subject to refund.

(B) Central Vermont Public Service Corporation shall collect its proposed R–8 and R–8A settlement rates, subject to refund, in lieu of the rates originally filed, from August 2, 1980, until such time as we act on the proposed settlement agreement.

(C) The Town of Springfield, Vermont and the New Hampshire Electric Cooperatives are hereby permitted to intervene in this proceeding subject to the Commission's rules and regulations. *Provided, however,* that participation by these intervenors shall be limited to matters set forth in their respective petitions to intervene; and *Provided, further,* that the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–23958 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–85–M

[Project No. 2742]

Copper Valley Electric Association, Inc.; Application for Amendment of License

July 25, 1980.

Take notice that the Copper Valley Electric Association, Inc. (Copper Valley) filed on February 6, 1980, and supplemented on June 17, 1980, an application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] to revise Article 39 of its license for the Solomon Gulch Project No. 2742 located on Solomon Gulch Creek near Valdez, Alaska. Correspondence with the Applicant should be directed to: Mr. James F. Palin, General Manager, Copper Valley Electric Association, Inc., Glennallen, Alaska 99588.

Description—Article 39 currently requires Copper Valley to provide a continuous minimum flow of 3.5 cfs through releases from the project dam to protect the anadromous fish resource of Solomon Gulch Creek. Licensee requests permission to move the location of discharge for the minimum flow downstream to the crest of the lower Solomon Gulch Creek Falls and to change the minimum flow to 9.0 cfs. Solomon Gulch Creek upstream of the falls is inaccessible to anadromous species. Copper Valley estimates that the change in the location of the discharge would result in an annual increase in generation of 1,030,000 kWh.

Comments, Protests or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before September 5, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–23959 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER80–538]

Hartford Electric Light Co.; Filing

July 25, 1980.

The filing Company submits the following:

Take Notice that on July 21, 1980. The Hartford Electric Light Company (HELCO) tendered for filing as an initial rate schedule of an exchange agreement (the "Agreement") between HELCO, The Connecticut Light and Power Company (CL&P) and Vermont Electric Cooperative, Inc. (VEC). The Agreement, dated as of December 10, 1979, provides for HELCO and CL&P to exchange capacity and energy in certain gas turbine generating units for capacity and energy from VEC's entitlement in Merrimack Unit #2, a coal-fired base

load type generating unit located at Merrimack Station in Bow, New Hampshire.

The Agreement provides that the parties will determine prior to 12:01 a.m. on Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week.

HELCO and CL&P will pay capacity charges to VEC in an amount equal to $0.006/kilowatthour times the kilowatthours delivered during each week. HELCO and CL&P will pay energy charges to VEC at at cost of $0/016/kilowatthour subject to adjustment to reflect changes in the fuel price at Merrimack. VEC will pay HELCO and CL&P's incremental cost of providing any energy taken by VEC pursuant to the Agreement.

HELCO requests an effective date of December 10, 1979 for the Agreement.

CL&P has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO, CL&P and by VEC and copies have been mailed to each of them.

HELCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington D.C. 20426 in accordance with §§ 1.8., 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 18, 1980. Protests will be considered by the Commission in determining appropriate action 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-23960 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-2-15 (PGA80-3) (IPR80-3) (LFUT80-2) and (TT80-2)]

Mid Louisiana Gas Co.; Order Accepting for Filing and Suspending Proposed Tariff Sheets Subject to Refund and Subject to Conditions

July 31, 1980.

On July 1, 1980, Mid Louisiana Gas Company (Mid Louisiana) filed revised gas tariff sheets [1] to reflect an increase in purchase gas costs, and increase in the Louisiana First Use Tax (LFUT) adjustment, and a decrease in the transportation cost tracker authorized pursuant to Article V of the Stipulation and Agreement in Docket No. RP77-58. Mid Louisiana requests an effective date for such revised tariff sheets of August 1, 1980. The July 1, 1980, filing by the company contains rates which will: (1) Increase the cost of purchase gas under Rate Schedules G-1, SG-1, and I-1; (2) increase the surcharge for the Unrecovered Purchase Gas Cost in Account No. 191 under Rate Schedules G-1, SG-1 and I-1; (3) increase the cost of purchase gas under Rate Schedule E-1; (4) increase the Louisiana First Use Tax Surcharge Adjustment under Rate Schedules G-1, SG-1 and I-1; and (5) decrease the transportation costs tracker [2] applicable under Rate Schedules G-1, SG-1 and I-1.

Based upon a review of Mid Louisiana's filing, the Commission finds that the proposed PGA rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Mid Louisiana's revised tariff sheets filed July 1, 1980, and suspend its effectiveness and make them subject to refund and as conditioned.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[3] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interest, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful."[4] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards.

Special circumstances will often warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. The Commission defines special circumstances to exist when the rate involves merely a rate change filed pursuant to Commission-authorized tracking authority. Accordingly, we believe we should exercise our discretion to suspend the rate permitting the rate to take effect on August 1, 1980.

Mid Louisiana, in its July 1, 1980, PGA filing, provides a Thirty-Seventh Revised Sheet No. 3a and an Alternative Thirty-Seventh Revised Sheet No. 3a. Although both reflect Purchase Gas Cost Adjustments to Rate Schedules G-1, SG-1, I-1, and E-1, the former sheet also reflects the Base Tariff Rate filed by the company on June 13, 1980, in Docket No. RP80-113, instead of the Base Tariff Rate established by settlement in Docket No. RP77-58. Accordingly, Mid Louisiana requests that if the rates requested by the company in Docket No. RP80-113 have not become effective by August 1, 1980, the alternative Thirty-Seventh Revised Sheet No. 3a be accepted by the Commission for filing, in lieu of Thirty-Seventh Revised Sheet No. 3a, and be made effective on August 1, 1980.

On July 9, 1980, the Commission accepted for filing the company's proposed rates in Docket No. RP80-113 and suspended such rates until December 15, 1980.[5] In addition, on July

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[1] Thirty-Seventh Revised Sheet No. 3a, Alternate Thirty Seventh Revised Sheet No. 3a, Fourth Revised Sheet No. 3b, and Second Revised Sheet No. 3c, to FERC Gas Tariff, First Revised Volume No. 1.

[2] The transportation costs tracker is calculated pursuant to Article V of Mid Louisiana's Stipulation and Agreement in Docket No. RP77-58.

[3] Connecticut Light and Power Company v. Federal Energy Regulatory Commission, ——— F.2d ——— (D.C. Cir. May 30, 1980).

[4] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

[5] Mid Louisiana Gas Company, "Order Accepting for Filing and Suspending Rate Increase Subject to

Footnotes continued on next page

15, 1980, Mid Louisiana's present rates established in Docket No. RP77–58 have been in effect for 36 months. The Commission's regulations in § 154.38(d)(4)(vi)(*a*) require a pipeline to file a restatement of new base tariff rates and cost study in support of such new base tariff rates. Accordingly, Mid Louisiana, to comply with the requirements of 18 CFR 154.38(d)(4)(vi)(*a*), was required by the Commission's order of July 9, 1980, in Docket No. RP80–113, to restate its base tariff rates, effective on July 15, 1980, to include its current purchase gas costs. Such restatement of its base tariff rates must be supported by a cost of revenue study justifying the restated rates and meeting the requirements of § 154.38(d)(4)(vi)(*a*). Therefore, the Commission believes that it is appropriate to require Mid Louisiana to reflect in this PGA proceeding the restated base tariff rates which the pipeline was required to file by the July 9, 1980 order issued in Docket No. RP 80–113.

Accordingly, Alternative Thirty-Seventh Revised Sheet No. 3a will be accepted, as requested by the company in its July 1, 1980, filing, subject to compliance with the above-stated condition that Mid Louisiana shall, within 30 days of this order, file revised sheets reflecting the base tariffs filed in Docket No. RP80–113.

The proposed increases in the cost of purchased gas under Rate Schedules G–1, SG–1 and I–1, includes, *inter alia*, increases pursuant to alleged contractural authority under area rate clauses. The Commission's acceptance of such filing shall not constitute a determination on the merits that any or all of area rate clauses permit the collection of maximum lawful prices established by the Natural Gas Policy Act of 1978 (NGPA).[6] Such determination of contractual authority to collect NGPA maximum lawful prices shall be made in accordance with the procedures prescribed in Order No. 23, as amended. If the Commission utlimately determines that a producer has collected a price for natural gas in excess of the applicable maximum lawful price under the NGPA, the refunds made by such producer to Mid Louisiana shall be flowed through to ratepayers in accordance with the pipeline's PGA clause.

Furthermore, the 82.8 cents per Mcf increase in the cost of purchased gas under includes a substantial increase in prices paid by Mid Louisiana to its affiliated producer, South Louisiana Production Company (SLAPCO), for deregulated high-cost natural under section 107 of the NGPA. Mid Louisiana pipeline projects a $6.55 per Mcf price to be paid the other mineral interest owner for gas produced from SLAPCO's section 107 well.[7]

Seller	Volume in Mcf	Price per Mcf
Border Gas*	100,600	6.55
CRA, Inc.*	402,500	6.55
First Energy Corp.*	536,700	6.55
BTA, et al	1,288,000	5.76

*Border Gas, CRA, Inc., First Energy Corp., are interest owners in the SLAPCO well.

However, subsequent information received from Mid Louisiana indicate that the projection of 369,000 Mcf purchases from such well at the deregulated price of $6.62 per Mcf mistakenly includes a 7 cents per Mcf tax which was applicable in the preceding 6 month period, but will not be applicable in the subsequent 6 month period.

Consequently, the applicable contract price for the gas purchased from SLAPCO under a gas purchase contract with pricing terms identical to those given the other mineral interest owners is $6.55 per Mcf and not the filed for $6.62 per Mcf. Therefore, Mid Louisiana shall be required to refile its proposed sheets reflecting the correct price of $6.55 per Mcf for purchases from SLAPCO.

Furthermore, the Commission is unable to determine from the information provided in the July 1, 1980, PGA filing whether the proposed purchase price satisfies the affiliated entities limitation provided under section 601(b)(1)(E) of the NGPA, 15 U.S.C. 3431(b)(1)(E). Such section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipe line, any amount paid shall be deemed just and reasonable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of such rate filing is conditioned upon the company filing, within thirty days after issuance of this order, data demonstrating through comparable purchases that the SLAPCO purchases meets the affiliated entities test imposed by section 601(b)(1)(E) of the NGPA. In addition, the collection of such charges paid SLAPCO shall be subject to refund pending Commission review of the data submitted and a determination upon what further action is appropriate.

Mid Louisiana purchase gas cost adjustment also includes projected purchases of 184,000 Mcf at NGPA prices of 264.2 cents per Mcf from Locust Ridge Processing Company (Locust Ridge). In the past, Mid Louisiana has made purchases from Locust Ridge at an approved rate of 40.28 cents per Mcf under a contract incorporated in Locust Ridge's FERC Gas Tariff as Rate Schedule X–1. An application for abandonment of this sale filed by Locust Ridge is currently pending in Docket No. CP80–422. It is unclear from the filing and other information available to the Commission whether the 184,000 Mcf of projected purchases of 264.2 cents is the same gas which is the subject of the abandonment application. It is clear, however, from the latest information available to the Commission, that no gas is flowing from Locust Ridge to Mid Louisiana. Accordingly, the Commission accepts the filing effective August 1, 1980, subject to the company's filing within 30 days of the issuance of this order revised rates eliminating costs and volumes associated with the Locust Ridge purchase if as of August 1, 1980, Mid Louisiana is not receiving gas from Locust Ridge as of that date. The issues raised by the cessation of deliveries by Locust Ridge to Mid Louisiana under Rate Schedule X–1 at the 40.28 cents per Mcf rate shall be resolved in Docket No. CP80–422.

Furthermore, Mid Louisiana's filing reflects a .02¢ per Mcf decrease in the transportation costs adjustment tracker which is proposed to be effective August 1, 1980. The company is authorized, pursuant to Article V of its Stipulation and Agreement in Docket No. RP77–58, to file transportation cost adjustments on a semi-annual basis, concurrently with its PGA adjustments, for the life time of the settlement agreement. However, Mid Louisiana's 2.29 cents per Mcf transportation cost tracker includes a 32.35 cents per Mcf charge for gathering, compressor and dehydration of gas provided by Sunbelt Gas Gathering Company, a wholly-owned subsidiary of Mid Louisiana and a $2.75 per Mcf purchase price paid to Louisiana Land and Exploration Company (LL&E). Such gas comes from Lake Washington Field, Plaquenmines Parish, Louisiana and is gathered, compressed and dehydrated by Sunbelt and then delivered to Tennessee Gas Pipeline Company for transportation to

Footnotes continued from last page
Conditions, Granting Waiver and Establishing Procedures", Docket No. RP80–133 (issued July 9, 1980).

[6] Pub. L. No. 95–621, 92 Stat. 3352 (1978), 15 U.S.C. 3301–3432 (Supp. II, 1978).

[7] Mid Louisiana purchases section 107 gas from the following:

Mid Louisiana. By order issued January 30, 1979, in Docket No. RP73–43 (PGA79–1) (TT79–2), the Commission suspended a previous transportation cost tracker and established hearing procedures relating to the inclusion of costs attributable to the gathering charge of Sunbelt. Since the propriety of Mid Louisiana's passthrough to its natural gas customers of these compression costs is currently under consideration, the July 1, 1980, filing with respect to the transportation cost adjustment is suspended and permitted to become effective August 1, 1980, subject to final disposition in that docket on the propriety of the charges in the proceedings involving Sunbelt.

The Commission Orders:

(A) Mid Louisiana Gas Company's proposed Alternative Thirty-Seventh Revised Sheet No. 3a, Fourth Revised Sheet No. 3b, and Second Revised Sheet No. 3c, to FERC Gas Tariff, First Revised Volume No. 1 are accepted for filing and suspended such that the filing shall become effective August 1, 1980, subject to refund, and subject to the conditions enumerated in the body of this order and the ordering paragraphs below. Consideration of Mid Louisiana's Thirty-Seventh Revised Sheet No. 3a is rendered moot for the reasons stated in the body of this order and that sheet is therefore rejected.

(B) Mid Louisiana, within 30 days of the issuance of this order, shall file, effective August 1, 1980, and subject to refund, a revised Alternate Thirty-Seventh Revised Sheet No. 3a which reflects: (1) The restated base tariff rates that the pipeline was required to file in Docket No. RP80–113, (2) the elimination of the costs associated with the 7¢ per Mcf tax from its purchases from South Louisiana Production Company, and (3) the elimination, if on August 1, 1980, the company is not receiving gas from Locust Ridge or such price charged for gas purchased from Locust Ridge has not been approved by the Commission, such costs and volumes projected from Locust Ridge, provided that the revised sheets will not result in rate levels higher than those contained in the initial July 1, 1980, filing.

(C) The acceptance of Mid Louisiana's filing is conditioned on the pipeline filing within 30 days of issuance of this order, data necessary to show that rate paid for its section 107 purchases from South Louisiana Production Company meets the affiliated entities limitation under section 601(b)(1)(E) of the NGPA. The costs associated with Mid Louisiana's purchases from its producer affiliate shall be collected subject to refund and conditioned on: (1) Mid Louisiana's filing the data called for above within 30 days of issuance of this order and (2) the Commissions review of such data to determine what further action is appropriate.

(D) Mid Louisiana shall collect charges paid to Sunbelt subject to refund and subject to the final outcome of the proceeding in Docket No. RP73–43 (PGA79–1 and TT79–2).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–23961 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. TA80–2–16 (PGA80–3 and IPR80–3)]

National Fuel Gas Supply Corp.; Order Accepting for Filing and Suspending Proposed Rate Increase and Granting Waiver of Notice Requirements

July 31, 1980.

On June 30, 1980, National Fuel Gas Supply Corporation (National Fuel) filed revised tariff sheets* to reflect a PGA increase of 14.12¢ per Mcf based on (1) a 15.82¢ per Mcf increase in purchase gas costs and (2) a 1.70¢ per Mcf decrease in the surcharge adjustment. The proposed effective date of the rate increase is August 1, 1980.

Public notice of the filing was issued on July 10, 1980.

National Fuel's filing includes increases pursuant to area rate clauses in contracts with its producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. That determination shall be made in accordance with the procedures prescribed in Order No. 23, as amended by subsequent orders, in Docket No. RM79–22. Should it be ultimately determined that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to National Fuel shall be flowed through by National Fuel to its ratepayers in accordance with the procedures prescribed in its PGA clause.

In addition, National Fuel's filing reflects a deferred accounting method for pricing storage gas volumes which is at issue in Docket No. TA80–1–16 (PGA80–2) (IPR80–2). As a result, the Commission shall accept the tariff sheets tendered by National Fuel for filing, but suspend the effectiveness, allowing the increase to become effective subject to refund. The proper method used for pricing storage gas in this docket shall be subject to the outcome, and determined by, the proceedings in Docket No. TA80–1–16 (PGA80–2) (IPR80–2).

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[1] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful."[2] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances were preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards.

Special circumstances will often warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. The Commission defines special circumstances to extent when the rate involves merely a rate change filed pursuant to Commission-authorized tracking authority. Accordingly, we believe we should exercise our discretion to suspend the rate permitting the rate to take effect on August 1, 1980.

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*Substitute Thirty-Second Revised Sheet No. 4 to FERC Gas Tariff, Original Volume No. 1.

[1] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, —— F.2d —— (D.C. Cir. May 30, 1980).

[2] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

The Commission Orders:

Subject to the conditions set forth in the text of this order, National Fuel's proposed revised tariff sheets are accepted for filing, suspended and waiver of the notice requirements is granted such that the sheets may become effective August 1, 1980, subject to refund.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-23962 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-421]

Oklahoma Gas & Electric Co.; Order Accepting for Filing and Suspending Proposed Rates, Instituting Investigation, Granting Interventions, Denying Motion for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

July 31, 1980.

On May 29, 1980, Oklahoma Gas and Electric Company (OGE) proposed a rate increase of $11,935,789 (43.2%) for service to 15 municipal and 3 cooperative wholesale customers[1] served under its FERC Electric Tariff, First Revised Volume No. 1 (the Tariff), Firm Power Schedules WM-1 and WC-1, respectively.[2] OGE's submittal also contained an increase in rates for service to the municipalities of Kingfisher, Mannford and Perry, Oklahoma, which are served under separate contracts at the WM-1 rate.

OGE requests an effective date of August 1, 1980, for the rate changes applicable to the Tariff customers. Kingfisher, Mannford, and Perry, have contracts with OGE which provide for rate changes prospectively upon approval of the rate by the Commission.[3] Since these contracts do not expire until December 31, 1980, September 1, 1985, and April 18, 2000, respectively, OGE requests an effective date which is the earlier of (1) Commission approval of the rate increase or (2) commencement of service to the municipality under the Tariff.

The proposed rates would increase revenues by approximately $11,935,789 (43.2%), for the test period which consists of the 12 months ending October 31, 1980.[4]

Notice of OGE's filing was issued on June 4, 1980, with protests or petitions due on or before June 27, 1980. On June 27, 1980, the Municipal Electric Systems of Oklahoma (MESO)[5] filed a protest and petition to intervene on behalf of the customers who are the subject of the proposed rate increase.[6] MESO states that the customers purchase all, or substantial amounts, of their power and energy requirements from OGE. Moreover, MESO asserts that the municipalities will experience a composite increase of 39.23%, and that the cooperatives will experience a composite increase of 49.38% above the existing rates. Furthermore, MESO claims that the 16.0% rate of return on common equity that OGE seeks is exorbitant when viewed in relation to OGE's equity ratio.

In addition to these issues, MESO contests a number of OGE's cost of service data and requests summary disposition with respect to any issues for which such action is considered appropriate. MESO also alleges in its petition that OGE's proposed rates are discriminatory and would result in a price squeeze. With respect to discrimination, MESO states that OGE's service to Gulf States Utilities Company, another wholesale customer, does not generate rates of return comparable to that sought from the customers in the instant case. MESO also urges the Commission to accord the presiding judge discretion with regard to phasing if the anti-competitive allegations cannot await a cost of service determination. Finally, MESO requests a five month suspension.

On July 14, 1980, OGE filed its answer to MESO's petition to intervene generally refuting MESO's allegations or stating that the questions raised are appropriate issues for a hearing, rather than summary disposition. With respect to the allegation of price squeeze, OGE argues that this issue should be phased in accordance with recent Commission practice.

Discussion

Our analysis reveals that OGE's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, as applied to the customers subject to the Tariff, we shall accept the proposed rates for filing and suspend those rates as ordered below.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[7] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful."[8] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards. Such circumstances are presented here. The Commission is unable to conclude on the basis of the filings before it that the tendered for rates are just and reasonable, and believes that the rates may be unjust and unreasonable. Accordingly, as applied to the customers subject to the

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[1] The municipal customers served under the Tariff are Blackwell, Edmund, Geary, Newkirk, Okeene, Ponca City, Pond Creek, Prague, Stillwater, Stroud, Tecumsek, Tonkawa, Waynoka and Wynnewood, Oklahoma, and Paris, Arkansas. The cooperative customers are Cimarron Electric Cooperative, KAMO Electric Cooperative and Arkansas Valley Electric Cooperative.

[2] The proposed rate schedule designations are *Oklahoma Gas and Electric Company*, First Revised Sheets Nos. 4 through 9, 28 and 29 under FERC Electric Tariff, First Revised Volume No. 1. (Supersedes Original Sheet Nos. 4 through 9, 28, and 29 thereunder).

[3] See *Oklahoma Gas and Electric Company*, Docket No. ER77-127, "Order Accepting for Filing and Suspending Proposed Rate Schedules, Granting Interventions and Establishing Procedures," issued January 28, 1977.

[4] OGE's Statement N for this period indicates that the proposed rate increase will result in an earned return of 10.76%.

[5] MESO is an association of municipal electric systems in Oklahoma, and has been designated by the customers to intervene and coordinate their participation in this proceeding.

[6] The customers are those named in footnote 1, *supra*, as well as the municipalities of Kingfisher, Mannford and Perry.

[7] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, —— F.2d —— (D.C. Cir. May 30, 1980).

[8] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

Tariff, we accept and suspend the rates for a period of five months to take effect subject to refund thereafter on January 1, 1981.

Special circumstances will often warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. No such showing has been made here.

With respect to Kingfisher, Mannford and Perry, OGE's proposed rate increase will become effective prospectively only upon final approval of the rates by the Commission, or upon termination of the present contracts, whichever occurs first.

Our review of OGE's submittal and of the pleadings before us indicates that the various issues identified by MESO should be considered on the basis of a hearing as ordered below. Consequently, MESO's motion for summary disposition will be denied.

In accordance with Commission policy established in Arkansas Power & Light Company, Docket ER79–339, order issued August 6, 1979, we will phase the price squeeze issue raised by MESO. This will allow a decision first to be reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

Finally, we have noted that the customers are all purchasers of power and energy from OGE. We find that participation by the customers in this proceeding may be in the public interest and we shall therefore grant them intervenor status.

The Commission Orders:

(A) OGE's proposed rates are hereby accepted for filing and suspended for five months to become effective subject to refund, on January 1, 1981, for those customers served under OGE's Firm Power Schedule WM–1 and WC–1. With respect to Kingfisher, Mannford, and Perry, Oklahoma, OGE's proposed rates will become effective prospectively only upon final approval of the rates by the Commission, or upon termination of the presently effective contracts, whichever occurs first.

(B) MESO's petition to intervene is granted subject to the rules and regulations of the Commission: *Provided, however,* That participation by the intervenors shall be limited to matters set forth in their petitions to intervene: *And provided, further,* That the admission of any intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(C) MESO's motion for summary disposition of various cost of service issues is hereby denied.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, particularly Sections 205 and 206, and by the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Ch. I (1979)), a public hearing shall be held concerning the justness and reasonableness of OGE's proposed rates.

(E) Staff shall serve top sheets in this proceeding on October 10, 1980.

(F) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within ten days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's rules of practice and procedure.

(G) We hereby order initiation of price squeeze procedures and further order that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–23963 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket Nos. RP80–118 and RP80–55]

Sea Robin Pipeline Co.; Order Accepting for Filing and Suspending Proposed Rate Increase, Consolidating Proceedings, Initiating a Hearing, and Granting Waivers

July 31, 1980.

On June 30, 1980, Sea Robin Pipeline Company (Sea Robin) filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and 2 * which would increase annual jurisdictional revenues by $15,424,082. The proposed effective date is August 1, 1980. The proposed increase is based on a cost of service for the twelve months ended March 31, 1980, as adjusted for changes known and measurable through December 31, 1980. Sea Robin states that the cost of service reflects increases in cost of capital, cost of operation and maintenance, and depreciation expenses over those costs included in existing rates. Sea Robin also proposes to change its calculation of sales rates to a combined basis for all of its jurisdictional sales. Sea Robin states that the change would simplify administrative procedures. The proposed rate increase would result in Sea Robin receiving an overall rate of return of 11.68 percent yielding a return of 15.00 percent on common equity which, according to Sea Robin, constitutes 49.06 percent of the total capitalization.

Public notice of the filing was issued on July 10, 1980, providing for filing of protests or interventions by July 25, 1980. Petitions for intervention were filed by the parties listed in Appendix A. For good cause show, they are granted intervention in this proceeding.

Based upon a review of Sea Robin's filing, the Commission finds that the proposed rate increase has not been shown to be just and reasonable and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. The Commission will accept Sea Robin's tariff sheets for filing, subject to certain conditions discussed below, suspend the effective date of the sheets and make them subject to refund. The issues raised by the proposed rate increase will be set for hearing.

A recent decision of the Court of Appeals for the District of Columbia Ciurcuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect

*Twenty-fifth Revised Sheet No. 4 and Sixth Revised Sheet No. 4–A, to FERC Gas Tariff, Original Volume No. 1, and Ninth Revised Sheet Nos. 127–D and 135–C to FERC Gas Tariff, Original Volume No. 2.

to rate increase filings.[1] We have done this as a predicate to our action on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful." [2] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards. Such circumstances are presented here. The Commission is unable to conclude on the basis of the filings before it, the applied for rates are just and reasonable, and believes that the rates may be unjust and unreasonable. Accordingly, we will suspend the applied for rate change for a period of five months permitting the rates to take effect subject to refund thereafter on January 1, 1980.

Special circumstances will often warrant shorter suspension. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. No such showing has been made here.

Sea Robin's filing includes in its rate base approximately $6 million in costs attributable to facilities which have been certificated but which were not in service on the date of its filing. Under § 154.63(e)(2)(ii) of the Commission's regulations (18 CFR 154.63(e)(2)(ii)), only facilities which have been certificated by the filing date and placed in service by the end of the test period can be included in rate base. However, the Commission will waive that regulation and accept Sea Robin's filing including the uncertificated facilities provided that Sea Robin files revised tariff sheets 30 days prior to the end of the test period eliminating all costs associated with any facilities not in service by December 31, 1980. This waiver is granted upon the condition that Sea Robin shall not be permitted to make offsetting adjustments other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

On July 2, 1980, Sea Robin requested waiver of the Commission's regulations to include as part of its initial filing Schedule F(6), page 2, which Sea Robin states was inadvertently omitted from its application. For good cause shown, the Commission will grant the requested waiver.

Sea Robin has a prior rate increase application in Docket No. RP80–55 which has been set for hearing. A review of the filing in that docket and this proceeding indicates that the base periods and test periods overlap by four months, that a number of common issues must be resolved and that in both dockets the rate increases are based upon changes in the cost of service due to alleged increases in the cost of capital, cost of operation and maintenance and depreciation expenses. Accordingly, the Commission will consolidate Docket Nos. RP80–55 and RP80–118 for purposes of hearing and decision.

The Commission Orders:

(A) Subject to the conditions set forth in paragraph (B) below requiring Sea Robin to revise its tariff filing, the Commission accepts for filing Sea Robin's Twenty-fifth Revised Sheet No. 4 and Sixth Revised Sheet No. 4–A to its FERC Gas Tariff, Originial Volume No. 1, and its Ninth Revised Sheet Nos. 127–D and 135–C to its FERC Gas Tariff, Original Volume No. 2, and suspends for five months the effective date of such tariff sheets to January 1, 1981, when they may become effective subject to refund, in the manner prescribed by Section 4 of the Natural Gas Act.

(B) Thirty days before December 31, 1980, Sea Robin shall file revised tariff sheets to eliminate all costs associated with facilities not in service by December 31, 1980.

(C) The Commission grants waiver of §154.63(e)(2)(ii) of its Regulations to the extent necessary to permit compliance with paragraph (B) above. This waiver is granted upon the condition that Sea Robin shall not be permitted to make offsetting adjustments other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

(D) Waiver is granted to include as part of Sea Robin's initial filing, Schedule F(6), page 2.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before November 3, 1980.

(F) Docket Nos. RP80–55 and RP80–118 are hereby consolidated for purposes of hearing and decision.

(G) The petitioners listed in Appendix A shall be permitted to intervene in this proceeding subject to the Commission's rules and regulations; *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interest specifically set forth in their petition to intervene; *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(H) The Presiding Administrative Law Judge assigned to Docket No. RP80–55, or such other Administrative Law Judge as the Chief Administrative Law Judge shall designate, shall establish such further procedures in this consolidated proceeding as the Presiding Judge deems appropriate.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

Petitions for Intervention:

Columbia Gas Transmission Corporation
Southern Natural Gas Company
Public Service Commission of the State of New York
Atlanta Gas Light Company
Northern Natural Gas Company
Natural Gas Pipeline Company of America

[FR Doc. 80–23964 Filed 8–7–80; 8:45 am]
BILLING CODE 6450–85–M

[1] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission,* —— F. 2d —— (D.C. Cir. May 30, 1980).

[2] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

[Docket No. ER80–415]

Southern Co. Services, Inc.; Order Accepting Rate for Filing, Setting Rate for Investigation, Consolidating Proceedings, Granting Waiver of Notice Requirements and Granting Petition To Intervene

July 25, 1980.

On January 2, 1980, in Docket No. ER80–160, Southern Company Services, Inc. (SCSI) filed on behalf of its affiliates Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (operating companies), an amendment to

its interchange contract with the Florida Power Corporation (FPC) providing for the long term sale to FPC of 200 MW of capacity and associated energy at an energy charge equal to the operating companies' out-of-pocket costs and a capacity charge calculated annually by use of a cost of service formula. The operating companies requested that the Commission allow periodic recalculations of charges without requiring a filing under Section 205 of the Federal Power Act. By order issued February 29, 1980, the Commission accepted SCSI's submittal for filing, permitted the first year's (calendar 1980) capacity charges under the formula to go into effect without investigation and set the rate formula for investigation.[1] SCSI was informed that subsequent capacity charge revisions in accordance with the formula would constitute changes in rates requiring timely filing. The Commission granted waiver of § 35.13 cost support filing requirements as they would apply to the future capacity charge revisions on the condition that SCSI agree to collect all increases resulting from such revisions subject to refund pending the outcome of the ordered proceedings.

On May 27, 1980, SCSI tendered for filing on behalf of the operating companies a long-term sales contract with Mississippi Power & Light Company (MPL) providing for the sale of 100 MW of capacity and associated energy to MPL for the period July 1, 1980, through December 31, 1986. Energy will be provided at an energy charge equal to the operating companies' out-of-pocket costs and capacity will be provided at a capacity charge calculated by the use of a cost of service formula which is identical to that submitted in Docket No. ER80–160. The capacity charge under the formula rate for calendar 1980 is $4.082/kW/month for service provided July 1, 1980, through December 31, 1980.[2] As with the submittal in Docket No. ER80–160, capacity charges will be recalculated pursuant to the formula each calendar year. SCSI has again requested that this formula rate be approved to allow periodic recalculations of the charges without the necessity for a filing under Section 205 of the Act. SCSI also requests waiver of the Commission's notice requirements to allow for the proposed rates to go into effect as of July 1, 1980.[3]

Notice of the filing was issued on May 30, 1980, with comments, protests, or petitions to intervene due on or before June 25, 1980.

An untimely petition to intervene was filed on June 25, 1980, by Neil Herring and Phillip H. Hoffman (petitioners), each of whom are shareholders in the Southern Company and ratepayers of Georgia Power Company.[4] Petitioners allege that the sale of power outside the Southern Company system at less than long-run incremental cost is injurious to Southern Company shareholders because it commits shareholders' investment to the demand for electricity of another system. Petitioners contend that MPL has not examined alternatives to the purchase from the operating companies, such as conservation. Petitioners also contend that Commission consideration of the sale of power proposed in the instant submittal is a major federal action significantly affecting the human environment, which would necessitate the preparation of a detailed statement pursuant to the National Environmental Policy Act of 1969, section 102, 42 U.S.C. 4332 (1970).[5]

On July 7, 1980, SCSI filed an answer to the petition of Messrs. Herring and Hoffman. SCSI takes issue with the petitioners' contention regarding the sale of power outside the Southern Company system at less than long-run incremental cost. SCSI points out that the contract in question is not firm and does not require the Southern Company system to make capacity available to MPL which would jeopardize deliveries to the firm customers of the Southern Company system. Moreover, the contract does not commit the Southern Company system to build any capacity for MPL, and SCSI contends that the Southern Company system expects to have capacity surplus to the needs of its customers for several years. SCSI also contends that the price of the capacity proposed to be sold to MPL is fair.

SCSI's answer alleges that the petitioners lack standing to raise environmental issues. SCSI further alleges that the Commission's acceptance of the proposed rate schedule would have no impact on the human environment and that the NEPA is inapposite.

Discussion

SCSI states in its filing that since MPL and the operating companies do not have any contractual arrangements for long-term sales of power such as that provided for in the proposed contract the instant submittal is an initial rate schedule filing under § 35.12 of the Commission's rules and regulations. We need not reach this question because we shall accept without suspension the rates calculated under the formula for calendar year 1980. We shall waiver of the Commission's notice requirements to allow the rates proposed for 1980 to go into effect as of July 1, 1980.

Consistent with Commission action in Docket No. ER80–160, we will institute an investigation pursuant to Section 206 of the Federal Power Act to consider the justness and reasonableness of the cost of service formula. Since SCSI's submittal in Docket No. ER80–160 and the instant submittal contain the identical formula, we will consolidate this docket with the identical formula, we will consolidate this docket with the aproceeding in Docket No. ER80–160, *et al.* Any subsequent revision to the capacity charges to MPL in accordance with the formula shall be treated as a change in rates pending the outcome of the investigation. We shall require SCSI to file the rate as changed pursuant to the formula 60 days before its proposed effective date. However, we shall waive the full filing requirements of § 35.13 of the regulations on condition that such revision shall be collected subject to refund pending the outcome of the proceedings ordered herein.

We do not agree with petitioners' argument that Commission consideration of the proposed sale of power is a major Federal action significantly affecting the human environment, which would necessitate the preparation of a detailed statement pursuant to NEPA. The Commission dealt with a similar argument in *Nepool Power Pool Agreement*, 48 F.P.C. 1477 (1972). There the petitioners contended that the Commission erred in accepting a power pooling agreement without preparing an environmental impact statement (EIS). The Commission held that its acceptance of the power pooling agreement did not require an EIS because such acceptance did not constitute the approval of plans for the

[1] Docket No. ER80–160 was consolidated with two prior SCSI submittals in Docket Nos. ER80–58 and ER80–65. Subsequent filings by SCSI of long-term power sales agreements in Docket No. ER80–243 (Jacksonville Electric Authority), Docket No. 80–262 (Florida Power & Light Company), and Docket No. ER80–343 (Savannah Electric and Power Company) have also been consolidated with these dockets. The instant submittal contains rates and charges and a cost of service formula identical to those filed in Docket Nos. ER80–243, ER80–262 and ER80–343.

[2] The difference in capacity charges during a year is due to operating companies' use of "peak period load ratios" in assigning proportionate fixed costs. Because peak period load ratios are calculated on the basis of an operating year (June 1 through May 31 of the following year), two difference sets of ratios, and two different capacity charge rates, are used in a contract year.

[3] See Attachment for rate schedule designations.

[4] Southern Company is a registered holding company which owns all of the common stock of the operating companies and SCSI.

[5] Section 102(2)(C) of the National Environmental Policy Act (NEPA) provides in pertinent part that "all agencies of the Federal Government shall * * * include in * * * major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official * * *."

construction of facilities.[6] This is similar to the instant case where no construction of facilities is contemplated by SCSI and MPL.[7]

In *Sierra Club V. Hodell*, 544 F.2d 1036 (9th Cir. 1976), the Bonneville Power Administration's (BPA) execution of a contract for the long term sale of electricity was challenged on the ground that the BPA failed to prepare an EIS. The court agreed with BPA's contention that as EIS was inappropriate, concluding that "no environmental impact statement was required in order to show the energy effect of the contract * * *." *Id.* at 1041. In the instant case petitioners do not allege that any direct effects upon the human environment would result from Commission approval of the proposed sale, but only state that "no examination of the environmental impact of the proposal has been made, nor any consideration of alternatives * * *." Similar contentions were rejected by the court in *Sierra Club*, where the decision not to prepare an EIS was challenged not on the basis of any direct effect on the environment, but on possible indirect effects, i.e., that by selling BPA power to Alcoa, BPA's ability to send power to other users in the Northwest would be reduced; that public utilities in the Northwest would have to make up the difference by building nuclear or thermal generating plants; that this in turn would cause pollution which would impact upon the environment. The court held that the purpose of an EIS is to examine direct effects upon the environment, not to consider conjectural or remote consequences. *Id.* at 1039. Likewise, we think that the environmental consequences of the Commission's consideration of the contract submitted in this docket are remote and speculative.

The Commission find that the petitioners have demonstrated that their participation as a party in this proceeding may be in the public interest pursuant to § 1.8(b)(2) of the Commission's regulations. Consequently the petitioners shall be permitted to intervene.

The Commission Orders:

(a) Waiver of the notice requirements set out in § 35.3 of the Commission's regulations is hereby granted.

(B) The proposed rates applicable to service during the calendar year 1980 are hereby accepted for filling, to become effective as of July 1, 1980.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by subsection 402(a) of the Department of Energy Act and by the Federal Power Act, and pursuant to the Commission's rules of practice and procedure and regulations under the Federal Power Act (18 CFR Ch. I), a public hearing shall be held concerning the proposed formulary method for determining rate levels in the future.

(D) This proceeding is hereby consolidated with Docket Nos. ER80–58, ER80–65, ER80–160, ER80–243, ER80–262 and ER80–343 for purposes of hearing and decision.

(E) We hereby grant waiver of our § 35.13 filing requirements for future rate changes made in accordance with the formula filed herein on the condition that SCSI agree to collect any increases in the rate under the formula subject to refund pending the outcome of the proceeding ordered herein. SCSI shall file these rate changes with the Commission 60 days before their proposed effective dates.

(F) Petitioners Neil Herring and Phillip H. Hoffman are hereby permitted to intervene in this proceeding subject to the Commission's rules and regulations. Participation by the intervenors shall be limited to matters set forth in their petition to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved by an order entered in this proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission, Commissioner Hall voted present.

Kenneth F. Plumb,

Secretary.

Attachment—Rate Schedule Designations

[Docket No. ER80-415]

Other Party: Mississippi Power & Light Co.	
Designation	Description
Southern Co. Services, Inc.:	
(1) Supplement No. 18 to Rate Schedule FPC No. 15.	Service Schedule E Long Term Power Sale.
(2) Supplement No. 1 to Supplement No. 16 to Rate Schedule FPC No. 15.	Manual E.
(3) Supplement No. 2 to Supplement No. 16 to Rate Schedule FPC No. 15.	Information Schedule E 1980 Calendar Year Charges.
Alabama Power Co.:	
(4) Supplement No. 13 to Rate Schedule FPC No. 11 Rate Schedule FPC No. 11 (Concurs in (1)–(3) above).	Certificate of Concurrence.
Georgia Power Co.:	
(5) Supplement No. 13 to Rate Schedule FPC No. 255 (Concurs in (1)–(3) above).	Certificate of Concurrence.
Gulf Power Co.:	
(6) Supplement No. 13 to Rate Schedule FPC No. 14 (Concurs in (1)–(3) above).	Certificate of Concurrence.
Mississippi Power Co.:	
(7) Supplement No. 13 to Rate Schedule FPC No. 47 (Concurs in (1)–(3) above).	Certificate of Concurrence.

[FR Doc. 80-23965 Filed 8-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-2-18 (PGA80-3, IPR80-3, DCA80-2, LFUT80-2 and AP80-1)]

Texas Gas Transmission Corp.; Order Accepting for Filing and Suspending PGA Rate Increase

July 31, 1980.

On June 27, 1980 Texas Gas Transmission Corporation (Texas Gas) filed a PGA rate increase proposed to be effective August 1, 1980, reflecting (1) a 31.85¢ per Mcf increase in the cost of purchased gas, (2) a 19.77¢ per Mcf decrease in the deferred account surcharge (from 17.17¢ to negative 2.6¢ per Mcf, (3) a .4¢ per Mcf decrease in the demand charge adjustment, and (4) a .21¢ per Mcf decrease in the LFUT. In addition, the filing reflects base rate changes relating to (1) advance payments adjustment (1.034¢ per Mcf increase), and (2) the cost of transportation of gas by others (1.12¢ per Mcf decrease). The advance payment and transportation cost adjustment were filed pursuant to the provisions of Articles IX and XI of the Stipulation and Agreement in Docket No. RP78–94, as approved by Commission order issued October 11, 1979, which permitted Texas Gas to file such adjustments concurrent with its PGA adjustment.

Public notice of the instant filing was issued on July 9, 1980 providing for

[6] The Commission has no jurisdiction to certificate or license electric generating facilities under Part II of the Federal Power Act.

[7] The Commission has recognized that its review of electric rate filings rarely constitutes a major federal action having a significant environmental impact. *Cf. Proposed Regulations Implementing NEPA*, Docket No. RM 79–69, § 3d.11(a)(16), 44 F.R. 50052 (1979). *See also City of Santa Clara v. Kleppe*, 418 F. Supp. 1243 (N.D. Cal. 1976), where the court held that a Bureau of Reclamation allocation of certain low-cost federal hydroelectric power to users other than Santa Clara did not sifnificantly affect the quality of the human environment within the intendment of NEPA. The court reasoned that no construction or physical alteration of facilities was involved and that electric power was simply ordered to be sent over certain existing lines rather than others.

protests or petitions to intervene to be filed on or before July 23, 1980.

Based upon a review of Texas Gas's filing the Commission finds that the proposed advanced payments portion of the June 27, 1980 filing has not been shown to be reasonable and appropriate in that certain advances have been in rate base for over five years and no repayment has been made. Accordingly, will accept for filing the tariff sheets listed in Appendix A, suspend the effective date of the sheets, subject to refund, and set the advance payment portion of the filing for hearing.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[1] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing or producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that *"any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful."[2] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards.

Special circumstances will often warrant shorter suspension. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. The Commission defines special circumstances to exist when the rate involves merely a rate change filed pursuant to Commission-authorized tracking authority. According, we believe we should exercise our discretion to suspend the rate, permitting the rate to take effect on August 1, 1980.

The Commission also notes that Texas Gas's filing includes increases pursuant to area rate clauses in the contracts between Texas Gas and its producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. That determination shall be made in accordance with the procedures prescribed in Order 23, as amended by subsequent orders, in Docket No. RM79–22. Should it be ultimately determined that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to the pipeline shall be flowed through to ratepayers in accordance with the procedures prescribed in the pipeline's PGA clause.

The Commission Orders:

(A) Pursuant to the authority of the Natural Gas Act, particulary sections 4, 5, 8 and 15 thereof, the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the advance payment portion of this filing.

(B) Pending hearing and decision, and subject to the conditions enumerated in this order, the tariff sheets listed in Appendix A are suspended until August 1, 1980, when they shall be permitted to become effective, subject to refund.

(C) Texas Gas shall file its direct case on the reserved advance payment issue within 30 days from the date of issuance of this order. Within 60 days thereafter, Staff shall file a statement of position with the Presiding Administrative Law Judge.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall, within 10 days after service of Staff's statement of position, convene a settlement conference in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(E) The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A—Texas Gas Transmission Corporation

[Docket No. TA80–2–18, et al.]

Third Revised Volume No. 1

Second Revised Sheet No. 7–B
Substitute Twenty-eighth Revised Sheet No. 7

[FR Doc. 80–23966 Filed 8–7–80; 8:45 am]
BILLING CODE 6450–85–M

[Docket No. RP80–121]

United Gas Pipe Line Co.; Order Accepting for Filing and Suspending Proposed Tariff Sheets Subject To Refund, and Granting Interventions and Waiver

July 31, 1980.

On July 1, 1980, United Gas Pipe Line Company (United) filed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, reflecting an increase in its annual jurisdictional revenues of $58,516,855 or a 23.9 percent increase exclusive of purchased gas costs. The proposed effective date is August 1, 1980. The proposed annual revenue increase is based upon the twelve month period ending March 31, 1980, as adjusted to reflect known and measurable changes during the nine month period ending December 31, 1980. United claims that the proposed increase is necessitated by increases in its cost of transportation by others, storage charges, and other operating costs. United further claims a need to increase its rate of return and depreciation rate.

Public notice of the instant filing was issued July 10, 1980, providing for protests or petitions to intervene to be filed on or before July 25, 1980. Appendix A lists those who have filed petitions to intervene. The Commission finds that those petitioners have demonstrated interests in this proceeding warranting their intervention. Accordingly, we shall grant these petitions to intervene.

Based upon a review of United's filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept United's filing, suspend the effective date of the proposed tariff, and make them subject

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[1] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, ——— F.2d ——— (D.C. Cir. May 30, 1980).

[2] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

to refund and the conditions set forth below, and set the matter for hearing.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it uses to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[1] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and a difficult balancing of producer and consumer interests, their primary purpose is to protect the consumer against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be excessive or that it may run afoul of other statutory standards. The governing statutes say that "*any* [emphasis added] rate or charge that is not just and reasonable is hereby . . . declared unlawful."[2] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing, the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable statutory standards. Such circumstances are presented here. The Commission is unable to conclude on the basis of the filings before it, the applied for rates are just and reasonable, and believes that the rates may be unjust and unreasonable. Accordingly, we will suspend the applied for rate change for a period of five months permitting the rates to take effect subject to refund thereafter on January 1, 1981.

Special circumstances will often warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. No such showing has been made here.

[1] *Connecticut Light and Power Company* v. *Federal Energy Regulatory Commission*, ——— F.2d ——— (D.C. Cir. May 30, 1980).

[2] Section 205(a) of the Federal Power Act, Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

The Commission notes that this filing includes certain costs which may be related to uncertificated facilities. Inclusion of these costs is inconsistent with § 154.63(e)(2)(ii) of the Commission's Regulations. Accordingly, acceptance for filing would require waiver of that rule. We find that good cause exists to accept United's filing so long as the acceptance is appropriately conditioned. The Commission will grant the waiver on condition that on or before December 31, 1980, United file revised tariff sheets to reflect elimination of those costs associated with facilities not in service on or before that date, and which also reflect the actual advance payments balance in Account 166 as of that date. We impose a further condition that United shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission-approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders. In addition, the revision of the balance in Account 166 shall be permitted on condition that it does not increase the level of the original, suspended rates.

The Commission Orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 8 and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the proposed increased rates by United.

(B) Pending hearing and decision, and subject to the conditions in this order, the effectiveness of United's First Revised Volume No. 1 and Original Volume No. 2 is suspended for five months, until January 1, 1981, when they may become effective, subject to refund, in the manner provided by Section 4 of the Natural Gas Act.

(C) Waiver of § 154.63(e)(2)(ii) is granted upon condition that United file substitute revised tariff sheets on or before December 31, 1980, reflecting the elimination of costs associated with facilities not in service and the balance in Account 166 as of that date. This waiver is granted on condition that the inclusion of a higher advance payment balance in Account 166 will not be permitted to increase the level of the original suspended rates, and upon further condition that United shall not be permitted to make offsetting adjustments to the suspended rates except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

(D) The Commission Staff shall prepare and serve top sheets on all parties on or before November 3, 1980.

(E) The petitioners noted in Appendix A are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(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 top sheets by the Staff in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

United Gas Pipe Line Company

[Docket No. RP80-121]

Petitions for Intervention

Consolidated Gas Supply Corporation
Texas Gas Transmission Corporation
Southern Natural Gas Company
Columbia Gas Transmission Corporation
New Orleans Public Service, Inc.
Public Service Commission of New York
Missouri Public Service Commission
Mississippi River Transmission Corporation
Texas Eastern Transmission Corporation
Clarke-Mobile Counties Gas District
Laclede Gas Company
Memphis Light, Gas and Water Division
Mobile Gas Service Corporation
Mississippi Valley Gas Company
Public Service Electric and Gas Company
Willmut Gas and Oil Company
United Municipal Distributors Group

[FR Doc. 80-23967 Filed 8-7-80; 8:45 am]

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[Volume 250]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued August 1, 1980.

The Federal Energy Regulatory Commission received notices of determination from the jurisdictional agencies listed herein, for the indicated wells, pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a (D) in the DEN column. Estimated annual production is in million cubic feet (MMcf).

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 on or before August 25, 1980.

Please reference the FERC Control Number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

NOTICE OF DETERMINATIONS
BY JURISDICTIONAL AGENCIES UNDER
THE NATURAL GAS POLICY ACT OF 1978

JD NO	JA DKT	API NO	SEC & WELL NAME	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION						
*HARPER OIL COMPANY			RECEIVED: 07/11/80 JA: OK			
8045769	04388	3507300000 108	BLAKLEY NO 1	SOONER TREND	3,0	EASON OIL CO
8045771	04390	3509300000 108	BLANCHARD #1	SOONER TREND	2,0	ARKANSAS LOUISIANA G
8045772	04389	3509300000 108	PECK A-A (MISS)	KING-WOOD	9,0	PHILLIPS PETROLEUM C
8045770	04393	3509300000 108	STATE 36-1	KING-WOOD	11,0	TRANSOK PIPE LINE CO
*K P EXPLORATION INC			RECEIVED: 07/11/80 JA: OK			
8045779	00991	3513921158 103	BLACKWELDER NO 1-1	MORROW	540,0	NATURAL GAS PIPELINE
8045780	00994	3513920987 103	NEWSUM NO 1-15		720,0	NATURAL GAS PIPELINE
8045778	00993	3513921004 103	NEWSUM NO 2-15	KEYES	108,0	NATURAL GAS PIPELINE
8045777	00992	3513920979 103	WOOD NO 1-11	KEYES	25,0	NATURAL GAS PIPELINE
8045776	01000	3513921011 103	WOOD NO 2-11	MORROW	10,8	NATURAL GAS PIPELINE
*PRODUCTION OIL CORP			RECEIVED: 07/11/80 JA: OK			
8045758	04401	3510521847 103	HALSELL # LH-86-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045765	04408	3510521814 103	HALSELL #LH-83-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045762	04405	3510521802 103	HALSELL #LH-80-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045761	04404	3510521851 103	HALSELL #LH-85-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045767	04410	3510521850 103	HALSELL #LH-87-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045764	04407	3510521852 103	HALSELL #LH-88-III	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045760	04403	3510521836 103	HALSELL LH-92-V	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045757	04400	3510521837 103	HALSELL LH-93-V	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045766	04409	3510521838 103	HALSELL LH-94-V	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045763	04406	3510521839 103	HALSELL LH-95-V	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045759	04402	3510521840 103	HALSELL LH-96-V	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045773	04177	3510521510 103	MAC STEWART 5	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045774	04211	3510521889 103	MBF SHARP #LFS-125	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045768	04411	3510521890 103	MBF SHARP LFS-126	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
8045775	04212	3510521892 103	MBF SHARP LFS-128	NORTH CHILDERS	16,4	CITIES SERVICE GAS C
TEXAS RAILROAD COMMISSION						
*A R ARCHER JR			RECEIVED: 07/11/80 JA: TX			
8045716	15471	4237130707 108	FOSTER NO 1 53787	ABEL (CLEAR FORK 3200)	10,5	EL PASO NATURAL GAS
8045714	15463	4237130687 108	RYAN NO 1	ABELL (CLEAR FORK 3200)	10,2	EL PASO NATURAL GAS
*ADOBE OIL & GAS CORPORATION			RECEIVED: 07/11/80 JA: TX			
8045694	14960	4247531886 103	BARSTOW #14	BARSTOW (SCOTT CHERRY CA	300,0	TRANSWESTERN PIPELIN
*ALAMO PETROLEUM COMPANY			RECEIVED: 07/11/80 JA: TX			
8045503	01540	4207330317 103	IRWIN & BARNELL TRUST #ELL NO 1	BIG BARNETT (TRAVIS PEAK	100,0	DELHI GAS PIPELINE C
*AMINOIL USA INC			RECEIVED: 07/11/80 JA: TX			
8045528	C7082	4246131232 103	UNIVERSITY 15-1	BLUCK & WOLFCAMP	8,0	UNION TEXAS PETROLEU
*AMOCO PRODUCTION CO			RECEIVED: 07/11/80 JA: TX			
8045591	12478	4236530657 103	CARTHAGE GAS UNIT 7 #5	CARTHAGE (COTTON VALLEY)	438,0	UNITED GAS PIPE LINE

JD NO	JA UNI	API NO	SEL	WELL NAME	FIELD NAME	PROD	PURCHASER
8045658	14037	4223500000	108	G L PITCHER B #2	PANHANDLE	7,3	SHELLY OIL CO
8045659	14034	4223500000	108	G C PITCHER B #4	PANHANDLE	7,3	SHELLY OIL CO
8045660	14040	4223500000	108	G C PITCHER B #5	PANHANDLE	7,3	SHELLY OIL CO
8045661	14058	4223500000	108	H B JENNY #24	PANHANDLE	3,4	SHELLY OIL CO
8045662	14059	4223500000	108	H B JENNY #25	PANHANDLE	3,4	SHELLY OIL CO
8045531	06001	4229750455	103	H U DUTY GAS UNIT NO 2	MAXINE LAST (MASSIVE LIM	529,0	NATURAL GAS PIPELINE
8045652	13674	4220350569	102	J HARRISON C #1	HAMILTON S (COTTON VALLE	300,0	TEXAS EASTERN TRANSM
8045550	07982	4239131158	103	J M UHLEN A NO 7	GRETA (4400)	25,6	TRANSCONTINENTAL GAS
8045529	07966	4203331595	103	UNIVERSITY BR NO 11	MCFARLAND (WOLFCAMP)	15,7	PHILLIPS PETROLEUM C
8045708	15036	4219500000	108	H W WILHEIM C #2	MANSFORD	7,0	NORTHERN NATURAL GAS
*ARCO OIL AND GAS COMPANY				RECEIVED: 07/11/80 JA: TX			
8045706	15019	4210532111	103	RUBY HELMING 27-S	HUNT-HAGGETT (STRAWN)	110,0	NORTHERN NATURAL GAS
8045695	14989	4221530694	103	TEMPLE A WEST #27-U	TABASCO (N)	300,0	TENNESSEE GAS PIPELI
*ARKLA EXPLORATION COMPANY				RECEIVED: 07/11/80 JA: TX			
8045525	06329	4236530669	102	CITIES SERVICE #1	CARTHAGE (COTTON VALLEY)	363,0	ARKANSAS LOUISIANA G
*BEN J TAYLOR				RECEIVED: 07/11/80 JA: TX			
8045700	14965	4230731548	103	HASHAM #3	BARON LIME (1200)	0,0	BUCKNER GAS CO
*BRIDWELL OIL CO				RECEIVED: 07/11/80 JA: TX			
8045542	08044	4223732014	103	DIXON-CANNON #1	JACK COUNTY REGULAR	30,0	CITIES SERVICE OIL C
8045541	08043	4223732197	103	C P HARMAN TRUST #1	NEWPORT S (ATOKA CONGL)	75,0	CITIES SERVICE OIL C
8045544	08040	4201730460	103	EDWARDS HEIRS C GAS UNIT #1	CLAY COUNTY REGULAR	42,0	CITIES SERVICE OIL C
8045540	08042	4242931777	103	IMA HIGGINS A #1	STEPHENS COUNTY REGULAR	9,0	LONE STAR GAS CO
8045536	08035	4219530194	103	J D CLEMONS #1	HAMILTON (MARBLE FALLS)	1,0	LONE STAR GAS CO
8045538	08039	4242931865	103	KATIE MUELLER A #1	EUREKA (CADDO)	60,0	LONE STAR GAS CO
8045543	08045	4242932014	103	KATIE MUELLER A #2	EUREKA (CADDO)	8,0	LONE STAR GAS CO
8045537	08038	4223732173	103	M L DAVENPORT A #1	JACK COUNTY REGULAR (GAS	42,0	LONE STAR GAS CO
8045539	08041	4223700000	103	M.L PIGG #4	JACK COUNTY REGULAR (GAS	60,0	CITIES SERVICE OIL C
*BUNK ROYALTY CO				RECEIVED: 07/11/80 JA: TX			
8045735	15901	4242900000	108	HITTSON #32526	MOON (MARBLE FALLS)	3,0	LONE STAR GAS CO
8045734	15902	4242900000	108	LONE STAR DAVIS #32529	MOON (MARBLE FALLS)	16,0	LONE STAR GAS CO
*C & K PETROLEUM INC				RECEIVED: 07/11/80 JA: TX			
8045583	11700	4238900000	107	REEDER 85 NO 1	WILDCAT	180,0	TRANSWESTERN PIPELIN
*C L GAGE JR				RECEIVED: 07/11/80 JA: TX			
8045575	11054	4223732527	103	FRANCES IRENE WICKER NO 1 19105	NEWPORT SOUTH (ATOKA CON	108,0	CITIES SERVICE CO
8045547	09269	4249700000	103	HAL JACKSON NO 1	BOONSVILLE (BEND CONGL G	150,0	NATURAL GAS PIPELINE
*CENTEX OIL & GAS INC				RECEIVED: 07/11/80 JA: TX			
8045741	17476	4226500000	102	HIGH ISLAND BLOCK 10-L NO 26	HIGH ISLAND BLOCK 10-L	0,0	TRANSCONTINENTAL GAS
8045741	17476	4226500000	103	HIGH ISLAND BLOCK 10-L NO 26	HIGH ISLAND BLOCK 10-L	0,0	TRANSCONTINENTAL GAS
*CHAMPLIN PETROLEUM COMPANY				RECEIVED: 07/11/80 JA: TX			
8045527	07052	4242700000	108	A GUERRA A WELL NO 5	LA REFORMA FIELD	7,3	TENNESSEE GAS PIPELI
8045572	11002	4224930979	103	SHAEFFER RANCH F NO 6	ROMERO TRAP (HUCKLEY GAS	12,0	NATURAL GAS PIPELINE
*CHARLES L WALKER				RECEIVED: 07/11/80 JA: TX			
*8045667	14470	4200331794	102	GUERRWOOD C #2	BLOCK A-34 (SAN ANDRES)	11,0	PHILLIPS PETROLEUM C
*CICO OIL & GAS CO				RECEIVED: 07/11/80 JA: TX			
8045574	11054	4212300000	102	AM C FOSTER #2 RRC ID NO 81060	MOONEY NE (YEGUA 5400)	350,0	LOVACA GATHERING CO
*CONOCO, INC				RECEIVED: 07/11/80 JA: TX			
8045550	10095	4227500000	108	A M UNSBURNE (04327) #14	KATZ	1,0	CITIES SERVICE CO
8045566	10234	4238400000	108	ANITA RUSSELL-10 (18356) #1	GERALDINE FORD	1,1	EL PASO NATURAL GAS
8045522	06020	4215130772	103	E S DUANE (09574) #11	MOUND TOP/CANYON SAND/	15,0	LONE STAR GAS CO
8045553	10043	4238900000	108	FORD-GERALDINE UNIT NO 102 21021	GERALDINE/FORD/	0,3	EL PASO NATURAL GAS
8045555	10041	4238900000	108	FORD-GERALDINE UNIT NO 116 21021	GERALDINE/FORD/	0,3	EL PASO NATURAL GAS
8045554	10057	4238900000	108	FORD-GERALDINE UNIT NO 122 21021	GERALDINE/FORD/	0,3	EL PASO NATURAL GAS
8045557	10044	4238900000	108	FORD-GERALDINE UNIT NO 88 21021	GERALDINE/FORD/	0,3	EL PASO NATURAL GAS

JD NO	JA DIST	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8045559	10167	4222700000	108	G D CHALK L NO 18 02887	HUMARD-GLASSCOCK	0.0	PHILLIPS PETROLEUM C
8045561	10107	4243300000	108	GUEST (CANYON SD) UNIT NO 37 10855	GUEST (CANYON SAND)	0.0	CITIES SERVICE CO
8045580	10105	4222700000	108	H H CLAY NO 27 02890	HUMARD-GLASSCOCK	0.0	PHILLIPS PET CO
8045594	12781	4232330529	108	N J CHITTIM NO 3855 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045596	12783	4232330558	108	N J CHITTIM NO 3854 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045603	12807	4232300000	108	N J CHITTIM NO 4059 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045599	12799	4232300000	108	N J CHITTIM NO 411 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045605	12808	4232300000	108	N J CHITTIM NO 4135 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045597	12784	4232330487	108	N J CHITTIM NO 4257 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045604	12821	4232330352	108	N J CHITTIM NO 430 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045602	12820	4232330030	108	N J CHITTIM NO 432 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045595	12782	4232330323	108	N J CHITTIM NO 4332 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045601	12819	4232330541	108	N J CHITTIM NO 437 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045600	12818	4232330540	108	N J CHITTIM NO 438 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045598	12790	4232300000	108	N J CHITTIM NO 537 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045606	12879	4232330516	108	N J CHITTIM NO 6844 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045607	12880	4232330515	108	N J CHITTIM NO 6845 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045608	12881	4232330514	108	N J CHITTIM NO 6846 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045609	12882	4232330513	108	N J CHITTIM NO 6847 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045610	12883	4232330512	108	N J CHITTIM NO 6848 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045611	12884	4232330511	108	N J CHITTIM NO 6849 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045612	12885	4232330510	108	N J CHITTIM NO 6850 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045613	12886	4232330509	108	N J CHITTIM NO 6851 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045614	12887	4232330508	108	N J CHITTIM NO 6852 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045615	12888	4232330507	108	N J CHITTIM NO 6853 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING COM
8045616	12889	4232330506	108	N J CHITTIM NO 6854 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045617	12890	4232330505	108	N J CHITTIM NO 6855 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045618	12891	4232330504	108	N J CHITTIM NO 6856 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045620	12892	4232330503	108	N J CHITTIM NO 6857 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045619	12893	4232330502	108	N J CHITTIM NO 6858 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045621	12894	4232330501	108	N J CHITTIM NO 6859 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045622	12895	4232330499	108	N J CHITTIM NO 6861 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045623	12896	4232330498	108	N J CHITTIM NO 6862 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045624	12897	4232330557	108	N J CHITTIM NO 6863 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045625	12898	4232330566	108	N J CHITTIM NO 6865 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045626	12899	4232300000	108	N J CHITTIM NO 6905 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045627	12900	4232330464	108	N J CHITTIM NO 6913 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045628	12901	4232330463	108	N J CHITTIM NO 6914 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045629	12902	4232330466	108	N J CHITTIM NO 6916 02082	SACATOSA (SAN MIGUEL #1	0.0	LOVACA GATHERING CO
8045558	10112	4200300000	108	W H HONER A #5 01663	FUHRMAN-MASCHO	0.5	PHILLIPS PETROLEUM C
8045565	10176	4243300000	108	WEST FLOWERS UNIT NO 15 11787	FLOWERS W/CANYON SAND/	0.0	CITIES SERVICE CO
8045562	10160	4243300000	108	WEST FLOWERS UNIT NO 21 11787	FLOWERS W/CANYON SAND/	0.0	CITIES SERVICE CO
8045563	10162	4243300000	108	WEST FLOWERS UNIT NO 58 11787	FLOWERS W/CANYON SAND/	0.0	CITIES SERVICE CO
8045564	10169	4213500000	108	WIGHT UNIT NO 17 20681	CONDEN NORTH	0.0	AMOCO PROD CO
8045567	10250	4213500000	108	WIGHT UNIT NO 77 20681	CONDEN NORTH	0.0	AMOCO PROD CO
*CONVEST ENERGY CORP				RECEIVED: 07/11/80 JA: TX			
8045705	17908	4226330648	102	G B CLARK ET AL #1	PULLAN/ELLENBURGER	0.0	EL PASO NATURAL GAS
8045706	17912	4226330619	102	WAYNE WILLIAMS ET AL #2	PULLAN/ELLENBURGER	0.0	EL PASO NATURAL GAS
8045707	17913	4216931058	102	WAYNE WILLIAMS ET AL #2A	PULLAN/ELLENBURGER	0.0	EL PASO NATURAL GAS
*CRYSTAL OIL & LAND CO				RECEIVED: 07/11/80 JA: TX			
8045886	14876	4236530947	103	A JERNIGAN B NO 1	PANOLA	13.0	UNITED GAS PIPELINE
8045887	14875	4236530946	103	A JERNIGAN B NO 2	PANOLA	0.0	UNITED GAS PIPELINE
8045888	14876	4236530950	103	SOL JERNIGAN C NO 1	PANOLA	19.0	UNITED GAS PIPELINE
8045889	14877	4236530948	103	SOL JERNIGAN C NO 2	PANOLA	0.0	UNITED GAS PIPELINE

JD NO	JA DAT	API NO	SEC	W WELL NAME
*DANDEN PETROLEUM INC				RECEIVED: 07/11/80 JA: TX
8045523	06107	4219500000	108	ALLAR #1 IA RR COM #65815
*DERRICK EXPLORATION INC				RECEIVED: 07/11/80 JA: TX
8045672	14792	4219500000	103	NO 1 LACKEY TEXAS RRC #83273
*DISCOVERY OPERATING INC				RECEIVED: 07/11/80 JA: TX
8045551	09385	4241330731	103	BEANCE A #1
8045690	14904	4241330783	103	DEAL #1
*8045715	15467	4241100000	108	M E DELUNG #1
*DIXON-CONNER OIL CO				RECEIVED: 07/11/80 JA: TX
8045665	14218	4238900000	108	GUY CALDWELL #1 RRC #23969
*ENNICH OIL CORPORATION				RECEIVED: 07/11/80 JA: TX
8045755	18724	4242931912	102	GOMEZ-SKH #1 ID 78869
8045756	18854	4242931949	102	H L CONNELL #1 ID 83258
*EXECUTIVE PROPERTIES INC				RECEIVED: 07/11/80 JA: TX
8045712	15220	4223300000	108	LATHAM-MISOUM #1 42651
*EXXON CORPORATION				RECEIVED: 07/11/80 JA: TX
8045717	15505	4226100000	108	C M ARMSTRONG 14L #09713
8045674	14820	4226130241	103	C M ARMSTRONG 42 #82852
8045666	14582	4242700000	108	LAZARO M GUERRA 2-T 51549
8045710	15501	4204700000	108	MCGILL BROS #371F #54411
8045546	09176	4226130443	103	RRS S M EAST 96-D 09237
8045714	15504	4226100000	108	S MAYFIELD GU #1-#1-J #32800
8045593	12633	4204730734	102	SCOTT & HUPPER 290 #2215
8045593	12633	4204730734	103	SCOTT & HUPPER 290 #2215
8045592	12632	4204730734	102	SCOTT & HUPPER 29F #2216
8045592	12632	4204730734	103	SCOTT & HUPPER 29F #2216
*GAS PRODUCING ENTERPRISES INC				RECEIVED: 07/11/80 JA: TX
8045676	14844	4237530865	103	MASTERSON 83-SHU
8045677	14849	4237530864	103	MASTERSON 83-6KU
8045678	14850	4237530863	103	MASTERSON 83-7 KU
8045679	14851	4237530862	103	MASTERSON 83-8 KU
8045680	14852	4237530866	103	MASTERSON 84-1 KU
8045681	14853	4237530867	103	MASTERSON 84-2 KU
8045682	14854	4241130536	103	THOMPSON 2-12 KU
*GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED: 07/11/80 JA: TX
8045582	11752	4252930818	103	TAL N #2
*GETTY OIL COMPANY				RECEIVED: 07/11/80 JA: TX
8045701	14960	4223330682	103	M B ARMSTRONG #20
*GRACE PETROLEUM CORPORATION				RECEIVED: 07/11/80 JA: TX
8045644	13455	4249731250	103	KAKER #1
*GULF OIL CORPORATION				RECEIVED: 07/11/80 JA: TX
8045550	09342	4223300000	108	E B JOHNSON ET AL #20
8045548	09340	4235750298	108	ELEANOR REED #2
8045549	09341	4219500000	108	GERTRUDE OGLE #1
8045691	14907	4250530582	103	J G MATHWELL NO 1 RRC #71814
8045692	14908	4250530585	103	M M ALEXANDER B 2 RRC #72147
*HALVEY ENERGY CO				RECEIVED: 07/11/80 JA: TX
8045675	14805	4239951263	103	YOUNG NO 1 07728
*HAMILTON BROTHERS OIL CO				RECEIVED: 07/11/80 JA: TX
8045735	16116	4232130891	102	TERRY ESTATE NO 1
*HANLEY COMPANY				RECEIVED: 07/11/80 JA: TX
8045669	14711	4217330976	103	B A HARRIS #3 (15569)
8045670	14712	4217330977	103	W H LANE A #3 (06826)

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FIELD NAME	PROD	PURCHASER
TEXAS HOUSTON	5,6	NORTHERN NATURAL GAS
MANSFORD (MORROW LOWER)	150,0	NORTHERN NATURAL GAS
CODY BELL (CANYON)	90,0	NORTHERN NATURAL GAS
P M (CANYON)	110,0	NORTHERN NATURAL GAS
VELREX SW (STRAWN)	4,5	CRA INC
ULDS (DELAWARE)	2,2	CONOCO INC
LUCKY LANE (MARBLE FALLS	285,0	LEA-TEX OIL & GAS CO
LUCKY LANE (MARBLE FALLS	76,0	LEA-TEX OIL & GAS CO
PANHANDLE EAST	7,0	DIAMOND SHAMROCK COR
CANOFLAMIA (G-SO)	16,4	NATURAL GAS PIPELINE
CANDELARIA (1-83)	183,0	NATURAL GAS PIPELINE
KELSEY SOUTH (16-A SW)	3,0	TRUNKLINE GAS CO
KELSEY DEEP (ZONE 15-AL)	12,8	TRUNKLINE GAS CO
KITA (7-E 11-A)	50,0	NATURAL GAS PIPELINE
MAY SOUTH (6-BASAL 2)	4,4	NATURAL GAS PIPELINE
SCOTT & HUPPER (6875)	620,0	TENNESSEE GAS PIPELI
SCOTT & HUPPER (6875)	620,0	TENNESSEE GAS PIPELI
SCOTT & HUPPER (5975)	564,0	TENNESSEE GAS PIPELI
SCOTT & HUPPER (5975)	564,0	TENNESSEE GAS PIPELI
WEST PANHANDLE (RED CAVE	10,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	10,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	155,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	119,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	13,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	18,0	COLORADO INTERSTATE
WEST PANHANDLE (RED CAVE	10,0	COLORADO INTERSTATE
AZALEA (ATOKA)	123,0	PHILLIPS PETROLEUM C
PANHANDLE HUTCHINSON	9,0	PANHANDLE EASTERN PI
BOONSVILLE (BEND CONGL G	300,0	NATURAL GAS PIPELINE
PANHANDLE HUTCHINSON	8,0	PHILLIPS PETROLEUM C
MANSFORD	8,0	TRANS-WESTERN PIPELIN
MANSFORD	5,0	NORTHERN NATURAL GAS
DRENEND (LUBO)	350,0	TENNESSEE GAS PIPELI
DRENEND (LUBO)	20,0	TENNESSEE GAS PIPELI
WINTERS (GARDNER)	7,0	EL PASO NATURAL GAS
UNNAMED	275,0	TENNESSEE GAS PIPELI
SPRABERRY (TREND AREA)	14,0	EL PASO NATURAL GAS
SPRABERRY (TREND AREA)	10,0	EL PASO NATURAL GAS

JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*HARRISON INTERESTS LTD				RECEIVED: 07/11/80 JA: TX			
8045743	17015	4210532459	102	NO 17 UNIVERSITY LAND 30-30	HOWARDS CREEK (CANYON)	110,0	INTRATEX GAS CO
8045745	17013	4210532459	103	NO 17 UNIVERSITY LAND 30-30	HOWARDS CREEK (CANYON)	110,0	INTRATEX GAS CO
*HNG OIL COMPANY				RECEIVED: 07/11/80 JA: TX			
8045720	15550	4217500000	108	ETTA TERRELL A #5 04307	TERRELL POINT (3900)	21,0	TRUNKLINE GAS CO
8045732	15570	4243530048	108	FAUCETT 130 #1 52955	SANYER (CANYON)	19,0	INTRATEX GAS CO
8045721	15557	4243530070	108	FIELDS 17 #1 52957	SANYER (CANYON)	21,0	INTRATEX GAS CO
8045709	15570	4243530552	108	FIELDS 21 #2 SM156	SANYER (CANYON)	8,0	INTRATEX GAS CO
8045722	15558	4243530084	108	GALBREATH 79 #1 53071	SANYER (CANYON)	8,0	INTRATEX GAS CO
8045723	15559	4243530062	108	KELLY 115 #1 52961	SANYER (CANYON)	17,0	INTRATEX GAS CO
8045724	15560	4243530292	108	KELLY 115 #2 55396	SANYER (CANYON)	18,0	INTRATEX GAS CO
8045725	15561	4241530411	108	MITTEL 64 #2 72043	SANYER (CANYON)	20,0	INTRATEX GAS CO
8045731	15569	4243530034	108	SHURLEY 111 #1 52989	SANYER (CANYON)	17,0	INTRATEX GAS CO
8045720	15565	4243530093	108	SHURLEY 94 #2 60385	SANYER (CANYON)	4,0	INTRATEX GAS CO
8045727	15564	4243530065	108	SHURLEY 95 #1 52985	SANYER (CANYON)	2,0	INTRATEX GAS CO
8045728	15565	4243530060	108	SHURLEY 96 #1 52214	SANYER (CANYON)	7,0	INTRATEX GAS CO
8045729	15566	4243530059	108	SHURLEY 98 #1 52986	SANYER (CANYON)	1,0	INTRATEX GAS CO
8045730	15567	4243530376	108	SHURLEY 99 #2 61389	SANYER (CANYON)	2,0	INTRATEX GAS CO
*HORIZON OIL & GAS CO OF TEXAS				RECEIVED: 07/11/80 JA: TX			
8045507	01550	4219530205	108	LEE 1-71 62837	HANSFORD (LOWER MORROW)	18,0	DIAMOND SHAMROCK COR
*HUGHES & HUGHES				RECEIVED: 07/11/80 JA: TX			
8045749	18252	4229732106	102	KATE KENDALL B NO 1	BRASLAU (6800)	40,0	UNITED TEXAS TRANSMI
8045751	18455	4247932358	102	ROSA V DE BENAVIDES NO 5	BRUNI NE (10350)	1,1	HOUSTON PIPE LINE CO
*HUNT OIL COMPANY				RECEIVED: 07/11/80 JA: TX			
8045000	14350	4200130893	103	PINK SMITH NO 1	LONG LAKE	22,0	LONE STAR GAS CO
*INDEPENDENT EXPLORATION CO				RECEIVED: 07/11/80 JA: TX			
8045739	16043	4236731480	102	HIND #2 83217	BUCKNER (BEND)	365,0	JAMES P DUNIGAN INC
8045510	03651	4236731203	102	HUFFSTUTTLER #1 78888	BUCKNER (BEND)	390,2	JAMES P DUNIGAN INC
8045512	03654	4236731113	102	J M HARRISON #1 78656	BUCKNER (BEND)	176,0	JAMES P DUNIGAN INC
8045737	16081	4236731445	102	JOHNSON #1 82251	BUCKNER (BEND)	21,9	JAMES P DUNIGAN INC
8045738	16082	4236731447	102	NASH #1 82702	BUCKNER (BEND)	684,0	JAMES P DUNIGAN INC
8045511	03652	4236731151	102	WHITEHEAD #1 79771	BUCKNER (BEND)	84,2	JAMES P DUNIGAN INC
*INTERCITY MANAGEMENT CORP				RECEIVED: 07/11/80 JA: TX			
8045004	14131	4212300000	108	W H WIEDEL A NO 3 (75388)	SLICK (HEXLAN)	0,3	UNITED GAS PIPELINE
*J F CICHOWSKI				RECEIVED: 07/11/80 JA: TX			
8045005	14060	4228930490	108	FITZSIMMONS NO 1 (72732)	BEN BOLDT N (4700)	0,2	LO-VACA GATHERING CO
*J M HUBER CORPORATION				RECEIVED: 07/11/80 JA: TX			
8045520	05591	4223500000	108	BURNETT RF NO 11	PANHANDLE	6,7	GETTY OIL CO
8045516	05579	4223500000	108	BURNETT RF NO 12	PANHANDLE	6,7	GETTY OIL CO
8045519	05574	4223500000	108	BURNETT RF NO 13	PANHANDLE	6,7	GETTY OIL CO
8045517	05590	4223500000	108	BURNETT RF NO 15	PANHANDLE	6,7	GETTY OIL CO
8045518	05548	4223500000	108	HERRING-BUNCH HERRING NO 74	PANHANDLE	1,2	COLORADO INTERSTATE
8045515	05578	4223500000	108	HERRING-BUNCH HERRING NO 93	PANHANDLE	1,2	COLORADO INTERSTATE
8045514	05106	4223500000	108	SANFORD A NO 1	PANHANDLE WEST	5,1	COLORADO INTERSTATE
*LOGUE AND PATTERSON INC				RECEIVED: 07/11/80 JA: TX			
8045502	00572	4235500000	108	W C RIVERS #1	AQUA DULCE 2200	20,0	UNITED GAS PIPELINE
*MAURICE L BROWN CO				RECEIVED: 07/11/80 JA: TX			
8045501	00475	4236500000	108	TIMMINS GAS UNIT #1	BETHANY	3,0	TENNESSEE GAS PIPELI
*MITCHELL ENERGY CORPORATION				RECEIVED: 07/11/80 JA: TX			
8045515	04110	4249700000	108	A O SCOTT #1 08638	ALVORD (CADDO CONG)	2,2	NATURAL GAS PIPELINE
8045075	14854	4249731424	105	G L HOSEY #A 82925	BOONSVILLE (BEND CONGL G	150,0	NATURAL GAS PIPELINE
8045589	12293	4236700000	108	H B PRATHER #1 28785	BOONSVILLE (BEND CONGL)	16,0	LONE STAR GAS CO
8045590	12294	4236700000	108	PEARL OXFORD #1 28787	BOONSVILLE BEND CONGL	4,0	LONE STAR GAS CO

JD NO	JA DKT	API NO	SEC	# WELL NAME	FIELD NAME	PROD	PURCHASER
*MOBIL OIL CORP				RECEIVED: 07/11/80 JA: TX			
R045702	15007	4216531806	103	PATRICK J DINAMORE #3	HOMANN (SAN ANDRES)	5,8	PHILLIPS PETROLEUM C
*MONSANTO COMPANY				RECEIVED: 07/11/80 JA: TX			
R045708	02150	4207930959	103	STANLEY #13 #62171	LEVELLAND	18,6	CITIES SERVICE GAS C
*MOORE MCCORMACK OIL & GAS CORP				RECEIVED: 07/11/80 JA: TX			
R045715	15243	4217541036	10R	V ALBRECHT NO 24	KAREN BEAUCHAMP (2600)	12,0	LONE STAR GAS CO
*NABUB PRODUCTION CO				RECEIVED: 07/11/80 JA: TX			
R045588	12159	4217900000	10R	CHAPMAN B #25R/A	EAST PANHANDLE	2,3	COLTEXO CORP
*NRM PETROLEUM CORPORATION				RECEIVED: 07/11/80 JA: TX			
R045708	17626	4240530786	102	GOODPASTURE NO 5	BECKER (YATES)	250,0	NORTHERN NATURAL GAS
*ORBIT OIL & GAS INC				RECEIVED: 07/11/80 JA: TX			
R045710	15102	4216130488	103	C E TURNER NO 2	SIMSBORO NO (CUTTON VALL	730,0	DELHI GAS PIPELINE C
*PETRO-SEARCH/INC				RECEIVED: 07/11/80 JA: TX			
R045586	11995	4223300000	10R	COLEMAN #10 (1-117-00969-A)	PANHANDLE	10,6	GETTY OIL CO
R045587	11996	4223300000	10R	COLEMAN #11 (1-117-00969-A)	PANHANDLE	10,6	GETTY OIL CO
R045585	11998	4223300000	10R	COLEMAN #9 (1-117-00969-A)	PANHANDLE	10,6	GETTY OIL CO
R045605	13628	4223300000	10R	NORTH CHRISTIAN #1 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045606	13627	4223300000	10R	NORTH CHRISTIAN #2 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045607	13628	4223300000	10R	NORTH CHRISTIAN #3 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045608	13630	4223300000	10R	NORTH CHRISTIAN #5 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045609	13631	4223300000	10R	NORTH CHRISTIAN #6 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045650	13632	4223300000	10R	NORTH CHRISTIAN #7 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
R045651	13633	4223300000	10R	NORTH CHRISTIAN #8 (1-117-01253-Z)	PANHANDLE	2,2	PHILLIPS PETROLEUM C
*PETROLEUM CORP OF DELAWARE				RECEIVED: 07/11/80 JA: TX			
R045568	10377	4240500000	10R	HULL NO 1	SONORA (UPPER CANYON)	6,6	EL PASO NATURAL GAS
R045569	10378	4241330144	10R	WHITTEN NO 1	ELDORADO N (CANYON A)	4,1	NORTHERN NATURAL GAS
R045570	10379	4241300000	10R	WHITTEN 51 NO 2	PAGE RANCH (CANYON)	5,6	NORTHERN NATURAL GAS
*PHILLIPS PETROLEUM COMPANY				RECEIVED: 07/11/80 JA: TX			
R045571	14728	4200330659	10R	(04041) TEX UNIV-CC NO 29	MAGUTEX (DEVONIAN)	1,0	NORTHERN NATURAL GAS
R045595	14981	4213533179	103	(19297) SOUTH COWDEN UNIT NO 6-17	COWDEN SOUTH	27,0	ODESSA NATURAL GAS C
R045736	10630	4236530943	102	CALLUM 2 UNIT NO 2	CARTHAGE	365,0	UNITED GAS PIPELINE
R045657	13963	4213503045	10R	CLAHUTH NO 2 (02120)	GOLDSMITH (CLEARFORK)	11,9	EL PASO NATURAL GAS
R045639	13120	4223300000	10R	COCKRELL RANCH NO 46	PANHANDLE HUTCHINSON	4,0	GETTY OIL CO
R045640	13122	4223300000	10R	COCKRELL RANCH NO 49	PANHANDLE HUTCHINSON	5,0	GETTY OIL CO
R045641	13123	4223300000	10R	COCKRELL RANCH NO 51	PANHANDLE HUTCHINSON	1,0	GETTY OIL CO
R045642	13127	4223300000	10R	COCKRELL RANCH NO 56	PANHANDLE HUTCHINSON	7,0	GETTY OIL CO
R045643	13128	4223300000	10R	COCKRELL RANCH NO 58	PANHANDLE HUTCHINSON	4,0	GETTY OIL CO
R045656	15961	4213500286	10R	GS ANDERSON UNIT E-02	GOLDSMITH (CLEARFORK)	11,9	EL PASO NATURAL GAS
R045653	14729	4241300517	10R	HARRIS-C NO 7	CHASCO (CANYON)	0,2	ARCO OIL & GAS CO
R045655	13959	4246100849	10R	N PEMBROOK S UNIT #5-02	SPRAWBERRY (TWEND AREA)	1,0	NORTHERN NATURAL GAS
R045637	12924	4217900000	10R	PHIL-PAMPA UNIT NO 11-6	PANHANDLE GRAY	4,5	GETTY OIL CO
R045630	12906	4217900000	10R	PHIL-PAMPA UNIT NO 5A-01	PANHANDLE GRAY	2,7	GETTY OIL CO
R045631	12907	4217900000	10R	PHIL-PAMPA UNIT NO 5A-02	PANHANDLE GRAY	2,5	GETTY OIL CO
R045632	12908	4217900000	10R	PHIL-PAMPA UNIT NO 5A-04	PANHANDLE GRAY	0,9	GETTY OIL CO
R045633	12909	4217900000	10R	PHIL-PAMPA UNIT NO 5A-05	PANHANDLE GRAY	0,9	GETTY OIL CO
R045634	12910	4217900000	10R	PHIL-PAMPA UNIT NO 5A-07	PANHANDLE GRAY	5,5	GETTY OIL CO
R045635	12911	4217900000	10R	PHIL-PAMPA UNIT NO 5A-09	PANHANDLE GRAY	1,5	GETTY OIL CO
R045636	12916	4217900000	10R	PHIL-PAMPA UNIT 9-01	PANHANDLE GRAY	12,0	GETTY OIL CO
R045638	12952	4223300000	10R	WHITTENBURG NO 103	PANHANDLE HUTCHINSON	0,0	GETTY OIL CO
*PYRAMID OIL & GAS COMPANY				RECEIVED: 07/11/80 JA: TX			
R045658	13870	4210300000	10R	SABINE ROYALTY #1 RRC 22365	WHITE HORSE	1,0	PHILLIPS PETROLEUM C
*RAEL GAS CO				RECEIVED: 07/11/80 JA: TX			
*R045521	05783	4248300000	10R	EMLEN LEASE	EAST PANHANDLE	7,5	EL PASO NATURAL GAS

JD NO	JA DKT	API NO	SEC	* WELL NAME	FIELD NAME	PROD	PURCHASER
*MIAL OIL COMPANY				RECEIVED: 07/11/80 JA: TX			
8045694	14942	4231732076	103	MAHONEY A NO 1 #62518	ACKERLY (DEAN SAND)	23,7	TEXACO INC
8045695	14944	4210352048	103	STATE 19 NO 1 #25456	DUNE	8,8	
8045696	14945	4238331335	103	TEXON STATE 36 NO 1 #07912	TEXON N (SPRABERRY)	16,4	
*SA-GU CORPORATION				RECEIVED: 07/11/80 JA: TX			
8045703	15010	4217531197	103	REAGAN ROBERTS #1 ID #83492	CIRCLE A (2600)	109,0	UNITED GAS PIPE LINE
*SHAR-ALAN OIL CO				RECEIVED: 07/11/80 JA: TX			
8045581	11675	4221514031	108	SANTA CRUZ HENDRIX C-1	SAN SALVADOR FIELD (6500	0,0	TENNESSEE GAS PIPELI
8045580	11673	4221513965	108	WEINFIELD NO 1	SAN SALVADOR FIELD (6500	0,0	TENNESSEE GAS PIPELI
*SHELL OIL CO				RECEIVED: 07/11/80 JA: TX			
8045754	18497	4242731321	102	JUDD ESTATE-STATE NO 7	LACOPITA (VICKSBURG X SE	475,0	TENNESSEE GAS PIPELI
8045752	18450	4242731264	102	MARTINEZ-STATE NO 1	LACOPITA (VICKSBURG Z NW	500,0	LONE STAR GAS CO
8045753	18451	4242731303	102	MARTINEZ-STATE NO 2	RINCON N (VICKSBURG Y2)	500,0	LONE STAR GAS CO
8045526	08466	4216500000	103	NEWBERN -A- NO 1	ROBERTSON N (SAN ANDRES)	5,5	PHILLIPS PETROLEUM C
8045508	01439	4216530684	103	NEWBERN 9	ROBERTSON N (SAN ANDRES)	54,0	PHILLIPS PETROLEUM C
8045571	10673	4250131603	105	UNRBY SAN ANDRES UNIT NO 55	UNRBY	6,9	AMOCO PRODUCTION CO
8045505	01435	4216530687	103	T O STARK 21	ROBERTSON N (SAN ANDRES)	8,0	PHILLIPS PETROLEUM C
8045504	01434	4216530681	103	T O STARK 22	ROBERTSON N (SAN ANDRES)	32,0	PHILLIPS PETROLEUM
*SUN OIL COMPANY (DELAWARE)				RECEIVED: 07/11/80 JA: TX			
8045509	02855	4203930831	103	*ISCH-SAINT UNIT NO 7-L	PLEDGER (MARKHAM 7700)	403,0	UNITED TEXAS TRANSMI
*TARTAN PRODUCTION CO				RECEIVED: 07/11/80 JA: TX			
8045573	11044	4208900000	103	H WRIGHT NO 1 (80888)	ENGLEMART (WILCOX 8600)	110,0	TEXAS EASTERN TRANSM
*TENNECO OIL COMPANY				RECEIVED: 07/11/80 JA: TX			
8045533	08469	4217900000	108	ALBERT COMBS #1-A	PANHANDLE GRAY CO	1,6	PHILLIPS PETROLEUM C
8045552	09869	4217900000	108	PHERE #2	PANHANDLE	4,4	PHILLIPS PETROLEUM C
*TEXAS AMERICAN OIL CORP				RECEIVED: 07/11/80 JA: TX			
8045545	08819	4248300000	103	J M RENEAU C NO 1	PANHANDLE EAST	124,0	PERRY GAS TRANSMISSI
*TEXAS OIL & GAS CORP				RECEIVED: 07/11/80 JA: TX			
8045683	14862	4248131499	103	BOETTCHER GAS UNIT #1 WELL #3	BONUS (DY 6700)	150,0	TEXAS EASTERN TRANSM
8045711	15149	4228531408	103	HANCOCK G U H #1	PROVIDENT CITY	400,0	TEXAS EASTERN GAS CO
8045750	18567	4248131830	102	MALEK #1	HOLUB (6250)	110,0	UNITED GAS PIPELINE
*8045704	15018	4216130459	103	STEWARDS MILL G U #5-1	STEWARDS MILL (COTTON VA	350,0	UNITED GAS PIPELINE
*8045705	15015	4216130496	103	STEWARDS MILL GU #7-1	STEWARDS MILL (COTTON VA	500,0	UNITED GAS PIPELINE
8045740	16765	4227331373	102	SULLIVAN D #1	MCGILL (8020)	70,0	TRANSCONTINENTAL GAS
*THOMAS C CANAN				RECEIVED: 07/11/80 JA: TX			
8045584	11923	4242900000	108	J M FARMAR NO 1 NO 57805	HAYLAND	16,0	LONE STAR GAS CO
*TRAVELERS OIL CO G-V PROJECT				RECEIVED: 07/11/80 JA: TX			
8045536	08115	4217900000	108	HOGAN #9 05843	PANHANDLE - GRAY COUNTY	3,7	PHILLIPS PETROLEUM C
*TRES PETROLEUM INC				RECEIVED: 07/11/80 JA: TX			
8045535	08616	4210300000	108	YARBROUGH & ALLEN NO #1	ARMER (GLORIETA)	3,6	WARREN PETROLEUM CO
*TURTLE PRODUCTION CO INC				RECEIVED: 07/11/80 JA: TX			
8045697	14951	4208331707	103	JAMES HULLINS NO 1	HUDSON (GRAY SAND LOWER)	80,0	UNION TEXAS PETROLEU
*UNION OIL COMPANY OF CALIF				RECEIVED: 07/11/80 JA: TX			
8045524	08111	4246730402	103	R A MUNELL 44 #6	VAN	58,0	UNITED GAS PIPELINE
*VENUS OIL COMPANY				RECEIVED: 07/11/80 JA: TX			
8045707	15025	4248100000	103	ANGELO #1 RRC NO 82989	EAST BERNARD (7900)	0,0	TRUNKLINE GAS CO
*WAINOCO OIL & GAS COMPANY				RECEIVED: 07/11/80 JA: TX			
8045742	17507	4231131316	102	ALAMO NATIONAL BANK TRUSTEE NO 1	FANNIE K (6000 WILCOX)	364,8	TENNESSEE GAS PIPELI
8045742	17507	4231131316	103	ALAMO NATIONAL BANK TRUSTEE NO 1	FANNIE K (6000 WILCOX)	364,8	TENNESSEE GAS PIPELI
*WERNER OIL , INC				RECEIVED: 07/11/80 JA: TX			
8045684	15654	4208500000	103	SEVEN MULES NO 2	PANHANDLE	130,0	PANHANDLE EASTERN PI
*WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 07/11/80 JA: TX			
8045579	11110	4210300000	108	R N MAUDELL ET AL TR A 1016	SAND HILLS MCKNIGHT	2,0	EL PASO NATURAL GAS

JD NO	JA DK1	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8045576	11107	4210300000	108	M N MADDELL ET AL TR A 525	SAND HILLS MCKNIGHT	5,0	EL PASO NATURAL GAS
8045578	11109	4210300000	108	M N MADDELL ET AL TR A 790	SAND HILLS MCKNIGHT	11,0	EL PASO NATURAL GAS
8045577	11108	4210300000	108	M N MADDELL ET AL TR A 826	SAND HILLS MCKNIGHT	5,0	EL PASO NATURAL GAS
*WESTLAND OIL DEVELOPMENT CORP				RECEIVED: 07/11/80 JA: TX			
8045748	18028	4212300000	102	DUDENSTADT JEANETTE GAS UNIT NO 1	GUMLEE NORTH (YEQUA 5370	150,0	NATURAL GAS PIPELINE
*WILLARD OIL & GAS INC				RECEIVED: 07/11/80 JA: TX			
8045554	08497	4223300000	103	PILLSBURY B-3 #04176	PANHANDLE	22,8	PHILLIPS PETROLEUM C
*WILLIAM K YOUNG				RECEIVED: 07/11/80 JA: TX			
8045698	14956	4200331839	103	ARMSTRONG NO 2	BLOCK A-38 (YATES)	54,7	PHILLIPS PETROLEUM C

** U.S. GEOLOGICAL SURVEY - WASHINGTON,DC

*CITIES SERVICE COMPANY				RECEIVED: 07/08/80 JA: NV 7			
8045781	NV-007-80	4709300034	102	USA T #1	LEADMINE	569,0	COLUMBIA GAS TRANSMI

OTHER PURCHASERS

8045521 MAEL GAS CO
8045687 EL PASO NATURAL GAS CO
8045704 UNITED TEXAS TRANSMISSION
8045705 DELHI-GAS PIPELINE CORP
8045715 NORTHERN NATURAL GAS CO

[FR Doc. 80-23955 Filed 8-7-80; 8:45 am]
BILLING CODE 6450-85-C

[Volume 249]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued August 1, 1980.

The Federal Energy Regulatory Commission received notices of determination from the jurisdictional agencies listed herein, for the indicated wells, pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a (D) in the DEN column. Estimated annual production is in million cubic feet (MMcf).

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 on or before August 25, 1980.

Please reference the FERC Control Number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

VOLUME 249

NOTICE OF DETERMINATIONS
BY JURISDICTIONAL AGENCIES UNDER
THE NATURAL GAS POLICY ACT OF 1978

JD NO	JA DKT	API NO	SEC = WELL NAME	FIELD NAME	PMUD	PURCHASER
********** WEST VIRGINIA DEPARTMENT OF MINES **********						
*A C RADFORD			RECEIVED: 07/08/80 JA: WV			
8045385		4708100676 108	EDWARD MORAN #2	COURTHOUSE DISTRICT	2.6	EQUITABLE GAS CO
*A F MORRIS TRUSTEE			RECEIVED: 07/08/80 JA: WV			
8045404		4708302485 108	J & PRIDEMORE #1 GPA 1051	MUD RIVER	1.1	PENNZOIL CO
*AIGT CORP/RITCHIE MINES P/S			RECEIVED: 07/08/80 JA: WV			
8045069		4708504714 108	A U WILSON #5	GRANT	3.7	CONSOLIDATED GAS SUP
8045333		4708504723 108	C L HARDEN #2	C L HARDEN LEASE	0.7	CONSOLIDATED GAS SUP
8045334		4708504722 108	C L HARDEN #4	C L HARDEN LEASE	0.4	CONSOLIDATED GAS SUP
8045067		4708504716 108	F P MARSHALL #1	GRANT	7.3	CONSOLIDATED GAS SUP
8045066		4708504717 108	F P MARSHALL #5	GRANT	3.7	CONSOLIDATED GAS SUP
8045341		4708504703 108	H S WILSON #2	H S WILSON LEASE	3.7	CONSOLIDATED GAS SUP
8045082		4708504701 108	J MARSHALL #10	GRANT	11.0	CONSOLIDATED GAS SUP
8045065		4708504718 108	J O LYNCH #1	GRANT	3.7	CONSOLIDATED GAS SUP
8045064		4708504719 108	J O LYNCH #3	GRANT	3.7	CONSOLIDATED GAS SUP
8045080		4708504692 108	J P MARSHALL #11	GRANT	37.0	CONSOLIDATED GAS SUP
8045077		4708504695 108	J W MARSHALL #1	GRANT	7.3	CONSOLIDATED GAS SUP
8045084		4708504699 108	J W MARSHALL #11	GRANT	3.7	CONSOLIDATED GAS SUP
8045083		4708504700 108	J W MARSHALL #13	GRANT	0.7	CONSOLIDATED GAS SUP
8045342		4708504702 108	J W MARSHALL #17	J W MARSHALL LEASE	0.7	CONSOLIDATED GAS SUP
8045076		4708504696 108	J W MARSHALL #4	GRANT	7.3	CONSOLIDATED GAS SUP
8045086		4708504697 108	J W MARSHALL #5	GRANT	0.7	CONSOLIDATED GAS SUP
8045085		4708504698 108	J W MARSHALL #8	GRANT	1.8	CONSOLIDATED GAS SUP
8045068		4708504715 108	L COKELEY #1	GRANT	1.8	CONSOLIDATED GAS SUP
8045078		4708504694 108	L CONNELLEY #3	GRANT	18.3	CONSOLIDATED GAS SUP
8045080		4708504725 108	L MOSS #5	GRANT	5.5	CONSOLIDATED GAS SUP
8045087		4708504724 108	M C SWEENEY #3	GRANT	1.8	CONSOLIDATED GAS SUP
8045070		4708504713 108	RITCHIE MINES #1	MURPHY	11.0	CONSOLIDATED GAS SUP
8045072		4708504711 108	RITCHIE MINES #10	MURPHY	3.7	CONSOLIDATED GAS SUP
8045339		4708504705 108	RITCHIE MINES #43	RITCHIE MINES LEASE	1.1	CONSOLIDATED GAS SUP
8045340		4708504704 108	RITCHIE MINES #46	RITCHIE MINES LEASE	1.1	CONSOLIDATED GAS SUP
8045338		4708504706 108	RITCHIE MINES #48	RITCHIE MINES LEASE	1.1	CONSOLIDATED GAS SUP
8045071		4708509712 108	RITCHIE MINES #57	MURPHY	18.3	CONSOLIDATED GAS SUP
8045075		4708504708 108	RITCHIE MINES #58	MURPHY	18.3	CONSOLIDATED GAS SUP
8045073		4708504710 108	RITCHIE MINES #59	MURPHY	18.3	CONSOLIDATED GAS SUP
8045074		4708504709 108	RITCHIE MINES #64	MURPHY	11.0	CONSOLIDATED GAS SUP
8045337		4708504707 108	RITCHIE MINES #73	RITCHIE MINES LEASE	1.1	CONSOLIDATED GAS SUP
8045336		4708504720 108	S C PARKS #6	S C PARKS LEASE	0.4	CONSOLIDATED GAS SUP
8045335		4708504721 108	S C PARKS #8	S C PARKS LEASE	1.8	CONSOLIDATED GAS SUP
8045343		4708504726 108	W H MOORE #5	W H MOORE LEASE	5.5	CONSOLIDATED GAS SUP
8045500		4708504727 108	W H MOORE #6	GRANT	7.3	CONSOLIDATED GAS SUP
8045292		4708504672 108	W H MOORE #7	W H MOORE LEASE	10.9	CONSOLIDATED GAS SUP

JD NO	JA DKT	API NO	SEC	* WELL NAME	FIELD NAME	PROD	PURCHASER
8045479		4708504693	108	W M MOORE #8	GRANT	0.0	CONSOLIDATED GAS SUP
*ALLEGHENY LAND & MINERAL COMPANY				RECEIVED: 07/08/80 JA: MV			
8045429		4701700259	108	A-5	SOUTHWEST DISTRICT	4.9	CONSOLIDATED GAS SUP
*APPALACHIAN EXPLORATION & DEVEL INC				RECEIVED: 07/08/80 JA: MV			
8045436		4707900910	108	G W SMITH #1	UNION	18.3	CABOT CORP
8045455		4707900871	108	MCLEAN HEIRS A-2	UNION	15.0	CABOT CORP
8045435		4707900921	108	MCLEAN HEIRS A-9	UNION	15.0	CABOT CORP
8045504		4703903506	103	SILER COAL & LAND CO A-1	WASHINGTON	23.0	
*ASHLAND EXPLORATION INC				RECEIVED: 07/08/80 JA: MV			
8045547		4701900414	103	EASTERN ASSOCIATED COAL #65	PAINT CREEK	64.0	COLUMBIA GAS TRANSMI
8045548		4703903405	103	JAMES F & PEYTON #2	PAINT CREEK	64.0	COLUMBIA GAS TRANSMI
8045556		4700501272	103	SOUTHERN LAND #11	LOGAN - WYOMING	57.0	CONSOLIDATED GAS SUP
*B & G OIL & GAS COMPANY				RECEIVED: 07/08/80 JA: MV			
8045430		4702103610	108	AMES #1	DEKALB	4.0	CONSOLIDATED GAS SUP
*C F SHEWEY AGENT				RECEIVED: 07/08/80 JA: MV			
8045421		4705900938	108	BURNING SPRINGS LAND CO 556036615	TUG RIVER	0.2	COLUMBIA GAS TRANSMI
*CABOT CORPORATION				RECEIVED: 07/08/80 JA: MV			
8045431		4701302641	108	ARDELIA GANNETSON 4-509	SHERIDAN	12.5	
8045434		4703902651	108	BOWERS 6-629	CABIN CREEK	0.5	
8045498		4703903127	108	M P TOMPKINS 11-623	CEDAR GROVE	2.2	CABOT CORP
8045432		4703902927	108	QUINCY COAL 1-656	CABIN CREEK	2.8	
*CAMERON OIL & GAS COMPANY				RECEIVED: 07/08/80 JA: MV			
8045453		4700501299	108	GEORGE P ALDERSON #8	SCOTT	1.2	COLUMBIA GAS TRANSMI
8045452		4704302450	108	JOHN A STONE #3	JEFFERSON	45.0	COLUMBIA GAS TRANSMI
8045451		4704302451	108	JOHN A STONE #5	JEFFERSON	0.5	COLUMBIA GAS TRANSMI
*CEDAR RUN OIL & GAS CO				RECEIVED: 07/08/80 JA: MV			
8045289		4708504668	108	CEDAR RUN OIL & GAS CO #469 WELL #1	MURPHY DISTRICE	5.1	CABOT CORP
*CHESTER LEE BACHELOR ET AL				RECEIVED: 07/08/80 JA: MV			
8045290		4708504669	108	U E HUTTER #1	MOUNTAIN	3.7	EQUITABLE GAS CO
*CITIES SERVICE COMPANY				RECEIVED: 07/08/80 JA: MV			
8045350		4701702123	108	JAMES K #1	SMITHBURG	4.5	CONSOLIDATED GAS SUP
8045351		4701702125	108	PARRELL A-2	SMITHBURG	3.0	CONSOLIDATED GAS SUP
*D A DORWARD				RECEIVED: 07/08/80 JA: MV			
8045459		4702101606	108	W G COLLINS #2	GLENVILLE	0.0	CONSOLIDATED GAS SUP
8045457		4702101683	108	SPROUSE MCHENRY #2	GLENVILLE	1.5	CONSOLIDATED GAS SUP
8045458		4702101682	108	SPROUSE-MCHENRY #1	GLENVILLE	1.5	CONSOLIDATED GAS SUP
*DEVON CORPORATION				RECEIVED: 07/08/80 JA: MV			
8045346		4705300206	103	4940 PEARLEY SAYRE	PARCHMENT	45.0	KAISER ALUMINUM & CH
*E & C GAS CO				RECEIVED: 07/08/80 JA: MV			
8045481		4705302326	108	GILBERT SNIDER - #1	EAGLE DISTRICT	7.0	EAGLE GAS CO
*E M AND N E SMITH				RECEIVED: 07/08/80 JA: MV			
8045489		4701302910	108	A G MATHENS NO 4	CENTER DISTRICT	5.5	CABOT CORP
8045492		4701302885	108	A M PENNINGER NO 1	SHERMAN DISTRICT	2.0	CABOT CORP
8045491		4701302886	108	A M PENNINGER NO 2	SHERMAN DISTRICT	4.1	CABOT CORP
8045496		4701300125	108	ARMINTA ELSMON NO 2	WASHINGTON DISTRICT	1.1	CABOT CORP
8045493		4701302875	108	D M WHIPKEY #3	LEATHANK CH CENTER DISTR	1.4	CABOT CORP
8045499		4701300058	108	HATTIE WULVERTON NO 1	SHERIDAN DISTRICT	0.8	CABOT CORP
8045495		4701300135	108	I A GAINER HEIRS NO 1	LEADING CREEK CENTER DIS	0.4	CABOT CORP
8045497		4701300107	108	J M MADDUX NO 2	CENTER DISTRICT	0.5	CABOT CORP
8045498		4701300094	108	LUTHER LITTLE NO 1	SYCAMORE CREEK - SHERMAN	2.5	CABOT CORP
8045494		4701300645	108	MINERVA PARSONS NO 2	WASHINGTON DISTRICT	3.0	CABOT CORP
8045490		4701302898	108	RUSS COLLINS NO 1	SHERIDAN DISTRICT	6.0	CABOT CORP
*FIVE STAR GAS CO				RECEIVED: 07/08/80 JA: MV			

JD NO	JA DKT	API NO	SEC	FILE NAME	FIELD NAME	PROD	PURCHASER
8045423		4708703261	108	J - FOLING #7117	LOUNEYVILLE GAS	3,1	COLUMBIA GAS TRANSMI
*FOX DRILLING CO INC				RECEIVED: 07/08/80 JA: WV			
8045369		4700101153	103	H ROBINSON #8(47-001-1153)	BELINGTON	125,0	COLUMBIA GAS TRANSMI
8045370		4700101155	103	H ROBINSON #5(47 001 1155	BELINGTON	75,0	COLUMBIA GAS TRANSMI
8045368		4700101150	103	H ROBINSON #6(47 001 1150)	BELINGTON	120,0	COLUMBIA GAS TRANSMI
8045374		4700101196	103	K CUNNINGHAM #1(47 001 1196)	BELINGTON	35,0	COLUMBIA GAS TRANSMI
8045375		4700101205	103	D HATHAWAY #1(47 001 1205)	BELINGTON	75,0	COLUMBIA GAS TRANSMI
8045376		4700101206	103	D HATHAWAY #2(47 001 1206)	BELINGTON	75,0	COLUMBIA GAS TRANSMI
8045377		4700101207	103	D HATHAWAY #3(47 001 1207)	BELINGTON	60,0	COLUMBIA GAS TRANSMI
8045367		4700101122	103	R L JONES #1(47-001-1122)	BELINGTON	90,0	COLUMBIA GAS TRANSMI
8045372		4700101189	103	R L JONES #2(47 001 1189)	BELINGTON	35,0	COLUMBIA GAS TRANSMI
8045371		4700101188	103	STEWART #2(47-001-1188)	BELINGTON	125,0	COLUMBIA GAS TRANSMI
8045373		4700101193	103	W BOLTON #1	BELINGTON	25,0	COLUMBIA GAS TRANSMI
*FRANCIS E CAIN				RECEIVED: 07/08/80 JA: WV			
8045050		4701503156	108	A H CHEUVRONT #2	SHERIDAN	0,3	CONS GAS SUPPLY CORP
*GAS SUPPLY CORP				RECEIVED: 07/08/80 JA: WV			
8045360		4709900233	108	D F BELCHER 1-926	BELCHER	8,8	INDUSTRIAL GAS CORP
8045358		4709900265	108	HIRAM FERGUSON B #1	HIRAM FERGUSON	0,1	INDUSTRIAL GAS CORP
8045357		4709900270	108	MINNIE EALEMN 688	MINNIE EALEM 688	5,0	INDUSTRIAL GAS CORP
8045359		4709900244	108	TONEY NO 2	TONEY	4,0	INDUSTRIAL GAS CORP
*GULF OIL CORPORATION				RECEIVED: 07/08/80 JA: WV			
8045425		4702103608	108	FLINT #1	VADIS	3,7	EQUITABLE GAS CO
8045012		4702101150	108	HARDMAN #1	TANNER	1,8	PENNZOIL CO
8045024		4702103609	108	*INEMILLEN #1	GLENVILLE WEST	3,7	CONSOLIDATED GAS SUP
*H M DEEM				RECEIVED: 07/08/80 JA: WV			
8045291		4708522003	108	H DEEM #1	H DEEM	10,0	CONSUMERS GAS UTILIT
*HARRY BUSH AGT				RECEIVED: 07/08/80 JA: WV			
8045024		4702123611	108	PARR #1	DEKALB	0,0	CONSULIDATED GAS SUP
*HUNTINGTON OKLA/MIDWAY CITY GAS CO				RECEIVED: 07/08/80 JA: WV			
8045014		4709901706	108	FLOYD BREWER #1	WAYNE CO LINCOLN DIST	5,0	COLUMBIA GAS & ELEC
*J & J ENTERPRISES INC				RECEIVED: 07/08/80 JA: WV			
8045390		4700121106	103	R-181 BAR-1106	PHILIPPI	20,0	CONSULIDATED GAS SUP
8045385		4703522048	103	R-226 MAR-2048	UNION	20,0	CONSULIDATED GAS SUP
8045383		4703522027	103	R-232 MAR-2027	UNION	20,0	CONSULIDATED GAS SUP
8045382		4703522015	103	R-240 MAR-2015	TENMILE	20,0	CONSULIDATED GAS SUP
8045384		4703502018	103	R-260 MAR-2018	SANDIS	20,0	CONSULIDATED GAS SUP
8045378		4703522047	103	R-270 MAR-2047	EAGLE	20,0	CONSULIDATED GAS SUP
8045391		4700101246	103	JJ-5-#1	VALLEY	20,0	CONSULIDATED GAS SUP
8045388		4701722515	103	K-19-1	WEST UNION	20,0	COLUMBIA GAS TRANSMI
8045387		4701722510	103	K-19-2	WEST UNION	20,0	COLUMBIA GAS TRANSMI
8045386		4701722503	103	K-26-#1	WEST UNION	20,0	COLUMBIA GAS TRANSMI
8045392		4701702471	103	K-271-#1	GRANT	20,0	CONSULIDATED GAS SUP
8045389		4701722480	103	K-512-#1	CUVE	20,0	COLUMBIA GAS TRANSMI
8045380		4703502174	103	S-551-#1	SANDIS	20,0	CONSULIDATED GAS SUP
8045381		4703502215	103	S-553-#1	SANDIS	20,0	CONSULIDATED GAS SUP
8045379		4703522120	103	S-554-#1	TENMILE	20,0	CONSULIDATED GAS SUP
*JAMES F SCOTT				RECEIVED: 07/08/80 JA: WV			
8045348		4703502221	103	C L BOGGESS S-286	EAGLE DISTRICT	12,0	CONSULIDATED GAS SUP
*JERRY C OLDS				RECEIVED: 07/08/80 JA: WV			
8045277		4704120662	108	DUSALDSON #1	COURTHOUSE	10,0	EQUITABLE GAS CO
8045276		4708100699	108	F HUSH #2	COURT HOUSE DISTRICT	2,0	EQUITABLE GAS CO
8045280		4705501987	108	MAXWELL #21	MOUNT CLARE	2,0	CONSULIDATED GAS SUP
8045279		4705501988	108	MAXWELL #23	MOUNT CLARE	2,0	CONSULIDATED GAS SUP

JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8045281		4703503986	10A	MAXFLI 19		2.0	CONSOLIDATED GAS SUP
8045278		4704120570	10A	P HUSH #1	COURTHOUSE	3.0	EQUITABLE GAS CO
8045282		4701721675	10A	R MCCULLOUGH #1	WEST UNION	2.0	CONSOLIDATED GAS SUP
8045284		4704120643	10A	V BRINKLEY #2	COLLINS SETTLEMENT	4.0	CONSOLIDATED GAS SUP
8045286		4704121098	10A	V BRINKLEY #3	COLLINS SETTLEMENT	4.0	CONSOLIDATED GAS SUP
8045287		4704121405	10A	V BRINKLEY #4	COLLINS SETTLEMENT	4.0	CONSOLIDATED GAS SUP
=KRAKRUM CORP				RECEIVED: 07/08/80 JA: WV			
8045419		4708703270	10A	O L & MARY TAWNEY #6	GEARY	0.3	COLUMBIA GAS TRANSMI
8045418		4708703269	10A	O L & MARY TAWNEY #7	GEARY	0.5	COLUMBIA GAS TRANSMI
8045416		4708703267	10A	FRED & LIZZIE SMITH #20	GEARY	30.0	COLUMBIA GAS TRANSMI
8045422		4708703273	10A	FRED & LIZZIE SMITH #25	GEARY	15.0	COLUMBIA GAS TRANSMI
8045421		4708703272	10A	FRED & LIZZIE SMITH #28	GEARY	4.0	COLUMBIA GAS TRANSMI
8045415		4708703266	10A	G T TAWNEY #31	GEARY	0.6	COLUMBIA GAS TRANSMI
8045420		4708703271	10A	JULIA KENT ETAL #15	GEARY	8.0	COLUMBIA GAS TRANSMI
8045417		4708703268	10A	W G & EMMA CARPER #8	GEARY	1.0	COLUMBIA GAS TRANSMI
=LASCO PRODUCTION CO				RECEIVED: 07/08/80 JA: WV			
8045413		4705920837	10A	MINGO #2	HARVEY	0.0	COLUMBIA GAS TRANSMI
=MUD RIVER GAS CO				RECEIVED: 07/08/80 JA: WV			
8045447		4704302417	10B	ELIZ ADKINS 76752 GPA 1053	MUD RIVER	4.0	PENNZOIL CO
=OKMAR OIL COMPANY				RECEIVED: 07/08/80 JA: WV			
8045273		4701323143	10A	A C FISHER #4	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045265		4701323151	10A	F M DEPUE #2	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045269		4701323152	10A	F M DEPUE #5	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045274		4701323142	10B	F M DEPUE #6	CENTER DISTRICT	0.0	CONSOLIDATED GAS SUP
8045270		4701323146	10A	JAMES METZ #4	CENTER DISTRICT	0.0	CONSOLIDATED GAS SUP
8045264		4701323147	10A	JAMES METZ #7	CENTER DISTRICT	0.0	CONSOLIDATED GAS SUP
8045263		4701323153	10A	JAMES W ROGERS #3 (J W YOAK LEASE)	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045271		4701323145	10A	M COMERLY #1	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045266		4701323150	10A	M COMERLY #5	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045272		4701323144	10B	M J WEBB #5	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045275		4701323086	10A	MOORE & FLING #1	SHERIDAN DISTRICT	0.7	CONSOLIDATED GAS SUP
8045008		4704920642	10A	O N KOEN #3	MANNINGTON DISTRICT	0.5	PENNZOIL CO
8045268		4701323148	10B	TASRIL TAYLOR #1	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045009		4701323150	10B	TASRIL TAYLOR #7	SHERIDAN DISTRICT	0.0	CONSOLIDATED GAS SUP
8045267		4701323149	10A	WRIGHT-BURROWS #1	CENTER DISTRICT	0.0	CONSOLIDATED GAS SUP
=P L GAINER AGENT				RECEIVED: 07/08/80 JA: WV			
8045327		4701301595	10A	BAILEY NO 1	LEE DISTRICT	3.5	CONSOLIDATED GAS SUP
8045328		4701301566	10A	BENEDUM NO 1	SHERIDAN DISTRICT	1.9	CONSOLIDATED GAS SUP
8045329		4701301701	10A	BENNETT NO 2	LEE DISTRICT	0.4	CONSOLIDATED GAS SUP
8045282		4701301914	10A	BENNETT NO 3	LEE DISTRICT	1.6	CONSOLIDATED GAS SUP
8045258		4701301975	10A	BRYNER NO 1	SHERIDAN DISTRICT	0.9	CONSOLIDATED GAS SUP
8045318		4701301873	10A	DIGMAN NO 1	LEE DISTRICT	1.0	CONSOLIDATED GAS SUP
8045331		4701301571	10A	FERRELL NO 2	SHERIDAN DISTRICT	2.0	CONSOLIDATED GAS SUP
8045332		4701301677	10A	FERRELL NO 3	SHERIDAN DISTRICT	5.0	CONSOLIDATED GAS SUP
8045259		4701301972	10A	FOX NO 1	SHERIDAN DISTRICT	0.1	CONSOLIDATED GAS SUP
8045320		4701301852	10A	GUNN NO 1	LEE DISTRICT	1.0	CONSOLIDATED GAS SUP
8045261		4701319040	10A	GUNN NO 2	LEE DISTRICT	1.0	CONSOLIDATED GAS SUP
8045260		4701301993	10A	HALE NO 1	SHERIDAN	1.0	CONSOLIDATED GAS SUP
8045257		4701302008	10A	HALE NO 2	SHERIDAN DISTRICT	0.6	CONSOLIDATED GAS SUP
8045321		4701301829	10A	HUGHES NO 1	LEE DISTRICT	1.2	CONSOLIDATED GAS SUP
8045319		4701301857	10A	HUGHES NO 2	LEE DISTRICT	0.4	CONSOLIDATED GAS SUP
8045326		4701301809	10A	JARVIS NO 1	WASHINGTON DISTRICT	3.5	CONSOLIDATED GAS SUP
8045323		4701301741	10A	KINDY NO 1	LEE DISTRICT	0.9	CONSOLIDATED GAS SUP
8045260		4701301958	10A	KIRBY NO 2	LEE DISTRICT	0.6	CONSOLIDATED GAS SUP

JO NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8045283		4702101065	108	MARY A STUMP NO 1	CENTER	25.0	CONSOLIDATED GAS SUP
8045329		4701501591	108	NADER NO 1	SHERIDAN DISTRICT	1.5	CONSOLIDATED GAS SUP
8045330		4701501611	108	NADER NO 2	SHERIDAN DISTRICT	1.5	CONSOLIDATED GAS SUP
8045325		4701501679	108	SAMPSON NO 1	LEE DISTRICT	1.0	CONSOLIDATED GAS SUP
8045322		4701501784	108	SAMPSON NO 2	LEE DISTRICT	0.0	CONSOLIDATED GAS SUP
*PALEO INC				RECEIVED: 07/08/80 JA: MV			
8045307		4702102206	108	H S MESSENGER #1	GLENVILLE	3.7	EQUITABLE GAS CO
8045463		4702102242	108	H S MESSENGER #2	GLENVILLE	3.8	EQUITABLE GAS CO
8045458		4702102307	108	F M STEINBECK #2	TROY	15.3	EQUITABLE GAS CO
8045310		4702112134	108	P W BURK #1	CENTER	2.0	EQUITABLE GAS CO
8045315		4702112413	108	HARDMAN BENNETT I-585	CENTER	9.1	CONSOLIDATED GAS SUP
8045461		4702102299	108	IDA LYNCH	GLENVILLE	14.5	EQUITABLE GAS CO
8045308		4702102207	108	LYON #1	GLENVILLE	6.0	EQUITABLE GAS CO
8045440		4702102241	108	LYON #2	GLENVILLE	5.3	EQUITABLE GAS CO
8045454		4702102497	108	PEARCY I-96	CENTER	16.7	CONSOLIDATED GAS SUP
8045462		4702102271	108	M E CAMPBELL 88A	GLENVILLE	3.6	EQUITABLE GAS CO
8045306		4702102214	108	M J MESSENGER #1	TROY	7.2	EQUITABLE GAS CO
8045311		4702102102	108	M P SNYDER #1	CENTER	3.4	EQUITABLE GAS CO
8045459		4702102305	108	S E CAMPBELL 75A	GLENVILLE	6.8	EQUITABLE GAS CO
8045313		4700700431	108	SMITH PENNZOIL #1	UTICA	0.1	EQUITABLE GAS CO
8045316		4702102494	108	STALNAKER I-524	CENTER	8.7	CONSOLIDATED GAS SUP
8045314		4702102481	108	STALNAKER I-586	CENTER	7.6	CONSOLIDATED GAS SUP
8045460		4702102300	108	STEINBECK #1	TROY	6.3	EQUITABLE GAS CO
8045312		4700700497	108	W A DUNCAN #1	UTICA	5.3	EQUITABLE GAS CO
8045309		4702102191	108	WOLFE UR W T SMITH #1	GLENVILLE	5.9	EQUITABLE GAS CO
*PENNZOIL COMPANY				RECEIVED: 07/08/80 JA: MV			
8045455		4703901066	108	CHALMURG COLLIERY CO #14	CABIN CREEK	0.0	CONSOLIDATED GAS SUP
8045445		4708700565	108	DAVID SIMMONS #3	SMITHFIELD	0.0	CONSOLIDATED GAS SUP
8045443		4708701683	108	GEORGE HARRIS #1	SMITHFIELD	0.0	CONSOLIDATED GAS SUP
8045317		4704102217	108	MULLADY-FARR #2	COURTHOUSE	0.0	CONSOLIDATED GAS SUP
8045456		4701501768	108	U D STUCKLEY #10	HENRY	0.0	CONSOLIDATED GAS SUP
8045457		4701500105	108	U D STUCKLEY #109	HENRY	0.0	CONSOLIDATED GAS SUP
8045441		4708702098	108	U D STUCKLEY #96	GEARY	0.0	CONSOLIDATED GAS SUP
8045442		4708702079	108	P A TALLMAN #53	SMITHFIELD	0.0	CONSOLIDATED GAS SUP
8045446		4704102884	108	REBELLA FLETCHER #2	COURTHOUSE	0.0	CONSOLIDATED GAS SUP
8045444		4708700995	108	WM KAUFMAN #6-13	SMITHFIELD	0.0	CONSOLIDATED GAS SUP
*POND FORK OIL & GAS CO				RECEIVED: 07/08/80 JA: MV			
8045365		4700501308	108	COLE & CRANE REAL ESTATE TRUST #8	MADISON	1.0	CONSOLIDATED GAS SUP
8045364		4700501309	108	COLE & CRANE REAL ESTATE TRUST #9	MADISON	1.5	CONSOLIDATED GAS SUP
8045362		4700701503	108	G CHAMBERLIN FARM 1-97	GASSAWAY	8.0	CONSOLIDATED GAS SUP
8045361		4700701504	108	LEWIS DUNN FARM #1-96	GASSAWAY	5.9	CONSOLIDATED GAS SUP
8045365		4700501310	108	POND FORK COAL CO FARM #2-38	MADISON	4.0	CONSOLIDATED GAS SUP
8045360		4700501307	108	POND FORK COAL CO FARM #5-41	MADISON	5.0	CONSOLIDATED GAS SUP
*R H ADKINS TRUSTEE FOR MCCUMAS				RECEIVED: 07/08/80 JA: MV			
8045305		4701100672	108	F M PERRY #1 GPA 1003-1007	TRACE CREEK	4.9	PENNZOIL CO
8045304		4701100673	108	E W MCMILLIAN #2 GPA 1003-1007	TRACE CREEK	4.9	PENNZOIL CO
*R H CARNES				RECEIVED: 07/08/80 JA: MV			
8045420		4703903572	108	REBELLA J YOUNG NO 2	CLENDENIN	5.6	PENNZOIL CO
*REED-WHEELER-YOUNG OIL & GAS CO				RECEIVED: 07/08/80 JA: MV			
8045411		4701501754	108	GOSHORN HEIRS 15	UNION DISTRICT	6.0	CONSOLIDATED GAS SUP
*SOUTHEASTERN GAS COMPANY				RECEIVED: 07/08/80 JA: MV			
*8045395		4701100636	108	A M FLOYD #P-68	GRANT	1.1	COLUMBIA GAS TRANS C
*8045394		4701100657	108	C CONNER #P-5	GRANT	1.1	COLUMBIA GAS TRANS C

JD NO	JA DRI	API NO	SEC	WELL NAME
8045403		4702103595	108	EMMA DELONG #615
*8045399		4701100632	108	H M MORRISON #P-20
*8045401		4701100640	108	HALL & DAVIDSON #P-48
*8045398		4701100633	108	HUMERT HATFIELD #P-44
*8045397		4701100634	108	HUMERT HATFIELD #P-45
*8045402		4701100629	108	J D CHAPMAN #P-36
*8045393		4701100638	108	J H WILLIAMS #P-18
*8045396		4701100635	108	J L BRADLEY #P-22
*8045400		4701100631	108	JOHN DAVIDSON #P-41
*STERLING DRILLING AND PROD CO INC				RECEIVED: 07/08/80 JA: WV
8045352		4701501656	103	ALMI #8 SN #138
8045353		4701501672	103	STAHLMAN #190
8045354		4701501675	103	STAHLMAN #198
8045355		4701501691	103	STAHLMAN #200
*SWEETLAND AND BURNS				RECEIVED: 07/08/80 JA: WV
8045403		4701100671	108	COLLINS #1 GPC 8135
*SWEETLAND LAND AND MINERAL CO				RECEIVED: 07/08/80 JA: WV
8045407		4704502435	108	BROMFIELD #1
8045300		4704502415	108	HOLBROOK #2 GPA 1061
8045299		4704502416	108	HOLBROOK #53
8045406		4704502436	108	JESSIE SMITH #4
8045410		4704502422	108	JESSIE SMITH #5
8045409		4704502424	108	JESSIE SMITH #6
8045405		4704502400	108	MINERVA JOHNSON #1
8045408		4704502432	108	SAMP BURNS #1
8045301		4704502414	108	STEWART #3 GPA 1061
8045302		4704502413	108	W E WOODALL #3 GPA1061
*W A DEEM				RECEIVED: 07/08/80 JA: WV
8045293		4708524602	108	BEE #2
8045295		4708524601	108	CUTRIGHT #1
8045296		4708522159	108	CUTRIGHT #2
8045294		4708522640	108	HALL #1
*W PAUL MCCUTCHAN				RECEIVED: 07/08/80 JA: WV
8045285		4701700417	108	BLAKE LEASE
*WHITE GAS CO				RECEIVED: 07/08/80 JA: WV
8045297		4704500664	108	L U G 664 U U

FIELD NAME	PROD	PURCHASER
CENTER	0,9	CONSOLIDATED GAS SUP
GRANT	1,6	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
GRANT	0,8	COLUMBIA GAS TRANS C
BUFFALO DISTRICT	91,8	EQUITABLE GAS CO
BUFFALO DISTRICT	89,5	EQUITABLE GAS CO
BUFFALO DISTRICT	28,8	EQUITABLE GAS CO
BUFFALO DISTRICT	28,8	EQUITABLE GAS CO
MUD RIVER	1,0	COLUMBIA GAS TRANS C
CANNELL	1,1	PENNZOIL CO
CANNELL	0,7	PENNZOIL CO
CANNELL	0,7	PENNZOIL CO
CANNELL	0,6	PENNZOIL CO
CANNELL	0,7	PENNZOIL CO
CANNELL	0,6	PENNZOIL CO
CANNELL	1,1	PENNZOIL CO
CANNELL	0,9	PENNZOIL CO
CANNELL	0,7	PENNZOIL CO
CANNELL	5,4	PENNZOIL CO
BEE #2 GAS CO	1,2	CONSOLIDATED GAS SUP
SYLVIA OSBORN FARM	3,5	CARNEGIE NATURAL GAS
SYLVIA OSBOURN FARM	3,5	CARNEGIE NATURAL GAS
ELLA HALL FARM	1,2	CONSOLIDATED GAS SUP
WEST UNION MAGISTERIAL D	1,3	CONSOLIDATED GAS SUP
TRIADELPHIA	2,7	CONSOLIDATED GAS SUP

OTHER PURCHASERS

8045393	SOUTHERN PUBLIC SERVICE CO
8045398	SOUTHERN PUBLIC SERVICE CO
8045395	SOUTHERN PUBLIC SERVICE CO
8045396	SOUTHERN PUBLIC SERVICE CO
8045397	SOUTHERN PUBLIC SERVICE CO
8045399	SOUTHERN PUBLIC SERVICE CO
8045399	SOUTHERN PUBLIC SERVICE CO
8045400	SOUTHERN PUBLIC SERVICE CO
8045401	SOUTHERN PUBLIC SERVICE CO
8045402	SOUTHERN PUBLIC SERVICE CO

[FR Doc. 80-23954 Filed 8-7-80; 8:45 am]
BILLING CODE 6450-85-C

Office of Conservation and Solar Energy

Inquiry and Public Meeting Concerning Municipal Waste-to-Energy Development Plan

AGENCY: Department of Energy, Office of Conservation and Solar Energy.

ACTION: Notice of inquiry and public meeting concerning Municipal Waste-to-Energy Development Plan.

SUMMARY: The Department of Energy (DOE) is inviting the public to submit suggestions for drafting a comprehensive program plan for municipal waste energy development under Title II, Subtitle B, of the Energy Security Act, Pub. L. 96–294, which is required to be published on September 28, 1980. DOE will accept written comments until September 2, 1980. A public meeting will be held beginning at 4 p.m., August 27, 1980, in Phoenix, Arizona.

DATES: Written comments must be received by September 2, 1980, 4:30 p.m., e.d.t. A public meeting will be held in Phoenix, Arizona beginning at 4 p.m., local time, continuing until all comments are heard, or until 7 p.m. The meeting may be continued if necessary, beginning at 9 a.m. on August 28, 1980.

ADDRESSES: Written comments should be addressed to Carol A. Snipes, U.S. Department of Energy, Hearings Procedures, Office of Conservation and Solar Energy, Mail Stop 6B–025, Docket Number CAS–RM–80–122, Washington, D.C. 20585.

The meeting will begin at 4 p.m., local time, in the Phoenix East Room, Hyatt Regency Hotel, Second Street and Adams, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT:

Donald K. Walter or Charlotte Rines, Office of Conservation and Solar Energy, Room 1–E–276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9393.

Carol A. Snipes, Hearing Procedures, U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Stop 6B–025, Docket Number CAS–RM–80–122, Washington, D.C. 20585, (202) 252–9319.

SUPPLEMENTARY INFORMATION: Section 231 of the Energy Security Act, Pub. L. 96–294, Title II, Subtitle B—Municipal Waste Biomass Energy, mandates the Secretary of Energy to prepare a comprehensive Municipal Waste-to-Energy Development Plan no later than 90 days after the date of the enactment of Pub. L. 96–294, transmitting the comprehensive plan to the President and the Congress. Section 231 requires that the comprehensive plan cover the following:

- anticipated research, development, demonstration, and commercialization objectives to be achieved;
- management structure and approach to be adopted to carry out such a plan;
- program strategies, including milestone goals to be achieved;
- specific funding requirements for individual program elements and activities, including total estimated construction costs of proposed projects; and
- the estimated relative financial contributions of the federal government and nonfederal participants in the program.

The purpose of this notice is to obtain written and oral suggestions from the public regarding the content of the plan authorized by section 231. These suggestions will be considered by DOE as it formulates and drafts the plan.

WRITTEN COMMENT PROCEDURE: Interested persons are invited to provide comments at the public meeting described below or by submitting written comments to the address indicated at the beginning of the notice by September 2, 1980. Comments should be labeled both on the envelope and the documents, Municipal Waste-to-Energy Development Plan, Docket Number CAS–RM–80–122. Fifteen copies are requested to be submitted, but this is not a requirement for submission.

Any persons submitting information or data which they believe to be confidential and exempt by law from public disclosure, should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. DOE will honor requests for confidential treatment of information to the extent allowed by law.

Any comments received by the close of the comment period, September 2, 1980, will be considered by DOE in developing the Municipal Waste-to-Energy Development Plan.

PUBLIC MEETING PROCEDURE: Because of the importance of the Municipal Waste-to-Energy Development Plan, DOE wishes to achieve the maximum level of public participation possible. The Department encourages attendance and participation by individuals and representatives of organizations, consumer groups, manufacturers and industry, and other government agencies at the meeting.

DOE will make a presentation at the outset including a tentative outline of the plan. DOE will then accept oral comments limited to a time which will be set in light of the number of persons who request to speak. Persons wishing to speak will be asked to so indicate upon registration and after the DOE presentation. The official conducting the meeting will accept comments or questions from those attending.

DOE is presently developing rules for the financial assistance options authorized by the Title II, Subtitle B of the Energy Security Act. DOE will seek comments on those rules probably in September and October. This meeting is not intended to focus on the procedures for applying for financial assistance or other subjects which will be covered in detail by the rules.

TENTATIVE PROGRAM: August 27, 1980:

Welcoming Remarks
Background
Proposed Program Plan
Goals and Objectives
Questions and Answers
Presentations and comments by interested persons.

Issued in Washington, D.C., August 5, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

[FR Doc. 80–24026 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Colorado River Storage Project; Proposed Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of a Proposed Rate Order and Opportunity for Public Comment—Colorado River Storage Project.

SUMMARY: Notice is given of a proposed Rate Order No. WAPA–4 of the Assistant Secretary for Resource Applications placing increased power rates into effect on an interim basis for Colorado River Storage Project (CRSP) power marketed by the Western Area Power Administration (Western).

The rate adjustment would increase average annual revenues about $11.5 million to meet cost recovery criteria.

The proposed wholesale firm-power rate consists of a capacity charge of $1.76 per kW-month and an energy charge of 4.1 mills per kWh. At 58.2-percent load factor, the composite rate is 8.24 mills per kWh, a 25.8-percent increase over the existing rate.

This proposed rate order also contains statements and discussion of the principal factors leading to the decision on the proposed rate increase, and

explanations and responses to the comments, criticisms, and alternatives offered during the rate increase proceedings.

An opportunity for an oral presentation of views, data, and arguments will be afforded interested persons upon request.

DATES: Interested persons will be given until September 8, 1980, to submit comments in writing to the Assistant Secretary for Resource Applications on the proposed decision. Requests for an oral presentation must be received on or before August 25, 1980.

EFFECTIVE DATE: The rate adjustments and new rate would be effective the first day of the first full billing period beginning on or after November 25, 1980.

ADDRESSES: All written comments (three copies required) and requests for oral presentation should be submitted to:

Dr. Ruth M. Davis, Assistant Secretary for Resource Applications, Department of Energy, Mail Station 3344, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC 20461.

Three copies of the written comments should also be sent to:

Mr. Robert L. McPhail, Administrator, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401.

Mr. A. M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 11606, Salt Lake City, UT 84147.

The oral presentation, if scheduled, would be held in Salt Lake City, Utah, and would be announced in a future **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT:

Mr. A. M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1535.

Ms. Marlene A. Moody, Office of Power Marketing Coordination, Department of Energy, Mail Station 3344, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC 20461, (202) 633–8338.

SUPPLEMENTARY INFORMATION:

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.

Rate adjustments on the CRSP are being conducted consistent with procedural rules applicable to Western. Final procedures for public participation in general adjustments were published the **Federal Register** on March 23, 1978 (43 FR 12076), April 5, 1978 (43 FR 14359), and February 7, 1979 (44 FR 7796).

Proceedings on the proposed rate were initiated in April 1979, with an announcement published in the **Federal Register** at 44 FR 19533 (April 3, 1979) stating that a 38-percent power rate increase for the CRSP was proposed beginning with an estimated date of January 1, 1980. This announcement was subsequently amended by **Federal Register** notices 44 FR 24154 (April 24, 1979) and 44 FR 30759 (May 29, 1979) to add references to Public Utility Regulatory Policies Act standards and written comments.

After consideration of comments received, Western prepared a new power repayment study in August 1979 incorporating reductions in some estimated future costs and delays in some other estimated future costs and correcting the misinterpretation of one of the provisions of Pub. L. 84–485. After proper notification to customers and to others by letter, press releases, and by an August 24, 1979, **Federal Register** notice (44 FR 49785), a public information forum was held on September 5, 1979, at which a revised proposed power rate increase of 23.8 percent was announced, in lieu of the 38-percent increase announced on April 3, 1979.

Subsequent to the September 5, 1979, forum, Western discovered that the price levels for all CRSP participating projects were at the January 1976 price level except for the Animas-La Plata, San Miguel, and West Divide Projects which were at the October 1967 price level. The costs of the three aforementioned projects were indexed to the January 1976 price level and the FY 1977 CRSP power repayment study was revised to include the revised costs. This revision resulted in a rate decrease of 25.8 percent (2 percent higher than the 23.8 percent advocated in the September 5, 1979, forum). The customers were given proper notification of the aforementioned revision by letter and by a February 15, 1980, **Federal Register** notice (45 FR 10399), and comments were received for 30 days, and have been considered in preparing the rate order.

Subsequent to the 30-day comment period discussed under "Dates" above, (beginning with the publication date of this notice) and after consideration of comments received, the Assistant Secretary for Resource Applications will issue a Rate Order confirming and approving rates to be placed in effect on an interim basis and promptly submit such rates to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Washington, D.C. August 1, 1980.

Ruth M. Davis,

Assistant Secretary for Resource Applications.

Proposed Rate Order; United States of America Department of Energy, Assistant Secretary for Resource Applications

In the Matter of: Western Area Power Administration—Colorado River Storage Project Power Rates, Rate Order No. WAPA–4.

Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

(————, 1980)

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project (CRSP), for the Water and Power Resources Service (Service) (formerly the Bureau of Reclamation), 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 and the rate adjustment procedures at 43 FR 12076 (March 23, 1978), as amended by 44 FR 7796 (February 7, 1979). The major topics included in the rate order are listed below.

Background

Existing Rates.
Public Notice and Comments.
Project History.

Discussion

Power Repayment Studies

General.
The August 1978 Study.
August 1979 Changes from August 1978 Study:

The increased rates which are the subject of this order supersede the following existing CRSP rates:

[Effective June 1, 1977]

	Existing rate	Increased rate
Existing rate schedule UC–F2 for wholesale firm power:		
Demand charge, $/kW-month	$1.34	$1.76
Energy charge, mills/kWh	3.4	4.1
Composite rate at 58.2-percent load factor in mills/kWh	6.55	8.24
Existing rate schedule UC–FP2 for peaking power:		
Peaking capacity without energy in $ per kW-month	1.34	1.76

This rate order does not change the rates for the sale of nonfirm power or for wheeling power over the CRSP transmission system.

Public Notice and Comments

Pub. L. 84–485 authorized the CRSP, including participating projects. This legislation requires that an annual report be made to Congress to show the status of the project including "* * * the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment * * *." To comply with this legislation, a power repayment study is made annually and its results are included in the annual report to Congress.

The FY 1977 power repayment study which was made for the 21st Annual Report showed that the existing power rate would be sufficient to pay annual expenses, but would not repay the power investment cost and the assistance needed to accomplish repayment of the irrigation features within the allowable time frames. A power rate increase of 43 percent (at 58.2-percent load factor) was found to be necessary to provide the required revenue. The result of this power repayment study was announced at a customer meeting on March 5, 1978.

An updated power repayment study was completed in August 1978. This study included some adjustments (primarily wheeling costs) to the 21st Annual Report study and indicated that a 2.49 mill/kWh (38-percent) rate increase (at 58.2-percent load factor) would be necessary to provide the required revenue.

At the request of the Colorado River Energy Distributors Association (CREDA), meetings were held with CREDA representatives on December 19, 1978, January 19, 1979, and March 30, 1979. CREDA represents the majority of CRSP customers; however, all CRSP customers were formally invited to the CREDA meetings. At the first meeting, copies of a draft of the proposed power rate brochure were distributed to those present. At the three meetings, questions were asked by CREDA representatives and written answers were distributed at the meetings or mailed subsequently.

Federal Register notice 44 FR 19533 (April 3, 1979) announced the proposed CRSP rate adjustment and the public information and comment forums for public participation. This notice was subsequently amended by Federal Register notices 44 FR 24154 (April 24, 1979) and 44 FR 30759 (May 29, 1979) to add references to the PURPA standards and references to written comments. A press release was issued on April 3, 1979, to announce the proposed rate adjustment and the forums. On April 5, 1979, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the forums and to transmit copies of the CRSP brochure dated April 1979, entitled "Proposed Power Rate Adjustment." Public information forums were held on the proposed rate increase in Phoenix, Arizona; Salt Lake City, Utah; and Denver, Colorado, on April 24, 25, and 26, 1979, respectively. At those forums numerous customers and other interested persons were in attendance. Procedures were reviewed, a summary of the brochure was presented, and all questions asked were answered at the forums or in writing before June 1, 1979.

In accordance with notices previously given, as referred to above, and reminder notices given by May 10, 1979, letters to customers and the June 6, 1979, press release, a public comment forum was held in Salt Lake City, Utah, on June 26, 1979, with customers and other interested persons in attendance. Written comments were received until the close of the comment period on July 11, 1979.

Several of the customers' comments seemed to merit further consideration, and a revised repayment study was made in August 1979. By means of an August 22, 1979, letter to all customers, an August 24, 1979, Federal Register notice (44 FR 49785), and a press release dated August 24, 1979, announcement was made of another public forum to be held in Salt Lake City, Utah, on September 5, 1979. At this forum, a revised proposed rate increase (1.56 mill/kWh or 23.8 percent) was announced and copies of the August 1979 revised repayment study, the overhead projections used at the forum, and a September 5, 1979, brochure entitled "Revised Proposed Power Rate Adjustment" were distributed. Further comments were received through October 5, 1979.

Subsequent to the September 5, 1979, public forum, the Western Area Power Administration (Western) discovered that, contrary to a statement in the April 1979 rate brochure, the investment costs for all except three participating projects were at the January 1976 level and the costs of the three (Animas-La Plata, San Miguel, and West Divide Projects) were at the October 1967 price level. A second revision of the repayment study, with the three projects' costs indexed to the January 1976 level was made in February 1980. This study showed a need for a 1.69 mill/kWh, or 25.8-percent, rate increase, 2 percent higher than the previously revised proposed rate. A brief report showing the details of the study was sent to all customers by letter on February 12, 1980 (February 15, 1980, for CRSP customers in the Boulder City area) and the second proposed revision was published in the February 15, 1980, Federal Register (45 FR 10399) and was announced in a press release dated February 15, 1980. Customers were given an opportunity to comment until March 17, 1980.

Project History

On April 11, 1956, the CRSP and participating projects were authorized by Pub. L. 84–485. By means of the four storage

units authorized, the flow of the Colorado River is regulated in such a way that irrigation, municipal, industrial, and other water use developments in the Upper Colorado River Basin can be made while still maintaining water flows into the lower basin as required by the Colorado River Compact. Facilities have also been provided at the storage units for flood control, for recreation, and for other beneficial purposes. In order to maximize the use of water and to obtain revenues to assist in the repayment of the irrigation developments, power generating plants have been installed at three of the four storage units. A power generating plant has been installed on one of the participating projects and generating plants will be included on other participating projects where such developments are found to be feasible.

The table below lists the powerplants, with their installed capacity and dates of initial service.

CRSP	Installed capacity MW	Inservice date
Glen Canyon	950	Sept. 1964.
Flaming Gorge Powerplant	108	Nov. 1963.
Curecanti Unit—Blue Mesa Powerplant.	60	Sept. 1967.
Curecanti Unit—Morrow Point Powerplant.	120	Dec. 1970.
Curecanti Unit—Crystal Powerplant.	28	Aug. 1978.
Subtotal	1,266	
Participating Projects:		
Seedskadee Project—Fontenelle Powerplant.	10	May 1968
Grand Total	1,276	

Transmission facilities include a high-voltage transmission grid to deliver power to the established delivery points in the market area, to provide interconnections among the plants of the CRSP units and participating projects, and to interconnect with other existing Federal and utility systems within the market area.

Discussion

Power Repayment Studies

General

The power repayment studies for the CRSP are prepared by Western with the cooperation of the Service. Basic river basin hydrology, water depletions, power generation, and project development data are among the many items the Service contributes to the studies.

The power repayment studies are prepared in accordance with CRSP authorizing legislation and with DOE Order No. RA 6120.2 on Power Marketing Administration financial reporting, which basically adopted policy criteria originally established in the Department of the Interior's Manual, parts 730.3 and 730.4. The studies array historic income, expense, and investment allocated to be repaid from power revenues, along with estimates for future years, and portray the annual repayment of power production and transmission costs of a power system through the application of revenues over the repayment period of the power system. The studies show, among other items, estimated revenues and expenses, year by year, over the remainder of a power system's repayment period, the estimated amount of Federal investment amortized during each year, and the total estimated amount of Federal investment remaining to be amortized. The studies do not deal with rate design.

The power repayment studies are also prepared in accordance with the Reclamation Project Act of 1939. As part of its marketing policy, Western strives to transmit and dispose of CRSP power and energy in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. With the rate increase which is the subject of this Order, the power will be sold at the lowest possible rates in accordance with statutory mandate. Without the increase, the statutory requirements will not be met. Insofar as possible, the increase is in keeping with both sound principles and statutory requirements.

The August 1978 Study

A repayment study made in August 1978 for fiscal year 1977 showed that the existing power rate is insufficient to pay within allowable time frames the costs assigned to the power function, mainly because of rapidly escalating construction and operating expenses. The study showed that in the time period between January 1974—the price level date for the present rate—and January 1977, the total costs to be paid by power increased by about $1,228 million. The August 1978 repayment study indicated that a power rate increase of about 38 percent (total cost of 9.04 mills/kWh at 58.2-percent load factor) would be needed to accomplish the repayment required by the project authorizing act.

The August 1979 Changes From August 1978 Study

The August 1978 power repayment study which resulted in the recommendation for a 2.49 mill/kWh (38-percent) rate increase was used in the April 1979 rate adjustment brochure entitled "Proposed Power Rate Adjustment." An analysis of customer comments and recommendations on this brochure resulted in Western adopting some of their recommendations. These changes are reflected in the August 1979 repayment study and are described in the September 5, 1979, brochure. The following is a discussion of the changes from the study in the April 1979 brochure:

Future Wheeling Expense

The repayment study in the April 1979 brochure included the estimated escalation of wheeling rates in future years. At the suggestion of the customers, Western reconsidered the matter and decided that the wheeling rates should not have been escalated. Elimination of the escalation reduced the future average annual wheeling cost for the 1978–2052 period from $4,347,000 to $3,071,000 and reduced the proposed power rate adjustment by 3.5 percent.

Application of Central Utah Project (CUP) and Seedskadee Power Revenues

The repayment study in the April 1979 brochure was based on deferring the application of CUP (Utah) and Seedskadee (Wyoming) power revenues to the repayment of the irrigation costs of participating projects in Utah and Wyoming until 50 years after the CUP and Seedskadee power inservice dates. The customers recommended that CUP and Seedskadee power revenues be applied to repayment of irrigation costs of Utah and Wyoming participating projects, respectively, as soon as the CUP and Seedskadee power costs are repaid. In comparing the early repayment studies with current studies, it was discovered that an unexplained change was made in 1973 and continued in subsequent years so that studies prepared from 1973 through 1976 have not been in compliance with the law on this point. Section 5(e) of Pub. L. 84–485 states that power revenues from a participating project should be applied to repayment of projects within the State and not be used to meet the requirements of participating projects in other States. Due to the express language in Pub. L. 84–485, Western adjusted the August 1979 repayment study to the original method, which retains CUP and Seedskadee power revenues to the credit of the States where the two projects are located. This reversion to the pre-1973 method of handling revenues from the participating projects reduced the proposed power rate adjustment by 7.3 percent.

Unidentified Future Transmission Investments

The repayment study in the April 1979 brochure included an estimated unidentified future transmission investment of about $71 million in the 1981–1984 period. The customers recommended that the $71 million be deleted. Pub. L. 84–485 authorized specific storage units, specific

participating projects, and transmission facilities related to the foregoing, but did not specify any particular transmission facilities. In the 1958 repayment study and in all repayment studies since then, an amount has been included for unidentified transmission facilities.

While the customers' interpretation of Pub. L. 84–485 may have some merit, there is nothing unreasonable about the interpretation of the Secretary of the Interior which was made contemporaneously with the enactment of Pub. L. 84–485. Congress intended a certain repayment policy and the Secretary of the Interior's contemporaneous interpretation of congressional intent in the first repayment study should carry great weight. On this basis, it has been concluded that the historic policy, which was followed by Western in the current rate adjustment proposal, is the most reasonable interpretation of the law.

However, in an effort to reduce the impact on rates, Western restudied the matter and decided that the $71 million of unidentified transmission facilities should be deferred from the 1981–1984 period to the 1990–2020 period, with approximately one-seventh of the cost being placed in service every 5 years. The effect of this change was to reduce the proposed power rate adjustment by about 3.4 percent.

Summary of August 1979 Changes

A summary of the changes made in the August 1979 study as compared to the August 1978 study is tabulated below:

Item	Decrease in proposed rate adjustment (percent)
Eliminate escalation of future wheeling expense	3.5
Apply CUP and Seedskadee power revenues to Utah and Wyoming as in repayment studies prior to 1973	7.3
Defer unidentified future transmission investments from 1981–1984 period until 1990–2020 period	3.4
Total decrease	14.2

The result of the above was to increase the existing rate by 1.56 mills/kWh (23.8 percent) instead of by the 2.49 mills/kWh (38 percent) stated in the April 1979 brochure.

Costs for the Animas-La Plata, San Miguel and West Divide Projects

Subsequent to the September 5, 1979, forum, Western discovered that, contrary to a statement in the April 1979 rate brochure indicating that all costs were at 1977 price levels, the investment costs of all except three of the participating projects were at 1976 price levels. The costs of the three projects (Animas-La Plata, San Miguel, and West Divide) were at 1967 price levels.

The investment costs of these three projects were indexed to January 1976 price levels and another revised repayment study was run in February 1980. This second revision showed that an overall rate increase of 1.69 mills/kwh (from 6.55 mills/kWh to 8.24 mills/kWh) or 25.8 percent was needed, 2 percent higher than the previously revised proposed rate.

Repayment Issues

Other public comments were received which were critical of a number of assumptions made in the repayment study. The areas of comment are discussed below.

Inclusion of Future Projects in Repayment Study

The primary thrust of a number of the public comments relating to the repayment study revolved around whether or not all participating projects which have been authorized by Congress should be included in the repayment study. This concern has apparently emerged due to the amount of time which has elapsed between authorization and construction.

Several customers suggested that the proposed rate increase be based on a repayment study which excludes the costs of participating projects not yet in service or nearing completion, and that future or "stepped" rate increases be made as the projects reach or approach the inservice dates. It is clear, however, from the legislative history of Pub. L. 84–485, which established CRSP, and from the first repayment study—which provides a contemporaneous interpretation and guide for repayment procedures, that it was the intent of Congress that current rates be based on the inclusion of all authorized participating projects in CRSP repayment studies. The inclusion of all authorized participating projects is legislatively and administratively proper.

The appropriateness, within legal restraints, of including each of the participating projects has been considered. Only one authorized participating project has ever been deauthorized. The Pine River Extension was authorized by Congress on April 11, 1956, by Pub. L. 84–485, and was deauthorized by Congress on September 30, 1968, by Pub. L. 90–537. No costs have been included for the Pine River Extension. The status of four other participating projects, although still authorized, is subject to question. The entire LaBarge Project and the irrigation development on the Seedskadee Project have both been indefinitely deferred and Congress has been so informed. Costs included for these two projects are based on their indefinitely deferred status. More recently, President Carter has recommended deauthorization of the Fruitland Mesa and Savery-Pot Hook Projects; however, no legislative action has been taken to deauthorize either of the projects and, although no funds have been expended on them since the President's recommendation, they have not been declared to be indefinitely deferred. Except for the delay, their status remains as it was before the President's recommendation, and their costs have accordingly been included. A more complete summary of the status of these four projects is given below. The continued authorization of the other authorized participating projects is not at this time in doubt.

LaBarge Project

The project was authorized by the Congress on April 11, 1956, by Pub. L. 84–485. On February 2, 1961, the Regional Director, U.S. Bureau of Reclamation, Salt Lake City, Utah, wrote the Commissioner of the Bureau of Reclamation recommending that construction not be undertaken. The Commissioner concurred by letter of February 27, 1961, in the recommendation "* * * that construction of the project not be undertaken at this time * * *.In the CRSP 9th Annual Report to Congress for FY 1965, the Bureau of Reclamation stated that construction had been deferred indefinitely, as suggested in the Senate Subcommittee Appropriation Hearings for FY 1962, page 216. Tables of repayment data for the LaBarge Project follow the discussion of the Savery-Pot Hook Project.

Seedskadee Project

The project was authorized by Congress on April 11, 1956, by Pub. L. 84–485. Congressional hearings on the Riverton and Eden Projects in 1962 brought to light that serious financial and economic problems were encountered by farmers on these high-altitude irrigation projects. As a result of these hearings, the Commissioner of the Bureau of Reclamation issued a stop order on May 21, 1962, suspending construction of irrigation features of the Seedskadee Project until a review of Wyoming reclamation projects could be accomplished. The Secretary of the Interior on August 10, 1962, appointed the Wyoming Reclamation Projects

Survey Team to analyze problems on Wyoming projects and recommend possible solutions. One of the recommendations made by the survey team was that a development farm be established on the Seedskadee Project. Data collected from the operation of the development farm resulted in the conclusion that only 34,000 acres of the original 58,000 acres were suitable for irrigation, that even the 34,000 acres would be marginally feasible, and that the developed project water supplies should be made available for municipal and industrial (M&I) and other purposes. As a result of the investigations, and because of the desire of the State of Wyoming to purchase Seedskadee water for M&I purposes, the United States sold the State all the storage space in the Fontenelle Reservoir excluding the last 65,000 acre-feet. The State was given the first right of refusal to the last 65,000 acre-feet upon notice of its availability for M&I purposes. All the foregoing is documented in the October 8, 1973, letter from the Assistant Secretary of the Interior to the President, with copies to the President of the Senate, to the Speaker of the House, and to the Chairman of the Senate and House Committees on Interior and Insular Affairs.

In December 1974, the Bureau of Reclamation in Salt Lake City, Utah, prepared a cost allocation report on the Seedskadee Project. After review by various offices of the Bureau of Reclamation and by the Wyoming reclamation representative, the report was submitted to the Commissioner of the Bureau of Reclamation for use in a report to the Congress as required by section 6 of Pub. L. 84–485. The report stated that "irrigation development has been indefinitely deferred * * *." and established revised repayment schedules. Tables of repayment data for the Seedskadee Project follow the discussion of the Savery-Pot Hook Project.

Fruitland Mesa Project

The project was authorized on September 2, 1964, by Pub. L. 88–568. The Definite Plan Report was approved October 9, 1967, and a repayment contract with Fruitland Mesa Water Conservancy District (District) was validated September 29, 1969. As a result of new water supply studies and changes in plan formulation, the Definite Plan Report and contract with the District were in the process of revision in early 1977. On April 18, 1977, the President recommended deauthorization of the project. No action has been taken to deauthorize the project and no funds have been expended on the project since that time. Tables of repayment data for the Fruitland Mesa Project follow the discussion of the Savery-Pot Hook Project.

Savery-Pot Hook Project

The project was authorized on September 2, 1964, by Pub. L. 88–568. The Definite Plan Report was approved December 2, 1971. As a result of changes in plan formulation, the Definite Plan Report was in the process of revisions in early 1977. Repayment contracts with the Pot Hook and Little Snake Water Conservancy Districts were also being negotiated in early 1977. On April 18, 1977, the President recommended deauthorization of the project. No action has been taken to deauthorize the project and no funds have been expended on the project since that time. Tables of repayment data for the LaBarge, Seedskadee, Fruitland Mesa, and Savery-Pot Hook Projects follow below.

Tables

LaBarge Project

1964—Data before deferment:	
Irrigation repaid by:	
Irrigators	250,000
Apportionment (power)	1,501,000
Others	0
Municipal and industrial	0
Power	0
Nonreimbursable	65,000
Total	1,816,000
1965—Data after deferment:	
Irrigation repaid by:	
Irrigators	0
Apportionment (power)	136,000
Others	0
Municipal and industrial	0
Power	0
Nonreimbursable	86,000
Total	222,000
1977—Repayment study:	
Irrigation repaid by:	
Irrigators	0
Apportionment (power)	136,000
Others	0
Municipal and industrial	0
Power	0
Nonreimbursable	86,000
Total	222,000

Seedskadee Project

1964—Data before deferment:	
Irrigation repaid by:	
Irrigators	7,300,000
Apportionment (power)	39,672,000
Others	402,000
Municipal and industrial	908,000
Power	3,574,000
Nonreimbursable	7,724,000
Total	59,580,000
1965—Data after deferment:	
Irrigation repaid by:	
Irrigators	0
Apportionment (power)	1,428,000
Others	411,000
Municipal and industrial	12,310,000
Power	3,574,000
Nonreimbursable	16,586,000
Total	34,309,000
1977—Repayment study:	
Irrigation repaid by:	
Irrigators	0
Apportionment (power)	1,228,000

Seedskadee Project—Continued

Others	411,000
Municipal and industrial	12,310,000
Power	3,574,000
Nonreimbursable	16,984,000
Total	34,507,000

Fruitland Mesa Project

1977—Repayment study:	
Irrigation repaid by:	
Irrigators	3,790,000
Power	80,256,000
Others	181,000
Municipal and industrial	0
Power	0
Nonreimbursable	4,373,000
Total	88,600,000
1978—22nd annual report:	
Irrigation repaid by:	
Irrigators	3,790,000
Power	80,256,000
Others	181,000
Municipal and industrial	0
Power	0
Nonreimbursable	4,163,000
Total	88,390,000

Savery-Pot Hook Project

1977—Repayment study:	
Irrigation repaid by:	
Irrigators	5,086,000
Power	66,630,000
Others	869,000
Municipal and industrial	0
Power	0
Nonreimbursable	2,315,000
Total	74,900,000
1978—22nd annual report:	
Irrigation repaid by:	
Irrigators	5,086,000
Power	66,630,000
Others	869,000
Municipal and industrial	0
Power	0
Nonreimbursable	2,340,000
Total	74,925,000

The total cost of all the participating projects is nearly $2,553 million, and the amount to be prepaid from power revenues is nearly $1,090 million.

Cost Evaluation Period

A number of customers raised the issue of whether section 730 DM 4 of the Department of the Interior Departmental Manual (now also Department of Energy Order RA 6120.2), which was made applicable to Western ratemaking procedures by the DOE, should not limit the period of analysis to a maximum of 5 years. This argument is without merit as 730 DM 4 by its terms makes exceptions for both statutory requirements and for interpretations by the Secretary of the Interior. Both the statute and the interpretation of the Secretary of the Interior made contemporaneously with enactment of the statute fall within this 730 DM 4 exception. In any event, the statute would govern even if 730 DM 4 did not provide such an exception.

Federal Projects Use Repayment Basis to Set Revenue Levels

Further comments raised the issue of whether the Federal Energy Regulatory Commission restrictions on the inclusion of the costs of future facilities in ratesetting for private utilities would restrict FERC approval of the CRSP rates.

Federal power rates are required by law to be established on a repayment basis; that is, on a showing generally that annual operating costs will be recovered in the year in which they are incurred and that all investment will be amortized within a reasonable period of years, which has been determined to be 50 years in most cases.

This requires an analysis of future revenues and costs—in this case to the year 2052—as well as historical revenues and costs. The methodology differs substantially from the ratesetting approach based on cost-of-service studies as used in the private utility sector.

Benefits Versus Costs

Some customers questioned whether the benefits of unbuilt projects would exceed the costs and/or outweigh the environmental consequences.

At one time, all authorized unbuilt projects had benefit-cost analyses indicating that the benefits exceeded the costs. Shortly before construction begins, new benefit-cost analyses and environmental impact statements will be made, based on the final plan adopted. It is not possible at this time to accurately predict what the final results will be.

Apportionment of Revenues

In the repayment studies, revenues in the Upper Colorado River Basin (Basin) fund for irrigation assistance to authorized participating projects are apportioned to the States by the percentages specified in section 5(e) of Pub. L. 84–485. This results in a credit to some States in excess of that required for currently authorized participating projects. Power customers refer to this excess as "surplus surplus" and, to prevent it, advocate application of the revenues to repayment of each participating project feature as the feature repayment comes due. The power customers and Western made repayment studies based on the originally proposed rate adjustment, which show that the method advocated by the customers would have reduced the 38-percent rate adjustment to about 19.8 percent. Western made a similar study using the 25.8-percent increase as a base, and it showed that the method advocated by the customers would reduce the rate adjustment from 25.8 percent to about 15.1 percent.

It is clear that this "surplus surplus" will accrue in the future because Pub. L. 84–485 requires that certain revenues in the Basin fund are to be apportioned among the States for repayment of the participating projects.

The law prohibits the use of revenues apportioned to any State from being used in any other State without the consent of the legally constituted authority of the State to which they are apportioned.

Western met with the governors of the four Upper Basin States to inform them of the need for the rate adjustment and the appropriate provisions of the law. Subsequently, on October 2, 1979, the governors of the affected States adopted the recommendation of the September 17, 1979, resolution passed by the Upper Colorado River Commission that they "* * * support the position that the proposed power rate adjustment for the marketing of Colorado River Storage Project power be established in accordance with the requirements of Pub. L. 84–485, as amended, to achieve the purposes of the Act * * *." While the adoption of this resolution does not rule out the possibility of a State with surpluses allowing those surpluses to be used in another State, it does preclude the use of such a possibility in the present rate adjustment.

Energy Losses

Several customers questioned using energy losses of 7 percent of the energy delivered at designated delivery points and suggested that it should be about 3 to 5 percent instead. CRSP's average percent loss of energy delivered to designated delivery points from 1972 through 1978 (excluding the drought year of 1977) is 7.38 percent; therefore, the 7 percent as used in the rate study seems reasonable.

Diversity Versus Capacity Losses

Some customers suggested that diversity may exceed capacity losses and that this should be analyzed. Western looked at the 1972–1978 period (excluding the 1977 drought year) and found that, in some of the years, the diversity exceeded losses and in other years, the diversity was less than losses. On the average for the 6-year period, the diversity exceeded the losses by 22 MW in the summar and 2 MW in the winter. With the exclusion of the summer of 1976 during which there was an extraordinarily high diversity (in addition to excluding the 1977 drought year), the diversity varied between 35 MW higher and 30 MW lower than losses. On the average, the diversity exceeded the losses by 8 MW in the summer and 2 MW in the winter. In view of the foregoing, it appears that the assumption of diversity equaling capacity losses is reasonable.

Depletions

Some customers suggested that the water depletions used in the power repayment study are too high because they include depletions for future participating projects and also for unidentified developments. The customers also commented that all possible M&I revenues from the sale of water (i.e., depletions for M&I use) are not included, and that, if included, the required power rate would decrease.

As stated elsewhere in this order, Pub. L. 84–485 requires that the study must include all authorized projects. The depletions have been developed accordingly, plus incorporating the reasonable assumption that the pressures of a growing population will eventually result in water developments utilizing each State's entitlement of the flow of the Colorado River. These developments may not necessarily be Federal projects, but projected water demands indicate that the water will be used. Because of uncertainties about the outcome of the President's recommendation to deauthorize the Fruitland Mesa and Savery-Pot Hook Projects, depletions for those two projects were omitted from the FY 1977 hydrological study, which later was used as the basis for the CRSP power repayment study. However, the depletions used in the hydrology study included unidentified depletions which, except for the one year 1990, exceeded the magnitude of the depletions for the Fruitland Mesa and Savery-Pot Hook Projects. As discussed above, these projects have not yet been deauthorized, and their costs are included in the power repayment study.

M&I revenues from storage units in excess of costs allocated to M&I are apportioned to the States for irrigation assistance. However, M&I water users of participating projects pay only their allocated costs and do not assist in the repayment of the irrigation allocation; therefore, future depletions caused by M&I water use will not result in extra revenue to reduce the power rate.

Replacements

The customers suggested that, since replacement factors used in the rate study were developed in 1969, replacement cost estimates should be reevaluated. It is true that the factors for replacements were developed in 1969. However, these factors were based on

the historical service lives of the equipment; and while updated experience may modify some of the service lives, it is unlikely that there would be a significant change. Western and the Service are currently in the process of updating the replacement factors, and any revisions will be reflected, when available, in future power repayment studies.

Power Revenue Assistance to Irrigation Projects

Pursuant to enabling legislation, CRSP power revenues must provide assistance for irrigation projects whereas enabling legislation for Parker-Davis and Boulder Canyon Projects does not provide for such assistance. The power rates proposed for each project must be adequate to effect repayment as contemplated by its authorizing legislation. Such legislation does not always allow uniformity among the projects as to what costs must be paid from power revenues and in methods for determining power rates. While power revenues from the Parker-Davis Project are not used for irrigation assistance, they are used to repay investment in noninterest-bearing electrical facilities used to support irrigation on several projects, as well as to repay certaini costs associated with the Mexican Water Treaty. Revenues from the Boulder Canyon Project are not used to repay costs of irrigation projects. Repayment on both projects is in accordance with authorizing legislation, and Western has made no changes in either study.

M&I Water Rates and Irrigators' Ability To Repay

Some customers suggested that M&I rates should be raised when power rates are increased and that the irrigators' ability to repay should also be revised at the same time. The M&I rate for water from mainstem CRSP reservoirs was set by Service policy to recover construction costs allocated to M&I water plus contingencies and operation and maintenance (O&M). The rates are fixed for the term of the contracts. Upon the expiration of these contracts, the need for changing the rates will be explored. The M&I rates for water from participating projects are set to repay the costs allocated to M&I plus O&M. All contracts for irrigation water on participating projects require the water users to repay a fixed amount of investment plus operation, maintenance, and replacements (OM&R). The irrigators and participating projects' M&I water users automatically pay any increased costs of OM&R.

Reserves

One of the customers suggested that the amount assumed for reserves is too high. The reserve assumed for the repayment study was 10 percent of the load, a percent factor that has been used in previous repayment and other studies. The Western Systems Coordinating Council (WSCC) power supply design criteria recommend that reserve capacity should meet or exceed at least the sum of the capacity associated with the two largest risks or the largest risk plus 5 percent of load. A comparison between the reserves, as used in the CRSP rate study and the WSCC standard for the year 1990, is as follows:

Rate study reserves—144 MW
WSCC standard—216 MW

From this comparison, it appears that the reserves as used in the repayment study are not too high.

Extraordinary O&M Expenses

One customer suggested that the extraordinary O&M expense in the repayment study in FY 1979 at Glen Canyon and Flaming Gorge should be amortized over a reasonable period instead of in the year it occurs. The extraordinary O&M expenses for spillway tunnel repairs at Flaming Gorge and for road construction at Glen Canyon totaled $800,000 in FY 1979. Amortizing this cost over several years would have no effect on the power rate if the project interest rate is used. If the present-day interest rate were used, the power rate would be increased slightly. Since by law the project interest rate is used, no change appears needed in the study.

Present Status of CRSP Repayment

Some customers stated that the CRSP is $87 million ahead of its required repayment of Federal investment. However, the $87 million is the total amount through FY 1977 that has been applied to repayment of storage units' investment costs which are allocated to power. CRSP generally has 50 years in which to repay each investment, but cannot wait until the last year for each investment and then repay the whole thing. This would cause sudden and severe changes of rates. Instead, CRSP spreads the repayment over the 50 years (paying highest interest-bearing investments first to the extent possible) in such a way as to maintain as level (and low) rates as possible. Based on CRSP repayment criteria and the power repayment study, repayment of Federal investment is behind instead of ahead of schedule.

Repayment of Salinity Control Construction Costs

Some customers recommended that, instead of assuming in the study that the interest-free salinity control construction costs would be repaid in 50 equal annual installments, the study should have been based on deferring such repayment until interest-bearing costs are repaid. This would eliminate about $3 million in interest payments.

Pub. L. 93–320 provides that, among other things, the portion of the salinity control costs allocated to the Basin will be paid by CRSP power revenues, and furthermore that "* * * the Secretary is authorized to make upward adjustments in rates * * * as soon as practicable and to the extent necessary to cover the costs of construction, operation, maintenance, and replacement of units * * * Provided, That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units in the Colorado River Basin * * *"

In early 1976, the then Bureau of Reclamation sought advice from the Regional Solicitor of the Department of the Interior on this matter. By a memorandum dated April 13, 1976, the Solicitor advised the Regional Director that in view of the provisions of Pub. L. 93–320 quoted above, the repayment of salinity control construction costs could not legally be delayed until after noninterest-bearing costs are repaid. Therefore, CRSP repayment studies made since 1976 have included repayment of salinity control construction costs in 50 equal annual installments.

Uprating the Generators at Glen Canyon Powerplant

Some customers suggested that the additional capacity at Glen Canyon Powerplant due to uprating the generators should have been included in the February 1980 repayment study and that, based on data from power repayment studies for the CRSP 23rd Annual Report (after FY 1979), the sale of such added capacity would have increased the revenues by more than twice those needed to counteract the increased costs of the three participating projects added in the February 1980 revised repayment study.

The power repayment studies for the proposed rate increase have for the most part been based upon conditions that existed as of the end of FY 1977, when the CRSP 21st Annual Report was prepared. At that time, maintenance funds were budgeted for future replacement of Glen Canyon generator

stator windings and rotor pole piece collars because of normal wear and tear. However, the Service had not investigated the matter fully enough to determine whether or not the units could be uprated. When the studies for the CRSP 23rd Annual Report were made, the Service had made further investigations and operational tests, and felt it was reasonable to assume the uprating could be realized.

Therefore, the repayment study for the 23rd Annual Report included increased sales due to uprating. It should be noted that, taking the planned uprating into account as well as other changes between 1977 and 1979, the 23rd Annual Report shows the need for a rate increase greater than the 25.8 percent promulgated by this order.

Revenues From Capacity Above Lower Quartile

One group of customers suggested that capacity during water years above the lower quartile could be sold and that the effect of this should be included in the rate determination.

Power repayment studies prior to the FY 1976 studies included capacity revenues only from the long-term dependable capacity (Capacity available during the most adverse year). The present study is based on sales of capacity up to the lower quartile capability. It is possible that more capacity may be sold in some years than the lower quartile quantities, but it is also possible that in some years, less capacity may be sold then the lower quartile quantities. The lower quartile capacity is a reasonable estimate of future capacity sales for repayment study purposes.

Amortization of Parker-Davis Project Facilities

Some customers suggested that the construction costs of the portion of the Parker-Davis Project facilities paid for by CRSP revenues be repaid in the same manner as the construction costs of CRSP facilities, instead of the CRSP paying Parker-Davis Project a uniform annual amortization amount.

By Contract No. 14–06–304–1548 between the then Regions 3 and 4 of the Bureau of Reclamation (now Water and Resources Service), agreement was made that the CRSP would pay the Parker-Davis Project for contruction repayments in equal annual amortization amounts based on 3-percent interest and a 30-year repayment period. The contract has been transferred to Western, and the contract provisions are used to develop the payment used in the CRSP repayment study. Since the 3-percent interest is higher than the interest rates of CRSP facilities, except central Utah, application of the general rules for CRSP repayment; i.e., repay highest interest-bearing costs first, would probably show a small reduction in the magnitude of the CRSP power rate increase needed. However, the change would be very minor, since the total construction cost involved is less than $3 million and the 3-percent interest rate is only slightly higher than the 2⅞-percent interest rate of the major portion of CRSP investments.

Increase in Investment Versus Increase in Required Irrigation Assistance

One group of customers pointed out that, in the February 1980 power repayment study, the investment costs of the Animas-La Plata, San Miguel, and West Divide participating projects increased by only 61 percent, whereas the required irrigation assistance to the aforementioned projects from power and M&I revenues increased by 80 percent. The customers claimed that the disproportionate increase of irrigation assistance as compared to investment is improper.

The reason why the required irrigation assistance increased by a greater percentage than did the investment costs is that the revised costs shown in the repayment study are based partly on cost indexing and partly on revised plan formulations for the participating projects. The irrigators' ability to repay did not increase in proportion to the cost increases. Thus, these changes result in the irrigation assistance being increased accordingly.

Rate Design Issues

Description of the Design of the Rates

Much of the CRSP cost paid by power revenues, such as aid to irrigation, is not normally considered to be a cost of service in the usual sense. The CRSP power is sold at the rate required to pay operating costs and to recover the costs specified in Pub. L. 84–485 and in Pub. L. 93–320. The rate schedule also has a provision that unauthorized overruns shall be billed at 10 times the base rate. Although this provision is intended as an incentive for the customer to find supplemental power suppliers, it may encourage energy conservation to some minor extent.

The CRSP firm-power rate includes a capacity component and an energy component. A cost classification analysis was made by assigning various costs to the two components. The main costs assigned to the capacity component include: power capital and replacement investments, interest on power investments, irrigation investments of the storage units to be repaid by power revenues, and one-half the irrigation aid to participating projects. The major costs assigned to the energy components include: O&M, firming-energy purchases, power wheeling, salinity construction costs, and one-half the irrigation aid to participating projects. Results of the cost classification analysis indicated that revenues from the sale of capacity and energy should be given approximately equal weight.

A low demand rate would probably benefit those customers who purchase CRSP peaking capacity, but could be detrimental to project irrigation pumpers. In consideration of the cost classification and in order to minimize discrimination among types of power users, it is felt that the new power rate should be based on equal revenues from capacity and energy sales at 58.2-percent load factor. The first rate established in 1962 also was on this basis. The energy component has been rounded off to the nearest 0.1 mill/kWh and the capacity component to the nearest 0.5 cent/kW-month, resulting in a revised proposed CRSP rate of 4.1 mills/kWh and $1.76/kW-month. Because of rounding in this fashion, the revised repayment study of February 1980 indicated a small surplus (approximately $2.1 million) in power revenues above the requirements of the law by the critical year 2046.

Adjustment Provision For Purchased Energy Costs

During the April 1979 public information forums Western announced that it was considering the possibility of including, in the new rate schedules, provision to pass through purchased power costs. Such a provision was under consideration because during periods of adverse hydro conditions large purchases are required, and funds for such purchases can be quickly depleted without some means of quick (i.e., monthly) recovery. However, such a provision has not been included for the following reasons:

1. Purchases are often made in the autumn and winter as a hedge against the possibility of poor water conditions in the following spring and summer. It is often late summer before the extent to which such purchases were necessary for firming is known. Purchases may turn out to have been in excess of firming requirements and, to that extent, are available for other uses, such as oil conservation sales. For this reason the purchased power costs cannot be passed on at the time they are made and

at the time when the revenues are needed.

2. When firming purchases are necessary for the CRSP, they are also apt to be necessary for the Boulder Canyon Project and the Parker-Davis Project, which are downstream from the CRSP. These two projects purchase their firming requirements from the CRSP, further complicating the determination on a monthly basis of just how much of the power purchased by the CRSP is for firming the supply to and at the cost of its own firm-power customers.

3. The power repayment studies on which the rate increase is based have been prepared using average hydro conditions for energy production, and assume that revenues from the sales of surplus energy in better-than-average water years will offset the cost of the purchase of firming energy during poorer-than-average years. Implementation of a passthrough provision for purchased power costs would upset this balance.

Alternative Power Rates and Conservation

Some customers stated that the repayment study implies that the rate is being increased because of conservation desires or to bring it closer to alternative rates. As stated in the rate brochures, in presentations at forums, and in all written and verbal answers to questions, the level of the rate increase determination is based on payment of costs and investments and was not influenced by alternative power rates or conservation desires. Rather, any comparison with other power rates in the general area is to demonstrate that the proposed cost-based rates are not in excess of market value. Were project costs such that required rates would be in excess of market value, the rates would be based on the market value and the project would operate at a loss until such time as market value increased sufficiently to allow the rates to be increased to recover costs, including repayment of the deficit with interest.

Charges for Wheeling Over Parker-Davis Project System

Some customers who receive CRSP power over the Parker-Davis Project system contend that the CRSP power rate should include the cost of wheeling over that system so that they would not have to pay for such wheeling (except as a component of the CRSP rate for power). The present CRSP marketing criteria, which were adopted and published in the **Federal Register** on February 9, 1978, after consultation with the customers, include a provision that any wheeling charges over other project systems such as the Parker-Davis Project system are to be paid by the customers receiving the power. The current Parker-Davis Project rate increase proposal includes provisions for such a rate, and, under the criteria, the customers receiving the power over that system must pay the costs.

Phased Rate Increases

Some Customers recommended that the proposed rate increase, if adopted, be phased in over a period of years, citing as justification a case where the Southwestern Power Administration did so. In view of anticipated additional rate increases in future years (indeed, the preliminary 1979 power repayment study shows the need for higher rates) due chiefly to cost escalation, phasing the proposed rate adjustment over a period of years would compound the magnitude of the future rate increases. Even with a more stable economy so that future increases would not be necessary, the final phase of a phased increase would have to be higher than without the phasing because the interim phases would not be developing the required revenues. Therefore, the increase will not be phased.

Applicability of the Public Utility Regulatory Policies Act of 1978 (PURPA)

The standards set forth in the PURPA, 16 U.S.C. 2601 *et seq.* are not currently applicable to CRSP because CRSP has not had sales that were not for resale in excess of 500 million kWh in any year. Nonetheless, each of the 11 standards was considered and briefly discussed in the April 1979 brochure entitled "Colorado River Storage Project and Participating Projects—Proposed Power Rate Adjustment" and interested parties were given opportunity to comment on the discussion in writing and/or orally at the forums which were held. No comments were received. Although not subject to the PURPA standards, CRSP is complying with those standards to the extent that it can reasonably do so as discussed in the referenced brochure. The standards of PURPA have thus been considered and the determinations made.

Other Considerations

Public Comment Procedures

A number of comments reflected concern that the procedures followed by Western in promulgating the proposed rate increase did not conform to basic due-process-of-law requirements. The lack of opportunity for cross examination of witnesses and the absence of other formalities of evidentiary hearings were among the alleged deficiencies cited.

We are satisfied that the opportunities provided by Western for public information and comment were more than adequate. The reasons for the rate increase and the methodology used in developing it were fully explained. Requested information was supplied. The parties were afforded access to Western's computer program. All questions were answered. Because of the two occasions upon which changes were made, the comment period lasted more than 11 months. Formal evidentiary procedures are not required in the development and review of Federal power rates.

National Environmental Policy Act (NEPA)

A number of comments raised the issue of whether the rate adjustment is subject to provisions of the NEPA. Procedures for compliance with NEPA are applicable to CRSP ratemaking. A preliminary environmental evaluation was made for and reported in the April 1979 proposed power rate adjustment brochure. Subsequently, an environmental assessment has been made in accordance with NEPA. The environmental assessment indicates there are no significant environmental impacts expected as a result of the proposed rate adjustment.

Leavitt Act

Comments also questioned whether the Leavitt Act, which is cited in Section 4 of Pub. L. 84–485, authorized reduced rates for Indians. Section 4 of Pub. L. 84–485 provides, in relevant part, that: "(d) as to Indian lands within, under or served by any participating project, payment of construction costs within the capability of the land to repay shall be subject to the Act of July 1, 1932 [Leavitt Act] (47 Stat. 564)."

The first provision of the Leavitt Act authorizes and directs the Secretary of the Interior "* * * to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made * * *." (Act of July 1, 1932, 47 Stat. 564, 25 U.S.C. 386a). This portion of the Leavitt Act authorized the Secretary of the Interior to grant relief on a project-by-project basis from then existing obligations under the Indian Appropriations Act for Fiscal Year 1915 (Act of August 1, 1914, 38 Stat. 582, 583) to reimburse the Government for expenditures made for Indian irrigation projects. First, neither it

nor the first proviso, which defers construction costs assessed "* * * against Indian-owned lands within any Government irrigation project * * *", applied to reclamation projects. Solicitor Finney Opinion, 54 I.D. 90 (1932). Second, both portions of the act, which derived from separate bills, provide relief only from irrigation costs and do not apply to power costs. Section 4 of Pub. L. 84–485 specifically makes the Leavitt Act applicable to participating projects, which are reclamation projects. However, Pub. L. 84–485 does not extend the relief provided by the Leavitt Act. Consequently, since the Leavitt Act provides relief only from irrigation costs and not from power costs, neither Section 4 of Pub. L. 84–485 nor the Leavitt Act authorize reduced power rates for Indians.

Price Stability

There was a question whether any rate increases which Western might promulgate would be limited to a 7-percent increase by the Council on Wage and Price Stability. On March 19, 1979, the Director of the Council on Wage and Price Stability stated in the preamble to the Interim Final Price Standard that "* * * while the price standard is intended to apply to all 'Government enterprises,' any statute mandating a particular pricing policy will, of course, take precedence." Rates for CRSP power are set in accordance with the authorizing legislation which takes precedence over the wage and price guidelines.

Availability of Information

Information regarding this rate adjustment, including studies, comments, transcripts, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84147; in the office of the Administrator, Western Area Power Administration, 1536 Cole Boulevard, Golden, Colorado 80401; and in the office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Submission to the FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective November 25, 1980, Rate Schedules SP–F1 and SP–FP1. These rates shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the FERC confirms and approves these or substitute rates on a final basis, whichever occurs first.

[Rate Schedule SP–F1 Supersedes Schedule UC–F2]

U.S. DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project

Schedule of Rates for Wholesale Firm Power Service

Effective: The first day of the first full billing period beginning on or after November 25, 1980.

Available: In the area served by the Colorado River Storage Project.

Applicable: To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthy Rate

Capacity Charge: $1.76/kW of billing demand.

Energy Charge: 4.1 mills/kWh for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

[Rate Schedule SP–FP1 Supersedes Schedule UC–FP2]

U.S. DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project

Schedule of Rates for Wholesale Peaking Power Service

Effective: The first full day of the first full billing period beginning on or after November 25, 1980.

Available: Within and adjacent to the marketing area of the Colorado River Storage Project.

Applicable: To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Conditions of Service: As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity Charge: $1.76/kW of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy Charge: 4.1 mills/kWh for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For power factor: None. The customer will normally be required to maintain a unity power factor at the point of delivery.

[FR Doc. 80–23983 Filed 8–7–80; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Biomass Energy Development; Quantity of Energy Which Is Energy Equivalent of 15 Million Gallons of Ethanol

AGENCY: Department of Energy and Department of Agriculture.

ACTION: Notice.

SUMMARY: The Departments of Agriculture and Energy are prescribing the quantity of biomass energy which is equivalent to the energy contained in 15,000,000 gallons of ethanol. This action is required by Title II of the Energy Security Act.

EFFECTIVE DATE: August 4, 1980.

FOR FURTHER INFORMATION CONTACT:
Marilyn Ripin (Office of Solar Applications for Industry), Department of Energy, Room 413, 600 E Street NW., Washington, D.C. 20585; (202) 376–9707.
Don Fink (Office of the Secretary), Department of Agriculture, Room 5175, 14th and Independence Avenue SW., Washington, D.C. 20250; (202) 447–7195.

SUPPLEMENTARY INFORMATION: Section 212(g) of the Energy Security Act (ESA), Pub. L. 96–294, which was enacted on June 30, 1980, requires that, within 30 days following the date of enactment, the Departments of Agriculture and Energy jointly prescribe, for purposes of Subtitle A of Title II of the ESA, the quantity of any biomass energy which is the energy equivalent to 15,000,000 gallons of ethanol. Section 212(a) of the ESA makes an anticipated annual production capacity of this quantity of energy a dividing line for the authorities of the Department of Energy (DOE) and the Department of Agriculture (USDA) in administering the financial assistance provisions of subtitle A.

Section 203 of the ESA defines biomass as "any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and aquatic plants." As used in the ESA, "biomass energy" means any gaseous, liquid, or solid fuel produced by conversion of biomass, or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

The Departments have determined that the quantity of biomass energy which is equivalent to 15,000,000 gallons of ethanol is best expressed on the basis of British thermal unit (Btu) equivalency. This approach uses the most fundamental expression of the energy contained in 15,000,000 gallons of ethanol and provides a sound and comprehensive basis for comparing the energy content of ethanol with other forms of biomass energy. The Btu content of various chemical substances, including ethanol, can be found in standard scientific and engineering references. The number of Btu's in a gallon of ethanopl is 84,400. See: *Handbook of Chemistry and Physics*, 60th Ed., Chemical Rubber Publishing Co., Cleveland, 1979–80; *Perry's Engineering Manual*, 3rd Ed., McGraw Hill, New York, 1976. Therefore, the number of Btu's in 15,000,000 gallons of ethanol is 1,266,000,000,000. Accordingly, the Departments of Agriculture and Energy hereby determine that:

For purposes of Subtitle A of Title II of the Energy Security Act (ESA), Pub. L. 96–294, the energy equivalent of fifteen million (15,000,000) gallons of ethanol is the quantity of biomass energy (as defined in Section 203(4) of the ESA) which contains one trillion, two hundred sixty-six billion (1,266,000,000,000) British thermal units of energy.

An applicant for financial assistance will be required to demonstrate, to the satisfaction of the agency administering the financial assistance, the per unit Btu content and quantity of each form of biomass energy which he proposes to produce. The agencies anticipate that the Btu content can normally be obtained by reference to standard scientific tables. In the event that the Btu content of a form of biomass energy cannot be determined from standard reference tables, the burden of demonstrating the Btu content will rest with the applicant.

In determining the equivalent of 15,000,000 gallons of ethanol, the angencies considered various alternatives. Approaches based on the quantity of a feedstock which would produce 15,000,000 gallons of ethanol were rejected as impractical, because a given feedstock, converted to a biomass fuel other than ethanol, or to steam or electricity, might yield a different amount of energy than it would when converted to ethanol. Furthermore, section 212 speaks in terms of fuels produced, rather than feedstocks used. Determinations based on a given weight or volume of particular forms of biomass fuels were also rejected because it would be impossible to anticipate all the types of fuels which may be developed from biomass under this program and to specify appropriate weights or volumes. USDA has decided that it will also use 84,400 Btu's per gallon of ethanol in determining the energy equivalence of one million gallons of ethanol for purposes of Section 203(19) of the Act.

Issued in Washington, D.C.

John C. Sawhill,
Deputy Secretary of Energy.

Alex P. Mercure,
Assistant Secretary for Rural Development, Department of Agriculture.

[FR Doc. 80–23982 Filed 8–7–80; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59024A; FRL 1564–5]

Office of Pesticides and Toxic Substances; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 14, 1980 EPA received an exemption application for test marketing purposes from a manufacturer claiming its identity confidential. The Test Marketing Exemption (TME) number assigned to the application is T–80–24. The manufacturer also claimed the identity of the subject substance confidential and is therefore identified by the generic name alkyl metal ester. EPA has determined that the manufacturer's test marketing of the chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency grants the manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing in the manner described in the application. The exemption is effective immediately.

FOR FURTHER INFORMATION CONTACT:
Kirk Maconaughey, Notice Review Branch, Premanufacturing Review Division (PTS–794), Office of Pesticides and Toxic Substances, EPA, Washington, D.C. 20460 (426–3936).

SUPPLEMENTAL INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacure or import begins. A "new" chemical substance is one that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting

requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon appliction, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On May 14, 1980 EPA received an application for an exemption from the requirements of section 5(a) and 5(b) of TSCA, to manufacture a substance for test marketing purposes. The manufacturer's identity was claimed confidential. The exemption application has been assigned the identification number T–80–24. A Federal Register notice published on May 28, 1980 (45 FR 35895) announced the receipt of the exemption application and requested comment on the appropriateness of granting the exemption. The Agency has received no comments concerning the application. The company claimed the specific identity of the substance and its use confidential. The generic name and usr provided by the manufacturer has been used and appears in the Federal Register. The name is alkyl metal ester and the use has been given as a rearrangement catalyst.

In the test market exemption application, the manufacturer claimed all the information which was submitted as being confidential. During telephone conversations with the manufacturer such topics as manufacturing and processing operations, worker and consumer exposure, and toxicological information were discussed but all information obtained in these areas was claimed confidential. Recognizing that all pertinent information to this application has been claimed confidential, EPA has an extremely difficult task in discussing the specifics of this application in the Federal Register.

The Agency believes that the manufacturer has provided sufficient information for it to make a decision concerning this exemption. Based on toxicity information on structural analogues to the substance supplied by the manufacturer and that obtained by the Agency during its review, the Agency is not concerned about the toxicity of the substance. No toxicity information was provided on the subject substance in the application other than the results of an Ames tests, which was negative. This manufacturer intends to submit a PMN on this same substance later this year. He has indicated that toxicity testing will be conducted on the substance and that the results of that testing will be submitted with the PMN.

The Agency reviewed all information submitted and that which it obtained itself in the categories of manufacturing, processing and use and has determined that the likelihood of any risk occurring from test marketing activities of this substance is minimal. Standard industrial safety practices will be followed when handling the substance during both manufacturing and processing operations. Worker exposure will be quite limited and consumer exposure is non-existent.

Therefore based on its review of available information in the two major areas of toxicity and exposure the Agency has determined that no unreasonable risk of injury to health or the environment will result from the test marketing of this substance. Any concern expressed in either of these areas is minimal considering its limited test market activity. The Agency therefore grants the test marketing exemption.

At least 90 days prior to manufacturing this substance for commercial purposes other than test marketing or research, the manufacturer must submit a premanufacture notice (PMN) as required under section 5(a) of TSCA. This exemption is granted solely to the applicant of TME 80–24 with the following provisions:

1. That the test market period not exceed the time frame specified in the application and

2. The production volume will not significantly exceed the amount specified in the exemption application.

3. That the substance will be manufactured in a closed system as indicated in the application and that worker exposure shall not exceed the levels specified;

4. That proper precautionary data sheets shall accompany the product and should be posted for all employees to read who come into contact with the substance during its manufacture, processing, and use; and

5. That the substance will not be resold by the persons provided the substance for evaluation purposes and that the substance will only be used during test marketing for the purpose described in the exemption application.

6. Each shipment contains a statement informing the recipient that the substance shipped may only be used for the purposes allowed in the exemption.

Dated: August 1, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 23913 Filed 8–7–80; 8:45]

BILLING CODE 6560–01–M

[FRL 1564–7]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A–104) US Environmental Protection Agency.

PURPOSE: This notice lists the Environmental Impact Statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of July 28, 1980 to August 1, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from August 8, 1980 and will end on September 22, 1980. The 30-day review period for final EIS's as calculated from August 8, 1980 will end on September 8, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For public availability and/or hard copy reproduction EIS filed prior to March 1980: Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036

For hard copy reproduction or microfiche: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558–8270.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review (A–104), Environmental

Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245–3006.

SUMMARY OF NOTICE:

On July 30, 1979, the CEQ regulations became effective, pursuant to section 1506.10(a), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of July 28, 1980 to August 1, 1980 the 30-day review period will be calculated from August 8, 1980. The review period will end on September 8, 1980.

Appendix I sets forth a list of EIS's filed with EPA during the week of July 28, 1980 to August 1, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the state(s) and county(ies) of the proposed action and a brief summary of the proposed federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or EPA has approved a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, state(s) and county(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the newly established date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous notices of availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: August 5, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A–104).

Appendix I—EIS's Filed With EPA During the Week of July 28 Through August 1, 1980

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412–A, Admin. Building, Washington, D.C. 20250 (202) 447–3965.

Forest Service

Draft

Salt River Wild and Scenic Study, Tonto National Forest, Gila County, Ariz., July 28: Proposed is inclusion of a segment of the Salt River, located in the Tonto National Forest, Gila County, Arizona in the National Wild and Scenic Rivers System. The segment recommended for inclusion is 22 miles long and would include approximately 7,100 acres of adjacent lands. The alternatives consider continuing present management. (EIS Order No. 800557.)

San Francisco River Wild and Scenic Study, Apache National Forest, Greenlee County, Ariz., July 28: Proposed is inclusion of a segment of the San Francisco River, located within the Apache National Forest, Greenlee County, Arizona. The segment proposed for inclusion is 9 miles in length. Two other segments meet the criteria for a recreational river. The alternatives consider: (1) no designaion, (2) designation of all eligible segments, (3) designation of recreational segments, (4) public recommendation, and (5) designation of one of the recreational segments. (EIS Order No. 800558.)

Rural Electrification Administration

Final Supplement

River Bend Nuclear Power Station Unit 1, Trans., West Feliciana Parish, La., August 1: This document supplements an NRC final EIS, #741491, filed 9–30–74 which has been adopted by the USDA/REA. Proposed is assistance for the purchase of undivided ownership interests in the river bend Nuclear Power Station Unit 1, West Feliciana Parish, Louisiana. Assistance may also be used for construction of related transmission facilities which extend through several Parishes. The unit will consist of a boiling-water reactor, and two steam turbine generators. Exhaust steam would be cooled by mechanical cooling towers using make-up water obtained from and discharged to the Mississippi River (USDA–REA–EIS–(ADM)–80–4–F). Comments made by: EPA, DOI, AHP, COE, FERC, USDA, HEW, State and local agencies. (EIS Order No. 800571.)

Soil Conservation Service

Draft

Jumper Creek Watershed Protection, Sumter County, Fla., July 29: Proposed is a watershed protection, flood prevention, water conservation and agricultural water management plan for the Jumper Creek Watershed in Sumter County, Florida. The plan involves: (1) land treatment, (2) 16.39 miles of channel rehabilitation, and (3) installation of 7 combination water control/grade stabilization strucutres. The channel rehabilitation will involve the enlargements of 11.43 miles of previously enlarged channel and clearing and snagging along 4.96 miles of existing lateral channels (USDA–SCS–EIS–WS–(ADM)–80–1–(D)–FL). (EIS Order No. 800561.)

Civil Aeronautics Board

Contact: Mr. Steve Rothenburg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5205.

Final

Multiple Permissive Entry Policy, Programmatic, July 31: This statement addresses the overall impacts of the deregulation of aviation routes and rates. Proposed is the granting of multiple permissive authority to all fit, willing, and able applicants for passenger air service for particular city-pair markets. The alternatives consider the status quo; a general policy of multiple, permissive entry to all fit, willing and able applicants; licensing by traffic predictions in particular markets; and other criteria. Comments made by: EPA, Local Agencies, Groups, Individuals and Businesses. (EIS Order No. 800569.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

Garapan Flood Control, Saipan Island, U.S. Territory, July 31: Proposed is a flood control plan for the Village of Garapan on Saipan Island, part of the Commonwealth of the Northern Mariana Islands. The alternatives are: 1) channelizing the floodflow, 2) permanent evacuation, and 3) relocation. The channel alignments all include a channelized section along the eastern edge of the West Coast Highway, involving one of three different outlet alignments. The relocation plan involves the physical removal of all damageable structures located in the floodplain. Cooperating Agency is DOI. (Honolulu District.) (EIS Order No. 800565.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6300.

The following is a community development block grant statement prepared and circulated directly by applicant pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

South University Industrial Park, UDAG, Bernalillo County, N. Mex., July 30: Proposed is the awarding of a UDAG for the South University Industrial Park in the City of Albuquerque, Bernalillo County, New Mexico. The grant would be used for the construction of municipal water and sanitary

sewer lines and The Cooperating Agency is DOC. Comments made by: EPA, COE, DOI, Local Agencies. (EIS Order No. 800564.)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Bureau of Land Management

Draft

Luke Air Force Range, Continued Use, Maricopa, Yuma, and Pima Counties, Ariz., July 31: Proposed is the renewal, for twenty years, of a 502,792 acre withdrawal on the Luke Air Force Range (LAFR) located in Maricopa, Pima and Yuma Counties, Arizona. The LAFR consists of 2,669,225 acres and includes the Cabeza Prieta National Wildlife Refuge. Associated with the withdrawal the USAF would continue operating the range, and with the Marine Corps, would upgrade target facilities and install telemetry equipment to improve aircrew training. The cooperating agency is USAF. (EIS Order No. 800566.)

E. San Diego County Planning Area Management, San Diego County, Calif., July 28: Proposed is a grazing and wilderness management plan for the Eastern San Diego County Planning Unit (McCain Valley) in the El Cento Resource Area of the Riverside District, California. The planning area encompasses 98,902 acres of public land. Grazing management would be implemented on 467,903 acres, and wilderness designation recommended for 40,086 acres. The grazing alternatives include: (1) no grazing, (2) intensive use, (3) limited use, and (4) no action. The wilderness alternatives are: (1) maximize wilderness, (2) no wilderness, and (3) limited wilderness. (EIS Order No. 800556.)

National Park Service

Draft

Voyageurs National Park, Wilderness Recommendation, St. Louis and Koochiching Counties, Minn., July 31: Proposed is a wilderness recommendation for the Voyageurs National Park in St. Louis and Koochiching Counties, Minnesota. The preferred alternative involves: 1) 91,653 acres to be designated for potential wilderness addition, 2) access allowed for floatplanes and skiplanes on all major lakes, and 3) permitting snowmobile use and motorboating on major lakes. The remaining alternatives consider designating varying acreage in the park as wilderness. (DES–80–49.) (EIS Order No. 800567.)

Water and Power Resources Services

Draft

Central Valley Project Reauthorization, several counties in California, July 29: Proposed is the reauthorization of the Central Valley Project (CVP) and the CVP/State Water Project Coordinated Operating Agreement. Considered are: 1) all viable alternative uses of the uncontracted water supplies of the presently authorized CVP, and 2) the construction of certain works related to fish and wildlife and Delta water quality. The Cooperating agencies include the FWS and the State of California. (DES–80–47.) (EIS Order No. 800562.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 4007th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Final

Willamette R. Bridges, OR–22 Willamina-Salem Hwy., Marion and Polk Counties, Oreg., August 1: Proposed is the replacement of the Center Street Bridge and the widening of the Marion Street Bridge both on OR/22, the Willamina-Salem Highway in Marion and Polk Counties, Oregon. The bridges span the Willamette River. Other features of the project will include: 1) two new bridges on the east side; 2) modifications to the existing Front Street ramp; 3) changes in the Center Street, Marion Street, Wallace Road/Edgewater Street, and Wallace Road/OR–22 ramps; and 4) other features. (FHWA–OR–EIS–79–10–F.) Comments made by: DOI, DOT, EPA, USDA, AHP, State and Local Agencies, Businesses. (EIS Order No. 800570.)

Walnut Boulevard, Kings Blvd. to Highland Drive, Benton County, Oreg., July 29: Proposed is completion of development of Walnut Boulevard as a continuous arterial route in the City of Corvallis, Benton County, Oregon. The project begins at Harrison Boulevard and extends to NW 9th Street. The project length is 0.75 miles. The alternatives considered are build and no build. Features of the build alternative include four traffic lanes throughout its length, additional left-turn lanes at intersections with major cross streets, a bike path, and a walkway. The cooperating agency is the State of Oregon. (FHWA–OR–EIS–79–05–F.) Comments made by: USDA, DOE, EPA, DOI, State Agencies. (EIS Order No. 800560.)

Final

Kauai Belt Road, Kalihiwai to Princeton (F–1), Princeton, Hawaii County, July 28: Proposed is the improvement of the Kauai Belt Road from Kalihiwai to Princeton, County and Island of Kauai, Hawaii. Interim maintenance repair for several of the one-lane bridges is also planned. This EIS finalizes a portion of the project addressed in the draft EIS, #770440, filed 4–6–77, which extends from Kalihiwai to Haena. When certain issues are resolved a supplemental EIS will be filed concerning Agency is the State of Hawaii. (FHWA–HI–EIS–79–03–F.) Comments made by: AHP, DOI, HEW, HUD, EPA, DOT, USDA, State and Local Agencies, Groups, Individuals, and Businesses. (EIS Order No. 800559.)

EIS's Filed During the Week of July 28 Through Aug. 1, 1980

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date filed	Originating agency No.
Hawaii	Princeton	Final	Kauai Belt Road, Kalihiwai to Princeton (F–1)	800559	July 28, 1980	DOT
Arizona	Several	Draft	Luke Air Force Range, Continued Use	800566	July 31, 1980	DOI
	Gila	Draft	Salt River Wild and Scenic Study Tonto NF	800557	July 28, 1980	USDA
	Greenlee	Draft	San Francisco R. Wild and Scenic Study, Apache NF.	800558	July 28, 1980	USDA
California	Several	Draft	Central Valley Project Reauthorization	800562	July 29, 1980	DOI
	San Diego	Draft	E. San Diego County Planning Area Management	800556	July 28, 1980	DOI
Florida	Sumter	Draft	Jumper Creek Watershed Protection	800561	July 29, 1980	USDA
Louisiana	West Feliciana	Suppl	River Bend Nuclear Power Station Unit 1, Trans. (FS).	800571	Aug. 1, 1980	USDA
Minnesota	Koochiching	Draft	Voyageurs National Park, Wilderness Recommendation.	800567	July 31, 1980	DOI
	St. Louis	Draft	Voyageurs National Park, Wilderness Recommendation.	800567	July 31, 1980	DOI
New Mexico	Bernalillo	Final	South University Industrial Park, UDAG	800564	July 30, 1980	HUD
Oregon	Benton	Final	Walnut Boulevard, Kings Boulevard to Highland Drive.	800560	July 29, 1980	DOT
	Marion	Final	Willamette R. Bridges, OR–22 Willamina-Salem Hwy.	800570	Aug. 1, 1980	DOT
	Polk	Final	Willamette R. Bridges, OR–22 Willamina-Salem Hwy.	800570	Aug. 1, 1980	DOT
Programmatic		Final	Multiple Permissive Entry Policy	800569	July 31, 1980	CAB
U.S. Territory		Draft	Garapan Flood Control, Saipan Island	800565	July 31, 1980	COE

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Waiver/ extension	Date review terminates
DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Bldg., Washington, D.C. 20250, (202) 447-3965	Salt River Wild and Scenic River Study, Gila County, Tonto NF, Arizona.	Draft 800557	Aug. 8, 1980	Extension	Oct. 23, 1980.
	San Francisco River, Wild and Scenic Study, Greenlee County, Apache NF, Arizona.	Draft 800558	Aug. 8, 1980	Extension	Oct. 23, 1980.
DEPARTMENT OF INTERIOR					
Mr. Bruce Blanchard, Director, Office of Environmental Quality, Room 7274, Department of HUD, 451 7th Street, S.W., Washington, D.C. 20240, (202) 343-3891	CVP and CVP/State Water Project, Coordinated Operating Agreement.	Draft 800562	Aug. 8, 1980	Extension	Sept. 29, 1980.
	Luke Air Force Range, Continued Use of Public Lands, Arizona.	Draft 800566	Aug. 8, 1980	Extension	Oct. 6, 1980.
	Voyageurs National Park Wilderness Recommendation, St. Louis and Koochiching Counties, New Mexico.	Draft 800567	Aug. 8, 1980	Extension	Oct. 1, 1980.
DEPARTMENT OF ENGINEERS					
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army of Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121	Cane Creek, Orange County, North Carolina.	Draft 800504	July 18, 1980	Extension	Sept. 15, 1980.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contract	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Date of withdrawal
DEPARTMENT OF COMMERCE				
Andrew E. Kauders, EIS Coordinator, Room 7217, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-4208.	Riverfront Entertainment Center, Jeffersonville, Indiana.	Draft 790361	Apr. 13, 1979	Aug. 8, 1980.

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in FEDERAL REGISTER	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contract	Title of report	Date made available to EPA	Accession No.
CORPS OF ENGINEERS			
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army of Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Grand Isle and Vicinity, Changes in Construction and Maintenance Plan, Louisiana.	July 19, 1980	800554
	Harry S. Truman Dam and Reservoir, Downstream Measures, 404(b)(1) Evaluation.	July 28, 1980	800555

Appendix VI.—*Official Correction*

Federal agency contract	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Correction
None.				

[FR Doc. 80-23987 Filed 8-7-80; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Investigation of the Effects of Skip Interference on Operations at 35 MHz in the Domestic Public Land Mobile Radio Services

The Office of Science and Technology announces the limited availability of Technical Memorandum No. 12 "Investigation of the Effects of Skip Interference on Operations at 35 MHz in the Domestic Public Land Mobile Radio Services."

Abstract

In Docket 80-189 it is proposed to adopt rules which would permit one-way signaling (paging) stations to be licensed on certain 35 MHz frequencies. The frequencies involved are allocated exclusively to two-way radio telephone service under the present Rules, and use of these frequencies has heretofore been partitioned in a system of zones designed for protection against skip interference.

It is proposed that the zoning restrictions be removed, and hence there is concern about the possibilities that skip interference may be harmful to paging systems operating under the liberalized rules. In addition since it is proposed to permit two-way operations to continue, there is concern about the possibilities for harmful skip interference to existing systems.

This Memorandum estimates the potential harm of skip to DPLMRS operations by comparison with accepted standards respecting mutual interference in neighboring co-channel systems.

Availability

Technical Memorandum No. 12 is on file at the Commission as part of Docket 80-189 and is available for public inspection. Copies are available in Room 7002, 2025 M Street, N.W., or by sending self-addressed label to "Jack Linthicum, Technical Information Officer, Office of Science and Technology, Washington, D.C. 20554, Attention: OST/TM-12."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-23923 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-366 et al.]

Absolutely Great Radio, Inc., et al.; Designating Applications For Consolidated Hearing On Stated Issues

Hearing Designation Order

Adopted: June 26, 1980.

Released: July 31, 1980.

In re Applications of Absolutely Radio, Inc. Ventura, California, Req: 107.1 MHz, Channel 296 0.28 kW (H&V), 870 feet, BC Docket No. 80-366, File No. BPH-11145; Ventura Broadcasting Co. Ventura, California, Req: 107.1 MHz, Channel 296 0.260 kW (H&V), 860 feet, BC Docket No. 80-366, File No. BPH-781129AH; San Buenaventura Wireless Co., Inc. Ventura, California, Req: 107.1 MHz, Channel 296 0.34 kW (H&V), 760 feet, BC Docket No. 80-368, File No. BPH-790212AC; William Shearer and Arike Logan-Shearer, Joint Tenants Ventura, California, Req: 107.1 MHz, Channel 296 0.280 kW (H&V), 840 feet, BC Docket No. 80-369, File No. BPH-790323AC; Latino Broadcasting Corporation Ventura, California, Req: 107.1 MHz, Channel 296 0.250 kW (H&V), 880 feet, BC Docket No. 80-370, File No. BPH-790327AA; Richard H. Albert Ventura, California, Req: 107.1 MHz, Channel 296 0.28 kW (H&V), 730 feet, BC Docket No. 80-371, File No. BPH-790327AF; Ventura Radio, Incorporated Ventura, California, Req: 107.1 MHz, Channel 296 0.375 kW (H&V), 730 feet, BC Docket No. 80-372, File No. BPH-790328AN; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (i) the above-captioned mutually exclusive applications filed by Absolutely Great Radio Inc. (Absolutely), Ventura Broadcasting Co. (Broadcasting), San Buenaventura Wireless Co., Inc. (Wireless), William Shearer and Arike Logan-Shearer, Joint Tenants (Shearer), Latino Broadcasting Corporation (Latino), Richard H. Albert (Alpert), and Ventura Radio Incorporated (Radio) and (ii) a petition to dismiss filed by Wireless against Radio and an opposition to the petition filed by Radio.

2. *Absolutely.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Absolutely published the required notice.[1] To remedy this deficiency, Absolutely will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

3. *Wireless.* We have no evidence that Wireless complied with §§ 73.3580 (f) and (h) of the Commission's Rules relating to local notice of filing of its application. To remedy this deficiency, Wireless will be requested to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

4. Anthony D. Naish, a principal of Wireless, is an alien and has subscribed for a permissible 20% of the applicant's stock. Naish, however, is also an officer and 24% stockholder of RNF Media Corporation (RNF), an entity in which three of the applicant's four principals own 75% of the stock and are its officers and directors. RNF is the sole financier of the applicant's proposal (apart from deferred credit from the equipment supplier) in that it has agreed to lend applicant $90,000. The loan is unsecured and need be repaid only at the demand of RNF. In view of RNF's financial control over the applicant and the substantial identity of RNF and the applicant, we believe that an issue is warranted as to whether Wireless is in violation of Section 310(b)(4) of the Communications Act of 1934, as amended. That section provides that no

[1] Applicant originally filed under the name "James C. Sylvester" and subsequently incorporated under Absolutely Great Radio. No evidence exists that the required notice was published under either name.

entity, of which an alien is an officer, may indirectly control an applicant for a broadcast license. An issue will, therefore, be specified to determine whether RNF indirectly controls Wireless.

5. *Latino.* We have no evidence that Latino complied with §§ 73.3580(f) and (h) of the Commission's Rules relating to local notice of filing of its application. To remedy this deficiency, Latino will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

6. Latino will not be able to provide a 3.16 mV/m signal to the entire city of Ventura, California as required by § 73.315(a) of the Commission's Rules. Latino has requested a waiver of this provision. We will not rule on the request at this juncture. Rather, a city coverage issue will be specified so that the matter may be explored in hearing.

7. *Albert.* We have no evidence that Albert complied with §§ 73.3580(f) and (h) of the Commission's Rules relating to local notice of filing of its application. To remedy this deficiency, Albert will be required to publish local notice of its application and to file a statement of publication with the Administrative Law Judge.

8. Analysis of the financial data submitted by Albert reveals that $38,262.65 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment lease payments	$7,371.00
Land	1,041.65
Building	7,500.00
Miscellaneous	10,500.00
Operating costs (three months)	11,850.00
Total	38,262.65

Costs may be higher as the equipment leasing agreement with Commercial Credit Corporation (CCC) is verbal and applicant has not submitted a copy of a written commitment with CCC. Albert plans to finance construction and operation with $4,000 cash and $50,000 in loan proceeds from a second mortgage on his home. Applicant has failed to submit a commitment from any bank for this loan as required by Section III, Paragraph 4(e) of FCC Form 301, instead relying on verbal agreements with various banks. Since applicant has only shown $4,000 in financing, an amount insufficient to meet proposed costs of $38,262.65, a limited financial issue wil be specified.

9. Albert has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has failed to submit a compositional study of Ventura, California indicating "the minority, racial or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive" as required by Question and Answer 9 of the Primer. Applicant has also failed to name the community leaders it surveyed, their positions and their organizations as required by Question and Answer 20 of the *Primer*, nor has applicant submitted a general public survey as required by Question and Answer 11(b). While applicant intends to serve the area immediately surrounding Ventura, including Oxnard, California, it is impossible to determine whether community leaders were surveyed from this area as required by Question and Answer 7 of the *Primer*. It is also impossible to determine if the consultations were performed within 6 months before the filing of the application as required by Question and Answer 15 of the *Primer*. Applicant has not stated the title, time segment, duration and frequency of broadcast of the programming proposed to meet the problems ascertained as required by Question and Answer 30 of the *Primer*. Accordingly, a general ascertainment issue will be specified.

10. Albert's application states that there will be five station employees whom, absent any indication to the contrary, we assume to be full time. Section 73.2080(c) of the Commission's rules requires all applicants for new facilities to file an Equal Employment Opportunity Program, Section VI of Form 301, unless the applicant proposes less than five full-time employees. Since Albert has not filed an Equal Employment Opportunity Program, he has not complied with requirement of Section VI of FCC Form 301, and an appropriate issue will be specified.

11. *Other Matters.* Wireless filed a petition to dismiss Radio's application on the grounds that Radio's amendment of August 9, 1979 adding new shareholders, constituted a change of control which would be considered a major amendment. Since the alleged major amendment was filed after the March 28, 1979 cut-off date, Wireless argues, it requires the assignment of a new file number and therefore the application must be dismissed. Radio, in opposition, argued that the August 9 amendment consisted of the withdrawal of a 40% stockholder and the subscription of these shares to five individuals, and that since no transfer of ownership occurred (60% of the stock remaining with the same stockholder), the change does not necessitate a new file number. Radio argued that *Barnes Enterprises, Inc.*, 55 FCC 2d 721, 35 RR 2d 174 (1975), stated that less than a 50% transfer of stock is not "substantial."

12. Radio's statement of the facts and the law is correct. The 40% stock transfer is not substantial and is the type which requires filing FCC Form 316. Accordingly, Wireless's petition is denied.

13. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

14. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

15. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Wireless' proposal complies with Section 310(b)(4) of the Communications Act of 1934, as amended.

2. To determine whether the proposal of Latino would provide coverage of the city sought to be served, as required by § 73.315(a) of the Commission's Rules, and if not, whether circumstances exist which warrant a waiver of that Section.

3. To determine with respect to Albert:
(a) the source and availability of additional funds over and above the $4,000 indicated; and
(b) whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine the efforts made by Albert to ascertain the community needs and problems of the area to be served and the means by which the applicant

proposes to meet those needs and problems.

5. To determine whether Albert has complied with the requirements of § 73.2080(c) of the Commission's Rules and Section VI of FCC Form 301.

6. To detemine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

16. It is further ordered, That, Absolutely, Wireless, Latino, and Albert file a statement of publication of local notice of its application with the presiding Administrative Law Judge, in accordance with § 73.3580(f) of the Commission's Rules.

17. It Is Further Ordered, That, the petition to dismiss filed by Wireless Is Denied.

18. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

19. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

By:

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-23919 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-417, 80-418]

Academy Radio Corp. et al.; Designating Applications For Consolidated Hearing On Stated Issues

Hearing Designation Order

Adopted: July 28, 1980.

Released: August 1, 1980.

In re Applications of Academy Radio Corporation, Rio Piedras, Puerto Rico, Req: 90.5 MHz, Channel 213, 4.427 kW (H & V), minus 104 feet, BC Docket No. 80-417, File No. BPED-2208; Christian Broadcasting Corporation, Carolina, Puerto Rico, Req: 90.5 MHz, Channel 213, 25 kW (H & V), 1869 feet, BC Docket No. 80-418, File No. BPED-2245; for construction permits for a new noncommercial educational FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Academy Radio Corporation (ARC) and Christian Broadcasting Corporation (CBC).[1]

2. *ARC.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. The local notice must contain the names of all corporate officers and directors. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. ARC's certification of local notice does not contain the names of its officers and directors. Accordingly, ARC will be required to republish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

3. Section II, Paragraph 3 of Form 340 requires that copies of the articles of incorporation and bylaws of the corporation be provided by the applicant. ARC's certificate of incorporation is stamped cancelled. Therefore, ARC will be required to submit a valid certificate of incorporation and certified copy of its articles of incorporation with the presiding Administrative Law Judge.

4. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR2d 215 (1967). Thus the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

5. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 FR 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a "share-time issue" is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

6. The respective proposals, although for different communities would serve substantial areas in common. Consequently, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, It Is Ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant and the areas and populations to be served thereby.

2. To determine whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

3. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is coucluded that a choice between the applications should not be based solely

[1] Inadvertently the staff initially determined the CBC application was not mutually exclusive with any other application and CBC was sent a deficiency letter on May 27, 1980 concerning its failure to ascertain its community. However, CBC is not subject to the Commission's ascertainment requirements because its application was filed in 1976 and the requirements were not effective until 1977. Therefore, the May 27, 1980 letter should be disregarded.

on considerations relating to Section 307(b), which of the proposals would, on a competitive basis, better serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It Is Further Ordered, That Academy Radio Corporation shall file a statement with the presiding Administative Law Judge showing compliance with the public notice requirements of § 73.3580(f) of the Commission's Rules.

10. It Is Further Ordered, That Academy Radio Corporation shall submit a certified copy of valid articles of incorporation with the presiding Administative Law Judge.

11. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-23917 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-399 et al.]

Broadcast West, Inc., et al.; Designating Applications For Consolidated Hearing On Stated Issues

Hearing Designation Order

Adopted: July 16, 1980.

Released: August 1, 1980.

By the Chief, Broadcast Bureau.

In re Applications of Broadcast West, Inc., Las Vegas, Nevada, BC Docket No. 80-399, File No. BPCT-5130; Alden Communications Corp., Las Vegas, Nevada, BC Docket No. 80-400, File No. BPCT-5238; Channel 21 Corp., Las Vegas, Nevada, BC Docket No. 80-401, File No. BPCT-5239; Dres Media, Inc., Las Vegas, Nevada, BC Docket No. 80-402, File No. BPCT-5240.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 21, Las Vegas, Nevada; a "Request for Waiver of § 73.3572 of the Commission's Rules or, in the Alternative, Request for Acceptance of Corrected Amendment *Nunc Pro Tunc*" filed by Broadcast West, Inc. June 17, 1980; a "Petition for Leave to Amend" filed by Dres Media, Inc. June 18, 1980; and related pleadings.

Broadcast West, Inc.

2. Broadcast West, Inc.'s (BWI) original technical proposal contains the following deficiencies:

(a) The maximum-to-minimum gain ratio of applicant's directional antenna exceeds the 15 dB value allowed in § 73.685(e) of the Rules;

(b) The radiation above the horizon proposed by applicant exceeds the radiation below the horizon in contravention of § 73.614(b)(4) of the Rules;

(c) The proposed facilities will not achieve the minimum allowable effective radiated power over an arc extending from 90 to 225 degrees true north (see § 73.614(a) of the Rules);

(d) The antenna gain specified is not correct; and

(e) The calculation of the proposed station's effective radiated power is incorrect.

In an amendment tendered May 27, 1980, BWI attempted to correct the deficiencies in its application, including those in its technical proposal. The engineering portion of this amendment constitutes a major change to BWI's proposal under § 73.3572 of the Rules, however, and cannot be accepted for filing absent a waiver of that Rule.

3. On June 17, 1980, BWI filed its above-mentioned pleading. In support of its request, BWI submits the following arguments:

(a) Its technical amendment was designed to obviate the need for a television translator to cover the Henderson, Nevada area;

(b) In increasing the predicted coverage of its proposed station to encompass Henderson, BWI inadvertently filed a major change to its application;

(c) BWI will gain no comparative advantage through acceptance of its major change amendment since the extended coverage area is largely uninhabited desert and mountain areas; and

(d) In the event it is determined that waiver of § 73.3572 to accept the major change amendment is not warranted, a minor change amendment curing the engineering deficiencies in BWI's proposal should be accepted *nunc pro tunc*.

4. The facts alleged by BWI in support of its waiver request do not justify grant of the relief applicant seeks. Accordingly the technical portions of BWI's May 27, 1980 amendment will not be accepted for filing. BWI's June 23, 1980 engineering amendment (filed in conjunction with its June 17, 1980 request) will be accepted for filing, however, with the *caveat* that nothing contained in the amendment be considered in evaluating the applicant's comparative qualifications. The June 23 amendment does not constitute a major change and cures the above-mentioned defects which otherwise raise potentially disqualifying questions concerning BWI's technical qualifications.[1]

Dres Media, Inc.

5. Subsequent to the date on which amendments as a matter of right in this proceeding were due, Dres Media, Inc. (DMI) tendered a minor change amendment to its financial proposal accompanied by a petition for leave to amend. The tendered amendment addresses qualifying matters and its acceptance will obviate the need for issues in this proceeding. Further, nothing in the amendment can enhance DMI's comparative posture *vis-a-vis* its opponents. Accordingly, the amendment tendered for filing June 18, 1980 by DMI will be accepted for filing.

Conclusion and Order

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutally exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, It Is Ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In a

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[1] The June 23 amendment contains one minor flaw which should be corrected. Applicant has failed to calculate its effective radiated power (ERP) properly and, therefore, the contour maps contained in its application are incorrect. To cure this defect, BWI will be ordered to submit corrected values for its proposed station's ERP and new contour maps within 30 days of the mailing of this Order (see para. 10, *infra*).

Consolidated Proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

8. It Is Further Ordered, That Broadcast West, Inc.'s June 17, 1980, "Request for Waiver of § 73.3572 of the Commission's Rules or, in the Alternative, Request for Acceptance of Corrected Amendment *Nunc Pro Tunc*" Is Denied, and the engineering portion of its May 27, 1980 amendment Is Returned As Unacceptable For Filing.

9. It Is Further Ordered, That Broadcast West, Inc.'s June 23, 1980, amendment Is Accepted For Filing to the limited extent indicated herein.

10. It Is Further Ordered, That, within thirty days of the mailing of this Order, Broadcast West, Inc. shall submit corrected values for its proposed station's effective radiated power and maps depicting the station's predicted Grade A, Grade B and principal community service contours.

11. It Is Further Ordered, That the "Petition for Leave to Amend" filed by Dres Media, Inc. June 18, 1980, Is Granted, and that applicant's amendment tendered June 18, 1980, Is Accepted For Filing.

12. It Is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

13. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-23920 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-340, 80-341]

George R. Johnson, et al.; Designating Applications For Consolidated Hearing On Stated Issues

Hearing Designation Order

Adopted: July 18, 1980.

Released: July 31, 1980.

In re Applications of George R. Johnson and Millard A. Holcomb dba Lumpkin County Broadcasting Company, Dahlonega, Georgia, Req: 1390 kHz, 1 kW, DA, Day, BC Docket No. 80-340, File No. BP-790122AH; Blue Ridge Radio Company, Dahlonega, Georgia, Req: 1520 kHz, 500 W, Day, BC Docket No. 80-341, File No. BP-790206AE; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications for new AM broadcast stations. They are mutually exclusive in that both proposals would receive co-channel interference within their 0.5 mV/m contours, and thus must satisfy the first-local-station proviso of § 73.37(b)(2) of the Commission's Rules.

2. *Lumpkin County Broadcasting Company.* The financial information Lumpkin County submitted is not sufficient to indicate how much money will be required to construct and operate the proposed station for three months. As filed, the application showed total costs of $45,725; however, a later amendment updating the cost of the proposed directional antenna system does not indicate how the earlier stated costs are revised. Further, the amount allocated for legal expenses (only $1,500) is clearly insufficient for the expense of a comparative hearing. The applicant relies on $40,000 capital contributions and $6,000 loans from the partners to pay construction and operating expenses, but none of these funds have been shown to be available. Neither partner has shown any net liquid assets from which to make the loans, and the bank letters offering to loan them money for their capital contributions fail to state the collateral required for the loans. Because of these serious deficiencies, a general financial issue will be specified.

3. Lumpkin County also failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 650 (1971). First, the compositional study sets out demographic information for Lumpkin County, but does not contain similar information about Dahlonega (especially information about minorities). It also appears the applicant did not interview leaders of the following groups in Dahlonega: business, charities, culture, elderly, labor, military, professions, recreation, and women. Further, the applicant apparently did not interview leaders who would be expected to have a broad overview of the problems of outlying communities the proposed station would serve. Finally, since only a limited number of problems were listed, it does not appear that all significant community problems ascertained were reported. A limited ascertainment issue will be specified.

4. *Blue Ridge Radio Company.* Analysis of the financial data Blue Ridge submitted reveals that $46,463 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$7,897
Equipment payments	2,448
Other construction costs	7,900
Operating expenses	28,218
Total	46,463

The applicant proposes to finance the station with $500 existing capital and two bank loans of $32,500 each. However, there is no balance sheet to show that the existing capital has been paid in. Further, one loan letter does not specify the collateral required, and the availability of the collateral specified in the other loan letter has not been shown. Therefore, a limited financial issue will be specified.

5. Blue Ridge did not comply with the requirements of the ascertainment *Primer.* It does not appear that representative Dahlonega leaders of the following groups were consulted: blacks, charities, consumers, culture, elderly, labor, and professions. Also, the applicant did not interview leaders of outlying communities to be served. A limited issue will be specified.[1]

6. As amended, Table I of Section II of Blue Ridge's application shows that the two stockholders have 100 and 109 shares of stock, but shows their interests as 50 percent each. An amendment will be necessary to correct this inconsistency.

[1] On June 16, 1980, Blue Ridge filed a proposed amendment to its ascertainment showing, along, with a petition for leave to amend. Although Blue Ridge previously indicated, in a timely filed amendment, that its ascertainment efforts were continuing and that it would submit a related amendment as soon as these efforts were completed, no explanation is given why these efforts were not undertaken and completed in a timely manner. Hence, good cause has not been shown, and the June 16 amendment will not be accepted.

7. *Other matters.* Date submitted by the applicants indicate that there will be significant differences in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

8. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

9. Accordingly, It is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Lumpkin County Broadcasting Company is financially qualified to construct and operate the proposed station.

2. To determine with respect to the efforts of Lumpkin County Broadcasting Company to ascertain the needs of its proposed service area:

a. Whether the applicant adeqautely determined the minority, racial, or ethnic breakdown of Dahlonega;

b. Whether the applicant interviewed leaders of business, charities, culture, elderly, labor, military, professions, recreation, and women in Dahlonega;

c. Whether the applicant adequately ascertained community problems outside of Dahlonega; and

d. Whether the applicant listed all ascertained community problems.

3. To determine with respect to Blue Ridge Radio Company:

a. The source and availability of sufficient funds to construct the proposed station and operate it for three months; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine with respect to the efforts of Blue Ridge Radio Company to ascertain the needs of its proposed service area:

a. Whether the applicant interviewed leaders of blacks, charities, consumers, culture, elderly, labor, and professions in Dahlonega; and

b. Whether the applicant adequately ascertained community problems outside of Dahlonega.

5. To determine which of the proposals would, on a comparative basis, better serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

10. It is Further Order, That Blue Ridge Radio Company's "Petition for Leave to Amend," filed June 16, 1980 Is Denied.

11. It is Further Ordered, That Blue Ridge Radio Company shall file the amendment specified in paragraph 6, above, within 30 days after this Order is published in the **Federal Register.**

12. It is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

13. It is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-23921 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-394; 80-395]

Imperial Valley Magic FM, et al.; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: July 8, 1980.
Released: July 31, 1980.

In re Applications of Imperial Valley Magic FM, Brawley, California, Req: 96.1 MHz, Channel 241B 50 kW (H&V), 232.3 feet, BC Docket No. 80-394, File No. BPH-790226AE; Robert T. Mindte, Brawley, California, Req: 96.1 MHz, Channel 241B 50 kW (H&V), 337 feet, BC Docket No. 80-395, File No. BPH-790808AC; For a construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Imperial Valley Magic FM (Imperial) and Robert T. Mindte (Mindte) for a construction permit for a new FM station.

2. *Imperial.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Imperial published the required notice. To remedy this deficiency, Imperial will be required to publish local notice of its application if it has not already done so and to file a statement of publication with the presiding Administrative Law Judge.

3. *Mindte.* The applicant's main source of funds consists of a loan from the Statewide California Business and Industrial Development Corporation of $260,000. The loan agreement requires a guarantee from the U.S. Small Business Administration. Mindte has failed to indicate that he has obtained this guarantee. A general financial issue will therefore be specified.

4. *Other matters.* Data submitted by the applicants indicate that there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, for the purpose of comparison, the populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accure to either of the applicants.

5. Neither applicant has provided us with a current FAA clearance. Accordingly, an appropriate issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, It Is Ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Mindte is financially qualified to construct and operate the proposed station.

2. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Imperial and Mindte would constitute hazards to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications, if any, should be granted.

8. It Is Further Ordered, That Imperial file a statement of local notice of its application with the presiding Administrative Law Judge, in accordance with § 73.3580(f) of the Commission's Rules.

9. It Is Further Ordered, That the Federal Aviation Administration is made a party to the proceeding.

10. It Is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-23915 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-411; 80-412]

Metropolitan Broadcasting Corp., Inc. et al.; Designating Applications For Consolidated Hearing On Stated Issues

Hearing Designation Order

Adopted: July 2, 1980.

Released: July 31, 1980.

In re Applications of Metropolitan Broadcasting Corporation, Inc. Tallahassee, Florida, Req: 95.9 MHz, Channel 240, 3.0 kW (H&V), 300 feet, BC Docket No. 80-411, File No. BPH-790110AC; Vivian L. French, Frank X. Veihmeyer, Rudy Hubbard, Roy Wood and Joyce Wood d.b.a. Hub Radio. Tallahassee, Florida, Req: 95.9 MHz, Channel 240, 3.0 kW (H&V), 300 feet, BC Docket No. 80-412, File No. BPH-790530AD; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Metropolitan Broadcasting Corporation, Inc. (Metropolitan) and Vivian L. French, Frank X. Veihmeyer, Rudy Hubbard, Roy Wood and Joyce Wood d.b.a. Hub Radio (Hub).

2. *Hub.* Analysis of the financial data submitted by Hub reveals that $91,767.44 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment purchase	$53,077.44
Building	4,000.00
Miscellaneous	7,500.00
Operating Costs (three months)	27,190.00m,s
Total	91,767.44

Hub plans to finance construction and operation with (i) $5,000 cash; (ii) $30,000 loan from Vivian L. French; (iii) $67,500 loan from Frank X. Veihmeyer; (iv) $7,500 loan from Joyce Wood and (v) $7,500 loan from Roy Wood. The commitment letters of V. French, J. Wood and R. Wood are not signed and there are no supporting balance sheets for either J. Wood or R. Wood. Hub was shown only $72,500 to finance construction and operation, an amount insufficient to meet its proposed expenses of $91,767.44. Accordingly, a limited financial issue will be specified.

3. Except as indicated by the issue specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, It Is Ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are Designated For Hearing In a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Hub:

(a) the source and availability of additional funds over and above the $72,500 indicated; and

(b) whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It Is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants, herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner precribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-23918 Filed 8-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-331; BRSCA-1199; 80-332; FCC 80-373]

Peoria Community Broadcasters, Inc., et al.; Designating Applications For Consolidated Hearing On Stated Issues

Memorandum Opinion and Order

Adopted: June 25, 1980.

Released: July 31, 1980.

In re Applications of Peoria Community Broadcasters, Inc., Debtor in Possession, Station WWCT(FM), Peoria, Illinois, BC Docket No. 80-331, BRH-2634; For Renewal of License and For Renewal of Subsidiary Communications Authority; BRSCA-1199; and Bruce Foster, Charles W. Foster, Belva A. Foster and Norman Ricca, a partnership d.b.a. Central Illinois Broadcasting Company, BC Docket No. 80-332, BPH-10121; Req: 105.7 MHz, Channel 289, 50 kW, 500 feet; for construction permit.

By the Commission: Commissioner Brown absent.

1. The Commission has before it: (i) the above-captioned license renewal application filed August 2, 1976 by Peoria Community Broadcasters, Inc.,

debtor in possession ("Peoria" or "licensee"); (ii) a petition to deny Peoria's renewal application filed November 1, 1976 by Central Illinois Broadcasting Company ("Central" or "petitioner"); (iii) responsive pleadings thereto filed by Peoria on December 15, 1976, by Central on January 21, 1977; and by Peoria on April 29, 1977; (iv) Central's mutually exclusive application, as amended, filed November 1, 1976, seeking WWCT(FM's) assigned frequency [1] and (v) an amendment to the pending renewal application filed July 31, 1979.

Background

2. On May 14, 1976, Peoria filed for and was granted bankruptcy status by the United States District Court for the Southern District of Illinois ("District Court"), and the licensee was designated debtor in possession "to conduct its business and operate same in the normal course thereof. . . ." (Case No. P BK 76 360). On June 22, 1976, the Commission granted an involuntary assignment of WWCT(FM's) license to Peoria Community Broadcasters, Inc. as debtor in possession. (BALH–2300; BASCA–747). On July 19, 1977, we accepted for filing an application for assignment of license from the debtor in possession to Walter W. Hart and/or Hart Broadcasting, Inc. (BTC 8389). However, before action could be taken on that application, it was withdrawn. Subsequently, on October 20, 1978, the Commission accepted for filing a new application for assignment of the license to Chan Broadcasting Co., Inc. (BALPH 780929–EG). Meanwhile, on November 1, 1976, Central filed a mutually exclusive application for a construction permit for WWCT(FM's) frequency (BPH–10121), and a petition to deny Peoria's renewal application alleging that Peoria had undergone an unauthorized transfer of control and had misrepresented its ownership to the Commission and the District Court. As discussed below, substantial and material questions of fact remain as to whether renewal of Peoria's license would serve the public interest, and an evidentiary hearing is therefore necessary. Further, since the Peoria renewal and the Central construction permit applications are mutually exclusive in that they seek the same facilities, they must be designated for hearing in a consolidated proceeding.

[1] On October 20, 1978, the Commission accepted for filing an application for assignment of license from Peoria to Chan Broadcasting Co., Inc. (Chan). The president and sole stockholder of Chan is Oland J. Chan, a minority. The assignment application will be held in abeyance pending the outcome of this proceeding.

Central's Petition to Deny Peoria's Renewal Application

3. Central contends that, although Peoria represented in its application for construction permit and in every one of its Ownership Reports (FCC Forms 323) that Thomas A. Murphy is the majority stockholder and chairman of the board of directors, both *de jure* and *de facto* control of the station passed to the other stockholders, Paul Carnegie, W. R. Warren and Walter W. Hart, "sometime prior to July of 1976" without the knowledge or approval of the Commission; that Peoria has misrepresented its ownership and corporate officers both to the Commission and to the District Court in the bankruptcy proceeding; and that Peoria may have violated § 73.3613(b) of the Commission's rules, 47 CFR 73.3613(b), which provides that agreements or contracts affecting ownership of a station must be reported to the Commission. Attached to Central's petition are (1) Exhibit A, a copy of Peoria's Ownership Report (FCC Form 323) dated July 23, 1976, which indicates Mr. Murphy owns 60,000 shares of common stock (60 percent) and is chairman of the board of directors; Mr. Carnegie owns 15,000 shares (15 percent) and is president of the corporation and a member of the board of directors; Mr. Warren owns 15,000 shares (15 percent) and is secretary-treasurer of the corporation and a member of the board of directors; and Mr. Hart owns 5,000 shares (24.39 percent) but holds no corporate office; (2) Exhibit B, a copy of a Statement of Affairs for Bankrupt Engaged in Business filed July 3, 1976, by Peoria in the District Court, which indicates the account books and records of Peoria were under the supervision of Mr. Murphy from January 1972 to January 1976, of Mr. Bruce Foster [2] from January 1976 to May 1976, and of Mr. Hart since then; the inventory reports and tax returns of Peoria were in the possession of Mr. Hart; Messrs. Murphy and Carnegie were authorized to make withdrawals from Peoria's account at Herget National Bank, Pekin, Illinois; and Messrs. Hart and Carnegie were authorized to make withdrawals from Peoria's account at First State Bank of Pekin, Illinois; and (3) Exhibit C, a plan of arrangement for the payment of creditors in the bankruptcy proceeding filed in the District Court on July 2, 1976. Exhibit B was signed and verified by Mr. Hart as vice-president of Peoria; Exhibit C was signed and verified by Mr. Hart as vice-president and treasurer of Peoria.

[2] Mr. Foster, one of the principals of Central which is now seeking WWCT's frequency, was employed by Peoria as chief engineer from October, 1973 to May 1976. Throughout its pleadings Peoria refers to Central as "Foster."

4. In opposition, Peoria states that Central's unauthorized transfer of control allegation "is predicated on the erroneous assumption that a debtor-in-possession . . . is the same entity as the original licensee, and that such an entity as originally approved by the Commission remains 'in control' of the licensee" (opp. at 3). Peoria maintains that under the federal bankruptcy statute [3] and case law, upon filing and acceptance of a bankruptcy petition the bankrupt comes under the exclusive control of the court and a debtor in possession becomes "a 'trustee' or 'receiver' [for the court] and [is] a separate entity from its prior being" (opp. at 6). On May 14, 1976, Peoria was designated debtor in possession ("Peoria/DIP") by the Distict Court in the bankruptcy proceeding and the Commission granted an application for involuntary assignement. According to Peoria, control of the licensee had therefore passed from Peoria to the United States District Court with Commission's approval; and Mr. Hart's possession of Peoria's tax returns, authority to write checks and his vertification of Peoria's pleadings in the bankruptcy proceeding is the "normal federal procedure of 'an arrangement' for the resolution of bankruptcy." Peoria quotes from our ruling in *WHDH, Inc.*, 17 FCC 2d 856 (1969) at 863, wherein we stated that "the term control includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue" and asserts that it is therefore "clear that the Petition to Deny's view that control rests in mere majority stock ownership is both a simplistic and unrealistic one." Peoria further states that Mr. Murphy was to be an "absentee stockholder and investor"; and although Mr. Murphy did come to work at the station it was as a result of his own "financial necessity" and his role was limited to that of "financial advisor" while Mr. Carnegie remained "in control" of the station. Peoria then asserts that "Thomas Murphy never had legal control of Peoria" (opp. at 7), apparently because he "never paid for his stock and thus it would appear that he did not validly hold it" (opp. at 10); and that the Commission's original grant of WWCT(FM)'s license was based "on

[3] 11 U.S.C. § 742 *et seq.*

that [sic] presentation that Mr. Murphy was to be an investor to supply the majority of necessary capital," and his failure to pay for his stock "was in violation of the promise to the Commission," for which Mr. Hart cannot be "charged." Opp. at 10. With regard to the Ownership Reports, Peoria states that the "confusion" arose because "no one after a while really knew who owned the company" and therefore "reasonable men might differ" as to whether the station was controlled by Mr. Carnegie, minority stockholder and station manager who actually operated the station, or Mr. Hart, who allegedly had nothing to do with the station's operation but upon whose signature the bank advanced operating capital, or Mr. Murphy, the majority stockholder who allegedly never paid for his stock; but regardless of who was actually in charge, the Commission has held that "such questionable situations do not call for severe penalties" where "the situation can only construed as an honest error in judgment and not an attempt to deceive the Commission."

5. Finally, Peoria states that as a result of its financial plight and cross-litigation between the stockholders a "settlement agreement" was reached under which Mr. Murphy, in consideration of a cash settlement, would "waive any interest" in the station and transfer his interest to Mr. Foster, "subject to Commission consent," but that upon receiving his money Mr. Murphy "abandoned the property and disappeared"; and therefore "the stock still is Mr. Murphy's until a transfer of control is authorized." Opp. at 11. Appended to Peoria's opposition as Attachment No. 1 to Attachment E is a copy of its December 30, 1975, settlement agreement which states that Mr. Hart is a director of Peoria; Mr. Murphy would "relinquish any and all rights and interest that he may have in . . . said corporation" in consideration of a cash payment of $22,000, the receipt of which was acknowledged by Mr. Murphy in the agreement; Mr. Murphy would cooperate with the other stockholders in their dealings with this Commission and would not interfere with the operation of the station; if the anticipated sale of the station did not occur prior to November 30, 1976, the transaction covered in the agreement would be "reported" to the Commission as a sale of Murphy's interest; and for the purpose of selling the station Mr. Hart was "vested with an irrevocable Power of Attorney, coupled with an interest to execute and document our file any application on behalf of [Mr. Murphy] which ordinarily and reasonably would. . . have been required. . . by the Federal Communications Commission."

6. In reply, Central states that when the chairman of the board who owns 60% of the stock resigns, sells his stock and leaves the city a transfer of control has occurred regardless of the day-to-day management of the station; and the intent of the December 1975 "Mutual Releases and Agreement" was clearly "to immediately remove Mr. Murphy" from Peoria. In a responsive pleading entitled "Reply to Opposition to Motion to Dismiss or Alternatively Petition to Enlarge Issues," filed April 29, 1977, Peoria characterizes Central's position as arguing that "as a result of the arrangement approved by the United States District Court acting under the authority of the FCC's authorization for transfer of control, Walter Hart has assumed control in that he has paid off the creditors and is advancing funds to operate the station," and asserts there has been no unauthorized transfer of control because "Hart does so pursuant to the Order of the United States District Court and not as a mere volunteer." (April 29, 1977, pleading, p. 3.). Peoria further states that Mr. Murphy's interest in the station "remains on the corporate books, and will remain so unless and until the Commission authorizes a transfer" (April 29 pleading, p. 5); and although its Ownership Reports were "never completely accurate," those reports "were always appropriately correct as to percentages owned and accurately reported that Thomas Murphy had and still has legal control of the corporation" (April 29 pleading, p. 6). Appended to the pleading as Attachment 3 are copies of reports and minutes of Peoria's board meetings which indicate that at a meeting held January 11, 1971, Mr. Hart was issued 10,000 shares of stock and was elected to the board of directors; at a meeting held December 13, 1971, Mr. Hart was present as a director/stockholder of the corporation and holder of 10,000 shares of stock out of 73,000 shares issued (13.7%); and at a meeting held January 30, 1974, Mr. Hart was present as a director/stockholder and holder of 4,875 shares out of 24,375 issued (20%).

Discussion

7. *Unauthorized Transfer of Control.* the Commission has provided both general and specific guidance as to what constitutes "control" of a licensed facility within the meaning of Section 310(d) of the Communications Act, 47 U.S.C. 310(b). In *WWIZ, Inc.*, 36 FCC 561, 579 (1964), we stated:

> . . . in determining control, the Commission looks beyond mere legal title and considers whether other factors may lend dominance to a party nominally having only a minority interest. Thus, we stated in *Town and Country Radio, Inc.*, . . . [28 FCC 129, 151 (1960)] 'The Commission has repeatedly held that passage of control need not be legal control in a formal sense, but may consist of actual control by virtue of the special circumstances presented.' . . . [Citations omitted]. 'Control' as used in Section 310(d) of the Act embraces 'every form of control, actual or legal, direct or indirect, negative or affirmative.' . . . [Citations omitted].

In *Lorain Journal Company* v. *F.C.C., 351 F. 2d 824, 829 (D.C. Cir. 1965), the United States Court of Appeals affirmed WWIZ, Inc.*, and specifically approved the Commission's definition of "control." Further, in *WWIZ, Inc.* we stated that ". . . preparation and processing of corporate minutes; processing and filing of reports and applications with the Commission; review of advertising contracts of the station; payment of salaries to employees of the station; and amortization of debts owed by" the station, *id.* at 573, as well as keeping the station's books, controlling the station's checking accounts and scrutinizing the station's receipts and expenditures, *id.* at 582, constitute manifestations of "control" within the meaning of Section 310(d).

8. The basic facts upon which Central relies in asserting that Peoria has undergone an unauthorized transfer of control are as follows: (1) Peoria's initial application for a construction permit, its renewal applications, and every Ownership Report filed by Peoria from March 10, 1970, to December 20, 1973, indicate that the only shareholders/officers/directors of the licensee were Mr. Murphy, 60% (or 65%) stockholder and chairman of the board; Mr. Carnegie, 15% (or 17.5%) stockholder, president and director; and Mr. Warren, 15% (or 17.5%) [4] stockholder, secretary-treasurer and director; (2) on May 27, 1976 and August 2, 1976, Peoria filed Ownership Reports which added Mr. Hart as a 24.39% owner (5000 shares) of the corporation, but indicated that he was not an officer or director of the corporation; and (3) a Statement of Affairs for a Bankrupt Engaged in Business submitted to the United States District Court in the bankruptcy proceeding on July 2, 1976, was signed by Mr. Hart as vice-president of Peoria and indicated that he had in his possession the books, accounts, records, inventory reports and tax returns of the

[4] An Ownership Report filed on September 11, 1973, indicated that the respective percentages were 65%/17.5%/17.5%, although the actual number of shares held by each stockholder remained the same (60,000/15,000/15,000 respectively) in all the reports.

corporation; that he was authorized to make withdrawals from Peoria's account at the First State Bank of Pekin, Pekin, Illinois; that "[d]during the year immediately proceeding the filing of the original [bankruptcy] petition" the corporation "repurchased Thomas A. Murphy's stock"; and that the only stockholders/officers/directors of the corporation were Messrs. Hart, Carnegie and Warren.

9. Although Peoria does not dispute any of these facts, it maintains that no unauthorized transfer of control has occurred. Peoria quotes from *WHDH, Inc. supra* at 863, wherein we stated that "* * * a realistic definition of the term 'control' includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue," and states that therefore Central's "view that control vests in mere majority stock ownership is both a simplistic and unrealistic one" (opp. at 9). In this regard Peoria states that the Commission "was advised from the very first day in a comparative hearing proceeding that Mr. Paul Carnegie * * * would be in control of the facility," and that although Mr. Murphy worked at the station as a "financial advisor," he was intended to be an "absentee stockholder." (*Id.*)

10. The clear implication of Peoria's interpretation of our definition of "control" in *WHDH, Inc., supra,* is that "mere" majority stock ownership may not constitute "control" of the licensee, and that, in spite of Mr. Murphy's ownership of a majority of Peoria's stock, Mr. Carnegie had been in control of the license because the Commission had been so "advised" and because of Mr. Murphy's "absentee stockholder" status. However, the language it cites, even without resort to prior Commission pronouncements, obviously does not support the proposition it urges, for the "*right* to determine the manner or means of operating the licensee," *id.* [emphasis added], by definition goes with "mere" majority stock ownership. This position was taken by the Commission over 28 years ago in *Albert J. Feyl et al.,* 15 FCC 823 (1951), wherein we stated:

> It is, of course, quite true that in our examination into the matter of control of a corporate licensee we do not confine ourselves to a narrow, legalistic approach but rather look beyond stock ownership, in some cases, to determine where actual working control resides * * * This does not mean that we do not attach prime importance to the ownership of majority stock for the reason that such ownership, far from being divorced from the realities of actual control, as petitioner would have us believe, is the very genesis of control. It is the owner of legal control who has the legal *right* to exercises or delegate actual control * * * Certainly the most fundamental right implicit in legal control is the right to determine the repository of actual control—and the passage of this right, alone, to anyone except the person to whom we originally confirmed it must have our prior consent. *Id.* at 826.

Further, as we stated in *Paramount Television Productions, Inc. et al.,* 17 FCC 264, 342 (1953),

> [e]ven a majority stockholder is frequently content to let others take a major role in management, but it would hardly be suggested that a majority stock interest is not a controlling interest merely because it has, as a matter of policy, refrained from exercising this control.

From the initial grant of WWCT's license in 1970 to the August 2, 1976, Ownership Report filed by Peoria, Thomas Murphy was consistently and exclusively represented to the Commission as the majority stockholder of Peoria.

11. Peoria also argues that there has been no unauthorized transfer of control (a) because Mr. Murphy "never had legal control of Peoria" (opp. at 7), apparently because he "never paid for his stock and thus it would appear that he did not validly hold it" (opp. at 10); (b) because "no one after a while really knew who owned the company" and therefore "reasonable men may differ" as to who was in control (opp. at 10); and/or (3) because "the stock still is technically Mr. Murphy's until a transfer of control is authorized" (opp. at 11).

12. With regard to its argument that Mr. Murphy "never had legal control of Peoria" because he "never paid for his stock," Peoria states that the Commission's "authorization for Mr. Murphy to be the majority stockholder of the corporation was on that presentation that [he] was * * * to supply the majority of necessary capital." However, our initial grant of WWCT's license and our subsequent renewals of that license have been based in pertinent part on the representations that Peoria has made concerning its financial status and organizational structure. As Peoria admits, Mr. Murphy was represented to this Commission as the corporation's majority stockholder and was, as such, the only individual authorized by this Commission to hold *de jure* control over the corporation. It appears Mr. Murphy exercised the powers of majority stockholder until December 1975. Thus, Mr. Murphy's alleged failure to pay for his stock fails to support Peoria's position that there has been no unauthorized transfer of control. See para. 20, *infra.*

13. Peoria's assertion that there has been no transfer of control because "no one after a while [sic] really knew who owned the company" is without merit. In *Television Company of America, Inc. et al.,* 1 FCC 2d 91 (1965), we rejected the same argument, stating that the excuse

> That no one really knew who owned the stock, etc., and thus that the Commission was not informed of the transfer is belied . . . by the fact that reports and documents filed with the Securities and Exchange Commission quite clearly stated that the stock in issue was owned by KBLI, Inc., while reports being filed contemporaneously with this Commission made no mention of this fact. The Commission's rules make ample provision for (indeed require) the reporting of executory contracts, beneficial ownerships, and other interests. Had the reporting officials endeavored to keep the Commission apprised of the true state of the licensee's ownership situation there would have been little difficulty in so doing. In cases of honest confusion a full disclosure of the facts with the statement that the legal consequences were uncertain would have been sufficient. Instead, there was no disclosure and the application for transfer of control now before us . . . represented [individuals] . . . as owners of stocks in which they had long ceased to have any interest, legal or beneficial. *Id.* at 94.

14. In the instant case, rather than making any effort to inform the Commission that some "confusion" might exist as to the company's ownership, Peoria unequivocally represented in every one of its ownership reports and license renewal applications that Mr. Murphy was the majority stockholder. Indeed, in 1973 Peoria represented to the Commission that Mr. Murphy was to provide *additional* funds upon which he was to be paid 8 percent interest. See para. 21 *infra.* Peoria never mentioned the possibility of any question as to its stock ownership until it filed its opposition to the unauthorized transfer of control allegation contained in the petition to deny. Further, Peoria's assertion that no one knew who owned the company is "belied" by the fact that in a document filed in District Court on July 2, 1976, Peoria, through Mr. Hart signing as vice-president and treasurer of the corporation, represented that the corporation had repurchased Mr. Murphy's stock, while in Ownership Reports filed with this Commission on May 27 and August 2, 1976, it represented that Mr. Murphy was still the majority stockholder. This fact situation does not appear to constitute an "honest error in judgment" excusing an unauthorized transfer of control, *Coral Television Corp., (WCIX–TV),* 6 FCC 2d 749, 756 (1967).

15. In support of its argument that "the stock still is technically Mr. Murphy's until a transfer of control is authorized," Peoria states that paragraph 8(a) of the sales agreement executed on December 30, 1975, recognizes the necessity for Commission approval of a transfer of control. However, the mere recognition by Peoria that it is required to seek the Commission's approval for a transfer of control does not excuse its failure to seek such approval before eliminating Mr. Murphy's interest in the corporation and then representing to the District Court that it had, in fact, eliminated his interest.

16. Although the import of Peoria's argument is that there has been no unauthorized transfer of control because the sales agreement was executory, there appears to be no act specified in the agreement which remains to be performed. Mr. Murphy was to receive $22,000;[5] resign as officer/director of the corporation; not interfere in the operation of the station; and cooperate with the remaining stockholders in making applications to the Commission. The first three conditions are satisfied, and the fourth is, under the terms of the agreement itself, irrelevant, inasmuch as paragraph 8(a) specifically provides that Mr. Hart "is vested with an irrevocable Power of Attorney, coupled with an interest to execute any document or file any applications on behalf of [Mr. Murphy] which ordinarily and reasonably would or might have been required of [Mr. Murphy] by the Federal Communications Commission." [6] Further, as stated above, in the documents filed in the bankruptcy proceeding on July 2, 1976, Peoria unequivocally represented that the corporation had repurchased Mr. Murphy's stock in December, 1975. Moreover, in connection with an application for transfer of control of WWCT(FM) from Peoria to Mr. Hart alone [7] Peoria filed on September 29, 1977, a number of documents including an "Option to Purchase Stock Agreement" dated December 10, 1976, under which Mr. Hart obtained an option to purchase Mr. Carnegie's stock in the corporation. That document stated that the December 30, 1975, sales agreement "effected the elimination of any purported Murphy stock interest." Thus, it appears it was the understanding and intention of the remaining Peoria stockholders that execution of the December 30, 1975, sales agreement and the payment to Mr. Murphy terminated his interest in the corporation. Finally, even if the sales agreement was executory, as indicated *supra* at para. 13, the Commission has made clear that our rules "make ample provisions for (indeed require) the reporting of executory contracts . . . [etc.]." *Television Company of America, Inc., et al., supra.* Although Central's petition to deny specifically raises the issue of the failure to report the December 30, 1975, sales agreement as required by Section 73.3613(b) of our rules, Peoria does not even address this point. Thus, Peoria's assertions (1) that Mr. Murphy's stock never belonged to him, (2) that it still belongs to him, and/or (3) that licensee never knew with certainty whether or not it belonged to him, do not, individually or taken together, rebut the questions raised indicating that an unauthorized transfer of control occurred.

17. Peoria also argues that no unauthorized transfer of control occurred because on May 14, 1976, Peoria was designated as debtor in possession in the District Court and the Commission granted an application for involuntary assignment and therefore control of the licensee passed with the Commission's approval from Peoria to the District Court (with Peoria as debtor in possession operating the stations as a "trustee"); and Mr. Hart's possession of Peoria's tax returns, authority to write checks and his verification of Peoria's pleadings in the bankruptcy proceeding is the "normal Federal procedure of 'an arrangement' for the resolution of a bankruptcy." In its April 29, 1977, pleading Peoria characterizes Central's position as arguing that "as a result of the arrangement approved by the United States District Court acting under the authority of the FCC's authorization for transfer of control, Walter Hart has assumed control in that he has paid off creditors and is advancing funds to operate the station," and asserts that "Hart does so pursuant to the Order of the United States District Court and not as a mere volunteer." At the outset we note petitioner does not argue that the unauthorized transfer of control occurred "as a result of the arrangement approved by the . . . District Court . . . ." Both the petition to deny and Peoria's own responses in this proceeding contain undisputed facts which indicate that Mr. Murphy relinquished control and Mr. Hart exercised manifestations of control long before Peoria filed for bankruptcy. The three most obvious of these facts are: (1) paragraph 8(a) of the December 30, 1975, sales agreement purported to terminate Mr. Murphy's interest and vest in Mr. Hart "an irrevocable Power of Attorney, coupled with an interest" to perform all acts which this Commission might have required of Mr. Murphy; (2) Peoria itself, in its July 2, 1976, submission to the District Court, represented in two separate places that the corporation had repurchased Mr. Murphy's stock; and (3) that pleading was signed and verified by Mr. Hart as vice-president of the corporation. Peoria never, in any of its pleadings, addresses the fact that the corporation repurchased Mr. Murphy's stock approximately *five months before* it filed for bankruptcy. Moreover, the bankruptcy order issued on May 14, 1976, did not order Mr. Hart personally to perform any acts. The Order stated that the corporation "shall remain in possession of its assets and property and it is hereby authorized and empowered to conduct its business and operate same in the normal course thereof * * *."

18. Further, the Commission's approval of the application for involuntary assignment would not retroactively authorize Mr. Murphy's relinquishment of control or Mr. Hart's assumption thereof. Although the application for involuntary assignment specifically requires a list of all stockholders and their proportional ownership interests, Peoria failed to complete that part of the application, making no mention of the fact that the actual ownership of the corporation was in any way different from the Ownership Reports that it had been filing for years. Under such circumstances, the Commission assumes that the station will continue to be operated by the corporation's authorized officers as represented in the licensee's Ownership Reports. However, although the record indicates that Mr. Hart had a significant ownership interest in and was a director of the corporation at least since January 1971, the Commission was not informed that Mr. Hart was in any way associated with Peoria until the filing of an allegedly corrected Ownership Report on May 27, 1976.

19. The well documented allegations by Central, and the apparent discrepancies in Peoria's explanations (*e.g.* Mr. Hart's interest in the corporation prior to Peoria's filing for bankruptcy; the conflict between the representations made in Peoria's July 2,

[5] The actual amount Mr. Murphy was to or did receive is not clear. Although the sales agreement calls for a cash payment of $22,000, the documents filed by Peoria in the District Court on July 2, 1976, indicate that Mr. Murphy received a cash settlement of $25,000.

[6] This provision alone conveys to Mr. Hart an essential element of "control" of the licensee, even though the Commission was not informed until five months later that Mr. Hart had any interest whatever in the corporation.

[7] This application was withdrawn by Peoria and dismissed without prejudice on October 23, 1978.

1976, submission to the District Court and its August 2, 1976, Ownership Report) discussed in the above paragraphs raise a substantial and material question of fact as to whether the licensee has undergone an unauthorized transfer of control. Thus, an issue will be specified under which the facts and circumstances relating to such transfer may be explored.

20. *Section 1.65.* As indicated *supra*, at para. 12, Peoria's assertion that Mr. Murphy "never had legal control of Peoria" because he "never paid for his stock and thus it would appear that he did not validly hold it" does not support its position that no unauthorized transfer of control has occurred. Further, this statement raises a question as to whether Peoria complied with § 1.65 of the Commission's rules.

21. Section 1.65 of the Commission's rules provides, in pertinent part:

> Whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information * * *.

Applicants are required to make a showing that they are financially qualified to operate a station, and such a showing is clearly "of decisional significance." Peoria's initial application for a construction permit (BPH–6551) was filed on December 11, 1968, and granted by the Commission on February 5, 1970, a period of fourteen months. At no time during that fourteen month period, nor in the following six years did Peoria submit a statement as required by § 1.65 of the Commission's rules, that it had failed to receive "the majority of [its] necessary capital." On the contrary, Peoria did not even bring this information to the Commission's attention when responding to a specific Commission inquiry concerning its financial condition in 1973. Peoria's license renewal application for the term from December 1, 1973 to December 1, 1976, filed September 3, 1973 (File No. BRH–2634) revealed that then current liabilities exceeded then current assets by $29,398 and the station had an operating deficit of $60,436. Therefore, Peoria was directed by letter dated November 1, 1973, to inform the Commission how it intended to finance the continued operation of the station. In a response filed December 3, 1973 Peoria indicated that Mr. Murphy was to advance all "funds necessary to cover any operating deficits of the corporation," that he was to receive 8% per annum interest, and that he "expect[ed] repayment of any funds required to be paid as soon as it becomes practical." Thus, Peoria represented in December 1973 that it was going to pay 8% interest on a loan for desperately needed working capital from a stockholder whom it now claims never paid for his stock in the first place. An issue shall be specified as to whether Peoria violated § 1.65 of the rules by failing, for a period of over six years, even after specific inquiry into its financial condition, to notify the Commission that it had not received "the majority of [its] necessary capital."

22. Peoria's pleadings raise additional questions pertaining to the licensee's candor in numerous statements made to the Commission and the District Court. For example, Peoria never informed the Commission that Mr. Hart had any ownership interest in the corporation until its allegedly "corrected" Ownership Report of May 27, 1976. The Commission has held that officers of corporate licensees, such as vice-president and secretary-treasurer, who file reports and applications with the Commission "must be charged with knowledge" of their corporation's stock ownership situation, and that incorrect information in such reports and/or applications are therefore "willfully and knowingly false." *Capital City Communications, Inc.*, 37 FCC 2d 164, 170 (1972); *recon. denied*, 38 FCC 2d 1010 (1972); *reversed on other grounds sub nom. La Rose.* v. *F.C.C.*, 494 F.2d 1145 (D.C. Cir. 1974). As stated previously, *supra* at para. 21, the Commission made a specific inquiry concerning Peoria's financial condition in 1973. Although numerous documents submitted in this proceeding (*e.g.*, Mr. Hart's affidavit submitted with Peoria's opposition to the petition to deny, and Attachments 3 and 4 to Peoria's April 29, 1977, pleading) clearly indicate that Mr. Hart has had an ownership interest in and participated in the corporate affairs of Peoria at least since January 1971, no mention of this interest in or financial contribution to the corporation was made in Peoria's December 3, 1973, response. Further, it appears that even in its "corrected" report in May 1976 Peoria misstated the duration of Mr. Hart's ownership interest in the corporation. According to that report, Mr. Hart had held stock in the corporation only since January 1974. Peoria's corporate minutes and an affidavit by Mr. Hart state that Mr. Hart had an ownership interest in Peoria as early as January 1971. In addition, the percentage stock ownerships represented in *all* of Peoria's Ownership Reports bear no mathematical relationship to the numbers of shares represented in those reports to be held by the various stockholders.[8]

23. In further illustration, a chronological listing of the representations made to this Commission and the District Court by the licensee clearly indicates that Peoria has made numerous other inconsistent statements with regard to Mr. Murphy's and Mr. Hart's stock ownership, *i.e.:*

(a) Peoria's application for construction permit and all Ownership Reports up to that filed May 27, 1976, indicated Mr. Murphy was majority stockholder, and did not reflect any ownership interest by Mr. Hart.

(b) Peoria's December 23, 1973, response to the Commission's inquiry concerning its financial condition made no mention of Mr. Hart's financial contribution or stock ownership.

(c) The allegedly "corrected" Ownership Report filed May 27, 1976, indicates that Mr. Hart held stock in the corporation only since January 1974.

(d) Attachments 3 and 4 to Peoria's April 27, 1977, pleading indicate that Mr. Hart had held stock and a directorship in the corporation at least since January 1971.

(e) The Statement of Affairs for Bankrupt Engaged in Business filed by Peoria in the District Court on July 2, 1976, stated that the corporation had "repurchased Thomas A. Murphy's stock," and that Mr. Hart was vice-president and treasurer of the corporation.

(f) The Ownership Report filed by Peoria on August 2, 1976, again represented that Mr. Murphy was still the majority stockholder, and that Mr. Hart held no corporate office.

(g) The "Option to Purchase Stock Agreement" executed by Messrs. Hart and Carnegie on December 10, 1976, stated that the December 30, 1975, sales

[8] For instance, Peoria filed two Ownership Reports on December 20, 1973. In both Peoria indicated that 90,000 shares of stock had been issued and were held as follows: Mr. Carneigie—15,000 shares; Mr. Murphy—60,000 shares; and Mr. Warren—15,000 shares. However, one of these reports represented the percentage ownership as 15%/60%/15% respectively, and the other represented the percentage ownership as 17.5%/65%/17.5%, respectively. These percentage figures clearly do not reflect the portion of stock represented as being held by each stockholder, and one set does not add up to 100%. Further, the May 27, 1976 "corrected" report, which was apparently intended to correct the December 1973 reports, did not indicate the issuance of any additional shares, but stated that Mr. Hart held 5,000 shares, or 24.39% of the voting stock. Combining all of the information in the May 27, 1976, report, Peoria is describing to the Commission as "appropriately correct" its representations that Messrs. Carnegie, Murphy, Warren and Hart held 114.39% of Peoria's stock, and that Mr. Hart's 5,000 shares of 90,000 (or 95,000) issued constituted 24.39% of the outstanding stock.

agreement "effected the elimination of any purported Murphy stock interest."

(h) The application for transfer of control of the licensee from Peoria to Mr. Hart alone filed on June 22, 1977, again represented that Mr. Murphy was the majority stockholder, while Attachment No. 1B to Exhibit No. 1 of that same application, the "Option to Purchase Stock Agreement" described in item (d) above, represented that Mr. Murphy's stock interest had been elminated.

The above items (a)–(h) are obviously contradictory and raise a substantial and material question as to whether Peoria has exercised candor with the Commission and whether any of the above representations constitute false and misleading statements intended to deceive the Commission. Thus, an appropriate issue will be specified in this regard.

Peoria's Objections to Central's Application for Construction Permit

24. In opposition to Central's petition to deny, Peoria filed a motion to dismiss containing allegations that Central knowingly filed a financially deficient application and specified a transmitter site that was unavailable. Peoria also requested specification of issues as to (i) whether Central has withheld for its personal advantage information which should have been disclosed to the Commission in the public interest; (ii) financial qualifications; (iii) site availability; (iv) failure to amend its application as required by Section 1.65 of the rules; and (v) whether Central has made substantial material misrepresentations to the Commission.

25. Peoria first contends that Central knowingly filed a financially deficient application. According to its application, Central is a general partnership composed of the following interests: Bruce D. Foster—52%, Belva A. Foster—19%, Charles W. Foster—19%, and Norman Ricca—10%. It alleges that "Foster [the Central partnership] knew well that he could not receive a letter of credit from the Peoria banks based on his financial showing of a mere family ownership in one or two farms on which the family raises hogs and cattle, and thus Foster was unable to purchase WWCT from Peoria in January of 1976 when he attempted to do so." However, Central's application as originally tendered did not rely upon loan commitments from any financial institution. Rather, Central stated its intent to rely upon loans totaling $200,000 from Bruce D. Foster, Charles W. Foster and Belva T. Foster. An agreement to this effect, which specifies terms of interest and repayment, accompanied by personal financial statements signed by the three partners, was included in the application.[9]

26. It is well established that an application may be acceptable for filing as substantially complete pursuant to Section 73.3564 of the rules and yet not demonstrate the qualifications required for a grant. *KALE, Inc.*, 56 FCC 2d 1033 (1975); *Trustees of Dartmouth College*, FCC 73–1308, 29 RR 2d 59 (1973); *Central Florida Enterprises, Inc.*, 22 FCC 2d 260 (1970). Although Peoria claims that financial portions of Central's application were not substantially complete at the time of tender, this allegation is based upon a misunderstanding of our requirements for acceptance. The Central application may have been deficient in certain respects (see para. 30, *infra*), but it was substantially complete for the pupose of acceptance for filing. *Cf. Henry M. Lesher*, 67 FCC 2d 278 (1977).

27. Next, Peoria asserts that "Foster knew that he did not have a site available as he was personally aware that Peoria's site lease was terminated effective April 1, 1977." Opp. "motion to dismiss" section, p. 1. The Central application, as tendered for filing on November 1, 1976, specified the existing facilities of Station WWCT(FM), including the transmitter site, which was leased from Mid-America Television Company. Attached to Peoria's opposition is a January 1976 draft agreement of sale of WWCT(FM) (attachment E–2) by Peoria to Bruce Foster which, in paragraph IV–B, provides notice to Foster that the transmitter site lessors "claim that the lease is in default, and that said matter is in litigation, which litigation *may* result in early termination of the site lease." (Emphasis added.) Also attached is a February 1976 draft agreement of sale between the same parties which, at paragraph 5.3, states that:

> As soon as practicable after execution of this Agreement, and after the FCC ascertainment survey is filed with the FCC, Seller and Purchaser shall commence discussions with Mid-America Television Company for the purpose of resolving the differences which presently exist between Seller and Mid-America, for the purpose of obtaining from Mid-America its consent to Seller's assigning its interest under Exhibit D to purchaser, and for the purpose of obtaining from Mid-America an extension of said lease to a date not earlier than 2 years after the Time of Closing.

[9] On April 5, 1977, Central amended its financial proposal to rely on $75,000 in new capital from stockholders and a $200,000 loan from a banking institution. Included in the amendment was a letter of commitment from the banking institution. See para. 30, *infra*.

28. We cannot accept Peoria's argument that the WWCT(FM) transmitter site was unavailable to Central at the time its application was filed. The draft agreements predate the Central application by nearly a year. They do not address the status of the existing lease or Central's likelihood of obtaining a lease at the time the application was filed. The draft agreements merely acknowledge the existence of a controversy between Peoria and the lessor regarding lease terms. In fact, the latter agreement proposed to bind Peoria to cooperate in obtaining an extension or renewal of the lease for Central. Moreover, Peoria's own renewal application specified no change in the existing WWCT(FM) transmitter site. Thus, Peoria's contention is unsupported by the facts presented in its opposition, and must be rejected as purely conjectural. In its opposition, Peoria first stated that it would under no circumstances allow its equipment or facilities to be leased to or obtained by Central (attachment E–5). Accordingly, Central amended its application on April 5, 1977, to specify other facilities, including a new transmitter site. In view of the foregoing, we are not persuaded that Central specified a transmitter site that was unavailable. *See Central Florida Enterprises, Inc., supra.*

29. The gravamen of Peoria's first request for a character issue against Central is that Central's petition to deny Peoria's renewal application is not based upon recently discovered evidence of an alleged unauthorized transfer of control of WWCT(FM), but upon information acquired as early as 1975 by Bruce Foster while chief engineer and operations manager of the station. As viewed by Peoria, Mr. Foster held back this information for personal gain until after he left Peoria's employ in May 1976, was unable to obtain the station's facilities by purchase, and applications mutually exclusive to Central's had been cut off. Although Peoria relies on *Home Service Broadcasting Corp.*, 24 FCC 2d 192 (Rev. Bd. 1970), that case is not applicable. In *Home Service*, petitioner's motion to enlarge issues was untimely filed after hearing, and petitioner failed to meet its burden under *Edgefield-Saluda Radio Company et al.*, 6 FCC 2d 682 (Rev. Bd. 1966), to demonstrate good cause for late filing. Further, Peoria's assertions as to Central's motivations are speculative at best. The petition to deny filed by the applicant raises decisionally significant issues which must be considered irrespective of the timeliness with which

they were brought to the Commission's attention.

30. With respect to its financial qualifications, Central will require $170,240 to construct and operate the proposed station for three months, without reliance on revenues, itemized as follows:

Equipment	$123,996
Buildings and installation	6,500
Legal	15,000
Miscellaneous	3,500
Working capital	21,244
Total	170,240

To meet this requirement, Central's proposal, as amended, relies on $75,000 in new capital from stockholders, and a $200,000 loan from a banking institution. Our review of the Central application satisfies us that Central has demonstrated the availability of the $75,000 in new capital from stockholders. However, the bank's commitment letter expired on June 30, 1978, and has not been extended. Accordingly, a limited financial issue against Central will be specified.

31. Based on the foregoing, the designation of site availability, § 1.65 and misrepresentation issues against Central is not warranted. Accordingly, Peoria's requests for specification of these issues will be denied.

32. Except as indicated by the issues specified below, the applicants are legally, financially and otherwise qualified to operate as proposed. However, in view of the substantial and material questions of fact which remain with regard to whether renewal of Peoria's license would serve the public interest, and the mutual exclusivity of the Peoria renewal and the Central construction permit applications for WWCT(FM)'s frequency, a comparative hearing is required. *Ashbacker Radio Corp.* v. *F.C.,C.,* 326 U.S. 327, 333 (1946).

33. The Commission's basic policy with regard to applications for change in ownership of a license which has been designated for hearing is that "resolution of outstanding questions concerning the qualifications of licensee-transferors . . . [is] a condition precedent to consideration of a transfer application, "*G. A. Richards et al.,* 14 FCC 429, 430 (1950), so that licensees can be "held accountable for their stewardship and will not be allowed to evade the consequences of their misconduct or abuse of a license by selling the station at the end of the license period." *1400 Corp. (KBMI) et al.,* 4 FCC 2d 715, 716 (1966). However, where a licensee which has been designated for hearing declares bankruptcy and is placed in the hands of a receiver or trustee, the Commission has recognized that a trustee generally is not in a position to be familiar with or explain the actions of the bankrupt licensee, and that substantial equities may exist in favor of innocent creditors who would be injured by a denial of renewal and assignment by the trustee. The Commission therefore has created a limited exception to its policy of requiring resolution of outstanding character issues as a condition precedent to approval of assignment. Under this exception, an assignment may be approved without hearing only upon a showing by the trustee/receiver that the individuals charged with misconduct no longer are associated with the station and will have no part in the proposed operations of the station, and that such individuals "will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors." *Second Thursday Corp.,* 22 FCC 2d 515, 516 (1970). *See also Arthur A. Cirilli (WIGL) et al.,* 2a FCC 2d 692 (1966).

34. Further, under these circumstances, where a comparative hearing is necessary due to the filing of a mutually exclusive construction permit application for the bankrupt licensee/transferor's facility, the Commission has stated that ". . . the public interest would better be served by comparing the qualifications of the two parties intending to operate the station. . . ," unless the Commission is ". . . presented with a situation in which a renewal applicant, faced with a mutually exclusive proposal, attempts to avoid a comparative hearing by substituting a prospective assignee to compete in his place." *KBMI, supra.* at 716.

35. In this case the District Court appointed Peoria itself to act as debtor in possession rather than appointing a trustee or receiver not associated with the licensee. Thus, the rationale that the trustee/receiver in the ordinary bankruptcy case is in no position to explain or answer for the misdeeds of the licensee is not applicable to this proceeding. Further, the licensee accused of misconduct still is operating the station as debtor in possession, and no showing has been made that individuals charged with misconduct will not benefit from approval of the assignment or that any innocent creditors would be protected thereby. On the contrary, Mr. Hart states that he and Mr. Carnegie, two individuals primarily involved in the alleged wrongdoing, are the "largest creditors" of Peoria (opp., Attachment E (Hart affidavit), p. 8), and they therefore would be the greatest beneficiaries of approval of Peoria's renewal and assignment applications. Finally, the Peoria-Chan assignment application was filed almost two years after the Central construction permit application. See para. 1, *supra.* Thus, a hearing must be held to determine whether Peoria's renewal application or Central's mutually exclusive construction permit application would, on a comparative basis, better serve the public interest. The Chan assignment application will be held in abeyance pending the outcome of the hearing proceeding. See *Moline Television Corp.,* 11 FCC 2d 592 (1968).

36. Accordingly, It Is Ordered: (a) That the petition to deny filed by Central Illinois Broadcasting Co. opposing the renewal application filed by Peoria Community Broadcasters, Inc. for Station WWCT(FM), Peoria, Illinois, is granted only to the limited extent indicated herein and is denied in all other respects; (b) That Peoria's "motion to dismiss" and "petition for enlargement of issues" are granted only to the limited extent indicated herein and are denied in all other respects; (c) That Peoria Community Broadcasters, Inc.; Walter W. Hart; Central Illinois Broadcasting Company; and Bruce G. Foster are made parties to the hearing ordered herein; and (d) That the assignment application from Peoria Community Broadcasters, Inc. to Chan Broadcasting Co., Inc. shall be held in abeyance pending the outcome of the proceeding.

37. It Is Further Ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal application filed by Peoria Community Broadcasters, Inc. and the Construction Permit application filed by Central Illinois Broadcasting Company are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) With respect to the license renewal application for WWCT(FM) filed by Peoria Community Broadcasters, Inc.:

(a) To determine whether Peoria has undergone an unauthorized transfer of control.

(b) To determine whether Peoria's failure to report Mr. Murphy's alleged failure to pay for his stock constituted a violation of § 1.65 of the Commission's rules requiring all applicants to report "substantial change[s]" in pending applications;

(c) To determine whether Peoria's failure to notify the Commission of the

December 1975 sales agreement constituted a violation of § 73.3613(b) (3) and/or (6) of the Commission's rules which requires the reporting of "executory contracts" affecting ownership of licensees and "options to purchase stock" of licensees;

(d) To determine whether Peoria's failure to notify the Commission in its December 1973 response to the Commission's financial inquiry that Mr. Hart had owned stock in the corporation since 1971 constituted a misrepresentation to the Commission;

(e) To determine whether Peoria's failure to include Mr. Hart in its Ownership Reports until May 1976 constituted a violation of § 73.3615(a)(3) of the Commission's rules and/or a misrepresentation to the Commission;

(f) To determine whether Peoria's representation in its allegedly "corrected" May 1976 Ownership Report concerning the duration and extent of Mr. Hart's ownership interest in the corporation involved a misrepresentation to the Commission.

(g) To determine whether Peoria, its stockholders or officers, misrepresented facts concerning its ownership and management to the Commission and to the U.S. District Court for the Southern District of Illinois.

(h) To determine the effects of the evidence adduced pursuant to (a), (b), (c), (d), (e), (f) and (g) above on the basic and/or comparative qualifications of Peoria.

(2) With respect to the application for construction permit filed by Central Illinois Broadcasting Co.:

(a) To determine the source and availability of additional funds to meet total construction and three month operating costs over and above the $75,000 from stockholders indicated; and

(b) Whether, in light of the evidence adduced pursuant to 2(a) above, the applicant is financially qualified to construct and operate as proposed.

(3) In the event that it is determined that Peoria and Central possess the requisite qualifications to be Commission licensees, to determine, in light of the evidence adduced pursuant to the foregoing issues, which on a comparative basis, would better serve the public interest.

38. It Is Further Ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence under issues 1 (a) through (c), (e) and (g), and 2 (a) and (b) shall be upon Central Illinois Broadcasting Co., since issues 1 (a) through (c), (e) and (g) were raised by Central, and the information regarding Central's financial qualifications under issues 2 (a) and (b) is peculiarly within its knowledge; the burden of proceeding with the introduction of evidence under issues 1 (d) and (f) shall be upon Peoria Community Broadcasters, Inc.; and that the burden of proof under issues 1(a) through (h) shall be upon Peoria; and under issues 2 (a) and (b), such burden shall be upon Central.

39. It Is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

40. It Is Further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in that Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

41. It Is Further Ordered, That the Secretary of the Commission shall send, by Certified Mail—Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on August 4, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before August 26, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accodunting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

The CAB requests clearance of a new, single-time questionnaire which will be mailed to all air taxi operators, requesting information regarding whether they perform air ambulance services and, specifically what these services consist of. Collection of this information is authorized under Section 407(a) of the Federal Aviation Act. The information is needed to answer questions raised at a recent House hearing by the Subcommittee on Oversight and Investigation and response is mandatory. The CAB estimates respondents will number approxiamtely 4,000 and that reporting burden will average one hour per response.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-23992 Filed 8-7-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 125; Case No.]

The Chesapeake & Potomac Telephone Co. of Maryland, the Public Service Commission of Maryland; Proposed Intervention in Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Public Service Commission of Maryland concerning the application of the Chesapeake and Potomac Telephone Company of Maryland for an increase in its annual telephone rates. GSA represents the interest of the executive agencies of the U.S. government as users of telecommunications services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Leonard A. Salters, Acting 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, on or

before September 8, 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: July 21, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-23938 Filed 8-7-80; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

Love Canal Epidemiology Work Group; Open Meeting; Correction

The date, time, and place for the meeting of the Love Canal Epidemiology Work Group, notice of which was published in the **Federal Register** (45 FR 51921, August 5, 1980) have been changed.

The Work Group has been rescheduled to meet on August 20, 1980, 8:00 a.m., in Auditorium B, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia.

All other aspects of the notice published on August 5, 1980, remain the same.

Dated: August 5, 1980.

Willaim H. Forge,

Director, Center for Disease Control.

[FR Doc. 80-23941 Filed 8-7-80; 8:45 am]

BILLING CODE 4110-86-M

Food and Drug Administration

[Docket No. 77N-0437; DESI Nos. 9149, 11020, 11127, and 12486]

Revised Physician Labeling for Neuroleptic Drugs

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice requires that a precaution statement be included in physician labeling of neuroleptic drugs (except rauwolfia alkaloids) stating that these drugs elevate serum prolactin levels and may pose a potential risk to patients.

DATES: Supplements to approved NDA's or ANDA's due on or before October 7, 1980. Revised labeling to be used on or before December 8, 1980.

ADDRESSES: Communications in response to this notice should be identified with the Docket number 77N-0437, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full NDA's (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Supplements to abbreviated new drug applications: Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 16, 1978 (43 FR 21051), FDA set forth a precaution statement to be included in the labeling of antipsychotic drugs except lithium carbonate, to inform physicians of recent studies showing a correlation between increased mammary neoplasms and the chronic administration of these drugs in rodents. In addition, it announced a meeting to be held on June 26, 1978, to discuss the design and initiation of epidemiological studies involving the chronic administration of the drugs.

In a notice published in the **Federal Register** of August 18, 1978 (43 FR 36696), FDA proposed a revised precaution statement because of new information presented at the June 26, 1978 meeting. The time limit for submitting supplements to new drug applications (NDA's) or abbreviated new drug applications (ANDA's) was postponed, and 30 days were given for written comments. In a **Federal Register** notice of September 19, 1978 (43 FR 42042), FDA extended the time limit for written comments for an additional 30 days to give all interested persons time to comment.

FDA received 14 comments in response to the proposed precaution statement. Comments came from two officials at State-supported mental health institutions, one mental health association, one professor of psychiatry, and ten manufacturers of neuroleptic drug products. All comments have been reviewed. A discussion of them follows. In the discussion of the comments and in the prevautionary statement the term "neuroleptic drugs" is substituted for "antipsychotic drug" to more accurately describe the type of drug covered. However, the antipsychotic drug terminology has been retained when used by the comment.

1. Seven comments noted that drugs other than antipsychotic drugs and certain conditions such as stress, sleep, and pregnancy also elevate prolactin levels. They suggested that this information be included in the precautionary statement for these other drugs.

The agency believes that information on prolactin elevation resulting from any drug approved for use or employed on a chronic basis should be disclosed as a matter of professional and public interest. FDA recognizes that neuroleptic drugs are not the only drugs capable of producing elevated prolactin levels in humans but believes that the unique pharmacologic activity of this class of drugs serves as a basis for proceeding with these drugs ahead of others. The importance of the neuroleptics in this case rests upon the fact that the neurochemcial, i.e., antidopaminergic, mechanism and prolactin elevation appear to be inseparable. The agency is aware of reports that other psychotropic drugs, such as dextroamphetamine and the tricyclic antidepressants, also induce prolactin elevation. Antihistamines and antihypertensive agents may also raise prolactin levels but there is no data to suggest an obligatory link between therapeutic effects and altered prolactin levels of these drugs. A precaution statement regarding rauwolfia alkoloids will be the subject of a future **Federal Register** notice. Actions covering other types of drugs are under consideration within the agency. No warning statement is required to be included in the labeling of lithium carbonate, because it does not elevate prolactin levels.

2. One comment stated that the precaution should not be required for the drug Navane (thiothixene) because it is chemically distinct from the phenothiazines, although it raises prolactin levels. The comment continued that it is inappropriate to infer from studies of the phenothiazine neuroleptic agents that Navane therapy is also associated with increased mammary tumors.

The precautionary statement should be included in the labeling for navane (thiothixene) and chlorprothixene even though they are chemically distinct from the phenothiazines because of the unique and specific neurochemical effects common to neuroleptics (vide supra). The potential risk, if any, to human subjects is independent of nuances in the chemical formula among the several classes of neuroleptic drugs.

3. One comment stated that the precaution should not be required for Phenergan (promethazine) and Sparine (promazine), products chemically similar to Thorazine (chlorpromazine), because they are not effective as antipsychotic drugs and do not raise serum prolactin levels.

It is possible that some analogues of chlorpromazine might not be prescribed in the treatment of psychoses. However, the potential risk depends not upon the disease or condition for which the drug is prescribed but rather on whether or not the drug raises serum prolactin levels. It has not been shown that promazine and promethazine do not affect prolactin levels. Elevated prolactin levels are anticipated with prolonged administration of any of the phenothiazines. The agency finds that the precautionary statement should be included for these drugs because both are likely to raise serum prolactin levels and both may be prescribed for chronic use.

4. Six comments suggested that FDA defer action on the proposed precautionary statement until data are available to thoroughly assess the relationship between administration of antipsychotic agents and human mammary tumors.

The recommendations to defer action are not desirable. A number of neuroleptic agents have been available for prescription use for more than two decades, but conclusive data are not yet available. An appropriate study would require an extended period of time to complete. To defer action until completion of such a study would increase the possibility that prescribing physicians would be unaware of the potential risk during the additional period.

5. One comment stated that adding information to the already lengthy package insert would help neither doctors nor patients. It suggested instead that a review article be published in a medical journal with wide readership.

Under the Federal Food, Drug, and Cosmetic Act a drug is misbranded if its labeling is false or misleading in any particular. 21 U.S.C. 352(a). In determining whether the labeling is misleading, the extent to which it fails to reveal material facts regarding possible consequences of the usual uses of the product are to be considered. 21 U.S.C. 321(n); 21 CFR 1.21. Thus, a statement in the labeling discussing the possible adverse effects of the elevated prolactin levels associated with the administration of neuroleptic drugs is required to ensure that they are not misbranded.

The agency recognizes that transmission of information to the medical profession requires other measures in addition to labeling. The suggestion that the state of present knowledge be given wider attention through a publication is welcome. Such an article may be published in the future.

6. One comment recounted a drug manufacturer's experience with antipsychotic agents used in studies on dogs and rodents. It found that the elevated prolactin levels and mammary gland hyperplasia were transitory effects and returned to normal during about 3 months of continued dosing. The manufacturer saw no increase in benign or malignant neoplasms.

The studies discussed by the comment employed a shorter exposure period than the 18- and 24-month studies in which a tumorigenic effect was observed. The studies with a shorter exposure period do not disprove the possibility that neuroleptic agents would be tumorigenic in rodents upon longer exposure.

7. Two comments noted that physiological differences between rodents and humans raise questions about the relevance of rodent data to risks in human subjects. Another comment suggested placing information on rodent data in a separate section dealing with animal studies.

FDA included information on the development of mammary tumors in rodents exposed for a protracted period to describe the findings which first drew attention to the possible risk in human subjects. However, information on rodent tumors is not essential to an understanding of the risk to humans. The precaution has been revised accordingly.

8. One comment stated that the weight of evidence demonstrates the lack of a relationship between human mammary tumors and prolonged exposure to antipsychotic agents. Another comment discussed the retrospective epidemiological examination of 5,463 patients treated with antipsychotic agents during a 20-year period at the Norristown State Hospital. The comment stated that the study showed no increase in the incidence of mammary cancer in these patients. Other comments questioned the accuracy with which the fraction of prolactin-dependent human mammary tumors can be estimated.

FDA is not aware of evidence disproving the possibility of a relationship between prolonged exposure to antipsychotic agents and human mammary tumors. The results of the Norristown State Hospital study may be interpreted as ruling out with reasonable certainty only the possibility of a twofold increase in mammary tumors. A smaller relative risk was not excluded. It has not been shown that any increase in risk is insignificant or clinically unimportant.

The fraction of human tumors that appear to be prolactin dependent can be reasonably inferred from in vitro data. One report states that prolactin improves maintenance and growth in culture media of 16 (32 percent) of 50 breast cancers studied. It is noteworthy that cell cultures of four of the cancers also showed clear enhancement of growth when prolactin was added at a level about one-tenth that normally found in human serum. Taking into account the limitations of extrapolating in vitro results to clinical situations, it can be inferred that one-third of human mammary carcinomata may be prolactin dependent, and a lesser fraction exquisitely sensitive. (Salih, H., et al., "Prolactin Dependence in Human Breast Cancers," *The Lancet*, November 25, 1972, pp. 1103–1105).

9. Seven comments stated that there is a risk that patients requiring antipsychotic agents would be unnecessarily alarmed and would avoid useful treatment because the precaution implies an increased risk of mammary tumors.

Some patients may be alarmed by the precautionary statement and avoid useful treatment. However, this possibility does not warrant withholding truthful information from the labeling. Patient compliance is often less than satisfactory, but it is not clear that poor patient compliance is a result of labeling statements.

10. Two comments stated that the precautionary statement may be used as a basis for malpractice suits if a patient subsequently develops mammary tumors, even though the tumors may be entirely unrelated to treatment with antipsychotic agents. It was stated that physicians would hesitate to prescribe antipsychotic agents, even when clearly indicated.

One of the functions of FDA is to assure full disclosure of adverse effects in information directed to physicians to promote safe and effective prescribing. The physician is then responsible for making the final judgment abut which, if any, of the available drugs the patient should receive. The current labeling for neuroleptic agents lists the adverse effects of acute and chronic administration. Some adverse effects are permanent or fatal, but the drugs continue to be widely prescribed.

11. The remaining comments are specific suggestions for the wording of

the precautionary statement. One comment suggested modification of the specific recommendation of periodic breast examinations because the optimal surveillance approach may vary from patient to patient. Another comment notes that "a fraction of human breast tumors" might be interpreted to mean that a part of a breast tumor in an individual could be prolactin-dependent, while other parts of the tumor were not.

These suggestions, along with others, have been incorporated into the final revised precaution statement.

After considering all comments submitted, the Director of the Bureau of Drugs concludes that the labeling for neuroleptic drugs except the rauwolfia alkaloids should contain a precaution statement on the possible adverse effects of the elevated serum prolactin levels associated with administration of these drugs. Accordingly, the physician labeling for these drug products must be revised to include the following paragraph in the Precautions section:

Neuroleptic drugs elevate prolactin levels; the elevation persists during chronic administration. Tissue culture experiments indicate that approximately one-third of human breast cancers are prolactin dependent in vitro, a factor of potential importance if the prescription of these drugs is contemplated in a patient with a previously detected breast cancer. Although disturbances such as galactorrhea, amenorrhea, gynecomastia, and impotence have been reported, the clinical significance of elevated serum prolactin levels is unknown for most patients. An increase in mammary neoplasms has been found in rodents after chronic administration of neuroleptic drugs. Neither clinical studies nor epidemiologic studies conducted to date, however, have shown an association between chronic administration of these drugs and mammary tumorigenesis; the available evidence is considered too limited to be conclusive at this time.

The following drug entities, and their salts and esters, are examples of neuroleptic agents which are covered by this notice, although this is not intended to be an exhaustive listing: Acetophenazine, butaperazine, carphenazine, chlorpromazine, chlorprothixene, mesoridazine, fluphenazine, haloperidol, loxapine, molindone, perphenazine, piperacetazine, prochlorperazine, promazine, thiopropazate, thiohtixene, trifluoroperazine, triflupromazine, and thioridazine. In addition, this notice covers any combination product containing a component covered by this notice.

This notice applies not only to the particular neuroleptic drugs subject to the Drug Efficacy Study but to all neuroleptic drug products (except the rauwolfia alkaloids) that are the subject of new drug applications approved either before or after the Drug Amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6), whether or not it is the subject of an approved new drug application. Any person may request an opinion of the applicability of this notice to a specific drug product the person manufactures or distributes by writing to the Division of Drug Labeling Compliance (address given above). The following drugs were reviewed in the Drug Efficacy Study, and conclusions on them were published in the Federal Register notices cited:

1. November 28, 1970 (35 FR 18213; DESI 11020): Acetophenazine maleate; fluphenazine hydrochloride; thipropazate hydrochloride.

2. April 3, 1971 (36 FR 6447; DESI 9149): Chlorpromazine hydrochloride; perpenazine; prochlorperazine edisylate; prochlorperazine maleate; promazine hydrochloride; trifluoperazine hydrochloride; triflupromazine hydrochloride; triflupromazine.

3. July 27, 1972 (37 FR 15038; DESI 11127): Chlorpromazine; prochlorperazine.

4. August 8, 1972 (37 FR 15947; DESI 12486): Chlorprothixene.

Applicants with approved NDA's or ANDA's shall submit supplements providing for appropriate revision of labeling to include the precaution statement on or before October 7, 1980. Applicants shall put the revised labeling into use by December 8, 1980. The revised labeling may be used without advance approval by the Food and Drug Administration.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 505, 52 Stat. 1041, 1050–1053, as amended (21 U.S.C. 321(n), 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: August 1, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 80-23780 Filed 8-7-80; 8:45 am]

BILLING CODE 4110-03-M

Fisher Scientific; Premarket Approval of Fluorescent Gonorrhea Test-Heated (FGT-H)

Correction

In FR Doc. 80-17866 appearing at page 40234 in the issue of Friday, June 13, 1980, on page 40235, insert the following information after "DATES:"

"Petitions for administrative review by July 14, 1980.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: The sponsor, Fisher Scientific Co., Orangeburg, NY, submitted an application for premarket approval of Fluorescent Gonorrhea Test-Heated (FGT-H) to FDA on June 9, 1977. The application was reviewed by the Microbiology Section of the Immunology and Microbiology Devices Panel, an FDA advisory committee, which recommended disapproval of the application. The agency has reviewed the Panel's recommendation and notes that a recommendation for disapproval of the application was based primarily on deficient product labeling. Other concerns of the Panel regarding high false-positive rates to be expected from the test are discussed in the Summary of Safety and Effectiveness Data prepared by the Bureau of Medical Devices."

BILLING CODE 1505-01-M

[Docket No. 80 M-0259]

Hancock Laboratories, Inc., Premarket Approval of Hancock Model 250 Modified Orifice Aortic Bioprosthesis and the Hancock Model 150 Modified Orifice Valved Conduit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMAMRY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Orifice Device Amendments of 1976 of the Hancock Model 250 Modified Aortic Bioprosthesis in sizes 19 through 25 millimeters (mm) and the Hancock Model 150 Modified Orifice Valved Conduit in sizes 16 through 22 mm sponsored by Hancock Laboratories, Inc., Anaheim, CA. After reviewing the recommendation of the Circulatory Systems Devices Panel, FDA notified the sponsor that the application was approved because the devices have been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by September 8, 1980.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry A. Goldstein, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: The sponsor, Hancock Laboratories, Inc., Anaheim, CA, submitted an application for permarket approval of the Hancock Model 250 Modified Aortic Orifice Bioprosthesis (a replacement heart valve) in sizes 19 through 25 mm and the Hancock Model 150 Modified Orifice Valved Conduit (a replacement heart valve with a vascular graft prosthesis) in sizes 16 through 22 mm to FDA on February 20, 1979. The application was reviewed by the Circulatory Systems Devices Panel, an FDA advisory committee, which recommended approval of the application. On November 15, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the office of the Hearing Clerk (address above) and is available upon request from that office. Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 8, 1980, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–23871 Filed 8–7–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Richfield District Advisory Council Meeting

July 31, 1980.

Notice is hereby given that a meeting of the Richfield District Advisory Council will be held September 9–10, 1980.

The meeting will begin at 10:00 a.m. on September 9 in the conference room of the Bureau of Land Management Office at 150 East 900 North, Richfield, Utah. The agenda for the meeting will include (1) overview of current Bureau of Land Management programs and policies; (2) update on the Mountain Valley Grazing Environmental Impact Statement; (3) review of Advisory Council Charter and orientation to Council's duties and responsibilities; (4) selection of chairperson and vice-chairperson; (5) scheduling for next meeting and agenda topics.

On September 10, 8:00 a.m., the Council will take a field tour of several critical areas within the Mountain Valley Planning Area.

The meeting is open to the public. Interested persons may make oral statements to the Council between 3 p.m. and 4 p.m. on September 9 or file a written statement for the Council's consideration. Anyone wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, 150 East 900 North, Box 768, Richfield, Utah, 84701 by September 2, 1980.

Summary minutes of the Council minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Donald L. Pendleton,

District Manager.

[FR Doc. 80–23914 Filed 8–7–80; 8:45 am]

BILLING CODE 4310–84–M

[A–9603]

Public Lands in Cochise County, Ariz.; Exchange

Correction

In FR Doc. 80–21924, appearing on page 48950, in the issue of Tuesday, July 22, 1980, make the following correction.

On page 48950, second column, the land description for "Section 24" should have read:

"Section 24: S½ Lot 4, Lots 5, 8, S½ Lot 10, S½SW¼NE¼, S½SE¼NW¼, E½E½SW¼W½SE¼.

BILLING CODE 1505–01–M

[OR 3660]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes to continue in their entirety for a 20-year period the existing withdrawals described below, pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714. The withdrawals were made by Public Land Order 4537 on November 20, 1968.

Willamette Meridian

Revested Oregon and California Railroad Grant Land

Wildwood Recreation Site

T. 2 S., R. 7 E.,
Sec. 31, Lot 4, S½NE¼, E½SW¼, and SE¼.
Containing 359.97 acres in Clackamas County.

Salmon Falls Recreation Site

T. 8 S., R. 4 E.,
Sec. 31, Lots 3, 4, and 10.
Containing 159.20 acres in Marion County.

Missouri Bend Recreation Site Addition

T. 14 S., R. 9 W.,
Sec. 13, NE¼SE¼SW¼.
Containing 10 acres in Benton County.

The areas described aggregate 529.17 acres.

The purpose of the withdrawals is to protect the recreational values within the described sites. The lands are currently segregated from location and entry under the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

On or before September 17, 1980, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned before September 17, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings are scheduled and conducted in accordance with BLM Manual Sec. 2351.16B.

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 review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the lands are dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the lands is provided for; and an agreement is reached on the concurrent management of the lands and their resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 1, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-23893 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-84-M

[Coal Lease Applications ES 15444 and ES 21181]

Coal Land in Whitley and McCreary Counties, Kentucky; Public Hearing and Availability of Environmental Assessment

The Department of the Interior, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 hereby gives notice that a public hearing will be held on August 28, 1980, at 7:30 P.M., in the Gatliff Auditorium, Cumberland College, Williamsburg, Kentucky 40769. Application has been made to the United States that it offer for lease certain coal resources in the public lands hereinafter described. The purpose of the hearing is to obtain public comments on the Environmental Assessment prepared and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal; (2) the impact that mining the coal in the proposed leasehold may have on the area, including but not limited to impacts on the environment; and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the August 28, 1980 public hearing should be received at the Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, prior to the close of business 4:00 P.M., on August 27, 1980. People who indicate they wish to testify when they check in at the hearing room may have an opportunity to testify if time is available after the listed witnesses have been heard.

Both oral and written comments will be received at the pubic hearings, but speakers will be limited to a maximum of ten minutes each depending on the number of persons disiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments may also be submitted to Eastern States Office, at the above address, prior to close of business on August 27, 1980. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

In addition, the public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management and the U.S. Geological Survey. Public comments will be utilized in establishing fair market value for the coal resources in the described lands.

Comments should address specific factors related to fair market value including, but not limited to: the quantity and quality of the coal resources, the price that the mined coal would bring in the market place, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return, the value of the surface estate (if private surface), and the mining method or methods which would achieve maximim economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions, may also be submitted at this time.

These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63 and 43 CFR 3422.1–2. Should any information submitted as comments be considered to be proprietary by the commentor, the information should be labeled as such and stated in the first page of the submission. Comments should be sent to both the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexander, Virginia 22304, and to the Regional Conservation Manager, Eastern Region, Geological Survey, 1725 K Street, N.W., Suite 204, Washington, D.C. 20006, to arrive no later than August 27, 1980.

Application ES 21181, 1920 acres

The coal resource to be offered is to be mined underground from the Jellico and Barren Fork seam(s) in the following lands located in the Daniel Boone National Forest, in Whitley County and McCreary County, Kentucky on the waters of Jellico Creek under the supervision of the Whitley, Kentucky District Forest Service Office. The metes and bounds description is available at the Eastern States Office at the address set out above, containing 1920 acres, and;

Application ES 15444, 409 acres

The coal resource to be offered is to be mined underground from the Barren Fork seam(s) in the following lands located in the Daniel Boone National Forest, McCreary County, Kentucky, Tract 54, on the waters of Cane Branch and Pole Road Hollow of Beaver Creek. The metes and bounds description is available at the Eastern States Office set out above.

The draft Environmental Assessment will be available for review in the Eastern States Office, Bureau of Land Management, at the above address. Single copies are available for distribution upon request from the office at the above address.

A copy of the Environmental Assessment, the case file and the comments submitted by the public on fair market value, except those stated in the Freedom of Information Act, will be available for public inspection at the Eastern States Office, Bureau of Land Management, at the address set out above.

Pieter J. VanZanden,

Associate Eastern States Director.

[FR Doc. 80-23894 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Floodplain Management and Wetlands Protection Procedures

AGENCY: Bureau of Mines, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice provides Bureau of Mines final procedures for complying with Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). The draft procedures were published in the Federal Register on May 9, 1980, (45 FR 30700).

DATE: These procedures will become effective August 8, 1980.

FOR FURTHER INFORMATION CONTACT: Wilton Johnson, Division of Mineral Land Assessment, Bureau of Mines, 2401 E St., N.W., Washington, D.C. 20241, telephone (202) 634-4743.

SUPPLEMENTARY INFORMATION: These procedures implement Executive Orders 11988 and 11990 and are based on Department of the Interior guidelines (520 DM 1) and the Water Resources Council Guidelines (43 FR 6030). No comments were received during the review period for comments on the draft procedures which are published here unchanged.

Dated: August 1, 1980.

Linsay Norman,

Assistant Director, Bureau of Mines.

1. *Purpose.* The purpose of these procedures is to set forth policy and guidance for carrying out the provisions of Executive Order 11988, Floodplain Management (May 24, 1977), Executive Order 11990, Protection of Wetlands (May 24, 1977), and the Department of the Interior Guidelines on Floodplain Management and Wetland Protection Procedures.

2. *Policy.* It is the policy of the Bureau of Mines to exercise leadership in fulfilling the requirements of Executive Orders 11988 and 11990 by:

A. Avoiding, to the extent practicable, the long- and short-term adverse impacts associated with the occupancy and modification of wetlands and floodplains.

B. Avoiding the direct or indirect support of wetland or floodplain development whenever there is a practicable alternative.

C. Reducing the risk of flood loss and minimizing the impact of floods on human health, safety, and welfare.

D. Assuring that planning programs and budget requests reflect consideration of the natural and beneficial values served by floodplains and wetlands.

E. Developing an integrated process to involve the public in the floodplain management decisionmaking process.

F. Adhering to the objectives of the Unified National Program for Floodplain Management.

G. Consulting with Water Resources Council (WRC), Council on Environmental Quality (CEQ), Federal Emergency Management Agency (FEMA), Fish and Wildlife Service (FWS), Corps of Engineers (CE), and other institutions with expertise in the natural and beneficial values of floodplains and wetlands.

3. *Applicability.* These procedures shall apply to the following Bureau actions which may be located in or affect floodplains or wetlands:

A. Acquiring, managing, and disposing of Federal lands and facilities.

B. Providing federally undertaken, financed, or assisted construction and improvements.

C. Conducting Federal activites and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

4. *Definitions.* A. Agency. An executive department, a government corporation, or an independent establishment, also including the military departments.

B. Base Flood. That flood which has a one percent change of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

C. Facility. Any man-made or man-placed item or structure.

D. Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff or surface waters from any source.

E. Floodplain. The lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

F. Minimize. To reduce to the smallest possible amount or degree possible.

G. Practicable. Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost, and technology.

H. Preserve. To prevent modification of the natural floodplain or wetland environment or to maintain it as closely as possible in its natural state.

I. Restore. To re-establish a setting or environment in which the natural functions and values of the floodplain or wetland can again be achieved.

J. Wetlands. "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" (as defined in Executive Order 11990, Protection of Wetlands).

5. *Procedures.* The Division, Branch, Section, or organizational unit of the Bureau with responsibility for the proposal must complete the following steps when proposing to take an action that may impact or be located in floodplains or wetlands. All requests for new authorizations or appropriations for actions to be located in floodplains or wetlands must contain a statement of compliance with these procedures.

A. Determine Whether a Proposed Action is Located in or Will Affect a Floodplain or Wetland. The floodplain determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area if available. If further information and assistance are needed, one or more of the following agencies will be consulted:

Soil Conservation Service, Corps of Engineers, National Oceanic and Atmospheric Administration, Federal Housing Administration, Federal Insurance Administration, Geological Survey, Bureau of Land Management, Water and Power Resources Service, Fish and Wildlife Service, Tennessee Valley Authority, Delaware River Basin Commission, Susquehanna River Basin Commission, and appropriate State agencies. If a determination regarding wetlands cannot be made on the basis of definition and inspection, assistance will be sought from the Fish and Wildlife Service, the Corps of Engineers, the Environmental Protection Agency, or local planning and zoning agencies.

B. Early Public Review. If it is determined that a proposed action will be located in or impact a floodplain or wetland, the public or persons interested in or affected by the action shall be notified at the earliest possible time of intent to carry out an action in order that they may give their views on the proposal.

C. Identify and Evaluate Practicable Alternatives. If it is determined that a proposed action is located in or affects a floodplain or wetland, alternative sites must be identified and the practicability of such sites avaluated. Alternatives to be evaluated include: (1) carrying out the proposed action at a location outside the base floodplain or at a location that will not result in impacts on wetlands (alternative sites), (2) other means which accomplish the same purpose as the proposed action (alternative actions), and (3) no action.

D. Identify Impacts of the Proposed Action. the full range of impacts of direct Bureau actions and the impacts of actions supported by the Bureau must be evaluated. Since the Executive Order is based primarily on the National Environmental Policy Act (NEPA), the concepts of impact identification and assessment applicable to both NEPA and the Order are identical. The three basic types of impacts to be assessed are:

(1) Positive and negative impacts. Both must be identified so that the practicability of a proposed action can be measured. For example, draining wetlands establishes an environment which is suitable for certain uses, but at the expense of beneficial values of the wetlands.

(2) Concentrated and dispersed impacts. these impacts may result from any action. The impact is concentrated if it occurs at or near the site of an action and is dispersed if at a site remote from the action. For example, a concentrated impact of constructing a building on a wooded area is the loss of vegetation at the site. A dispersed impact of the same action could be sedimentation downstream caused by erosion at the site.

(3) Short- and long-term impacts. Both must be analyzed to evaluate the total impact of an action or alternative. Short-term impacts are temporary changes occurring during or immediately following an activity and usually persist for a short while. Long-term impacts occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions. An example of a short-term impact could be sedimentation at or below a construction site. A long-term impact could be the loss of valley floodwater storage resulting from the cumulative effects of floodplain development.

After determining that a proposed action is in a floodplain, the risk to lives and property involved in using the site must be determined. This assessment includes the identification of high hazard areas (riverine and coastal floodplains). These areas are usually those nearest the watercourse and are subject to frequent flooding.

E. Minimize, Restore, Preserve. If it is determined that a proposed action or alternative will result in harm to lives and property or impact the natural and beneficial values of or within a floodplain or wetland, modifications must be planned to reduce harm to the smallest amount possible and to insure preservation and restoration of as much of the natural and beneficial floodplain or wetland values as possible.

F. Reevaluate Alternatives. After the impacts the proposed action would have on the floodplain or wetland (step D) and methods to minimize these impacts and opportunities to restore and preserve floodplain and wetland values (step E) have been identified, the proposed action should now be reevaluated. For proposed actions in the floodplain or in wetlands, the initiating office must determine whether the action is still feasible in terms of: (1) avoiding support of floodplain or wetland development where there is a practicable alternative; (2) reducing risk of flood loss; (3) protecting human safety, health and welfare; and (4) restoring and preserving natural and beneficial floodplain values. the evaluation should lead to a determination of whether there are alternatives to the proposed action.

If there is no practicable alternative to the proposed action, consideration must be given to modifying or limiting the proposed action to minimize potential harm to or within floodplains or wetlands. New alternative actions and sites can then be identified and previously rejected ones reevaluated for practicability based on scaled-down expectations. If neither of the above courses of action is feasible, the no action alternative must be reevaluated.

If the proposed action is outside the floodplain or wetland but has impacts which cannot be minimized, consideration must be given to modifying or relocating the action to eliminate or reduce the identified impacts or to choosing the no action alternative.

The reevaluation must include a comparison of relative adverse impacts associated with the proposed action located in and out of the floodplain or wetland, with emphasis on floodplain or wetland values. However, a site outside of a floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

G. Findings and Public Explanation. If the reevaluation results in the determination that there is no practicable alternative to locating in or impacting a floodplain, a statement of findings and public explanation must be provided, indicating how any trade off analysis was conducted in making the findings. OMB Circular A–95 and NEPA review procedures will be used to make findings available for agency and public review.

The statement of findings and public explanation must include:

(1) A description of why the proposed action must be located in the floodplain.

(2) A description of all significant facts considered in making the determination including alternative sites and actions.

(3) A statement indicating whether the actions conform to applicable State, or local floodplain protection standards.

(4) A statement indicating why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action.

(5) A provision for publication in the **Federal Register** and other appropriate vehicle.

(6) A provision for a brief comment period prior to agency action (15 to 30 days).

(7) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(8) A statement indicating how the action affects natural or beneficial floodplain values.

(9) A statement listing other involved agencies and individuals.

H. Implementation of Action. With the conclusion of the decisionmaking process described in steps A through G, the proposed action can be

implemented. However, it is the continuing responsibility of the initiating office to monitor all aspects of the project activities to insure that all requirements relating to minimization, preservation, and restoration will be observed if the proposed action will result in floodplain or wetland impacts. All proposed actions will be coordinated with the Division of Mineral Land Assessment.

6. *Documentation and Circulation.* Each Division will be responsible for case-by-case documentation of specific analysis of actions covered by EO 11988 and EO 11990 and for maintaining current records for reporting purposes.

For proposed actions having national significance or impact, a notice will be published in the **Federal Register** with sufficient time allowed for public review and comment. For proposed actions affecting areas of lesser geographic coverage, other public information methods such as news releases, newsletters, or public meetings will be used to inform the interested public.

Actions requiring preparation of environmental impact statements or environmental assessments will be coordinated with the Division of Planning, Office of Program Development and Evaluation. To assure interagency coordination, NEPA documents and decision statements concerning floodplains and wetlands will be circulated to the following agencies: EPA, FEMA, USGS, FWS, CE, SCS, WPRS, and State water resources agencies.

[FR 80-23924 Filed 8-7-80; 8:45 am]
BILLING CODE 4310-53-M

Office of the Secretary

Central Arizona Project, Arizona; Proposed Allocations of Project Water to Indian Tribes

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of proposed water allocations.

SUMMARY: The purpose of this action is to propose the allocation of Central Arizona Project (CAP) water to Indian tribes. This notice proposes that 309,810 acre-feet of water be allocated to Indian reservations, with the stipulation that in times of shortages, the Indian supply would be reduced on a proportional basis with the municipal and industrial (M&I) supply. This proportion would be determined according to the amount of water used by each of the two classes in the most recent year in which a full supply was available for both classes. This action proposes to adjust allocations made previously by the Department.

DATES: All comments and material relevant to these proposals received before October 7, 1980 will be considered. Additionally, the Department will conduct public hearings on the proposed allocations in Arizona during the month of September. The dates and places of these hearings, once set, will be published in newspapers of general circulation in Arizona and in the **Federal Register.**

ADDRESSES: Interested persons may submit written comments, suggestions or objections regarding these proposed allocations to the Associate Solicitor for Energy and Resources, Department of the Interior, Washington, D.C. 20240. An administrative record of the data relied upon in making these proposed allocations will be available for inspection at the following locations: Arizona Projects Office, Water and Power Resources Service, Suite 2200, Valley Center, 201 North Central Avenue, Phoenix, Arizona 85073, Telephone (602) 261-3106 and Office of the Field Solicitor, U.S. Department of the Interior, Suite 2080, Valley Center, 201 North Central Avenue, Phoenix, Arizona 85073, Telephone (602) 261-4756. This administrative record can be inspected by the public during regular business hours, and arrangements can be made to have specified portions copied upon payment of reasonable charges.

FOR FURTHER INFORMATION CONTACT: Steve Lanich, Office of the Assistant Secretary, Land and Water Resources, Department of the Interior, Washington, D.C. 20240. Telephone: (202) 343-4931.

Authority and Purpose for Allocations

I take this action in recognition of my trust responsibilities to the Indians, and pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended, (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501). In making these tentative decisions, I have carefully considered many interrelated factors. I have met on many occasions both in Washington and in Arizona with representatives of the central Arizona tribes, with other potential users of CAP water, and with Governor Bruce Babbitt and members of the Arizona Congressional delegation. Also, I have reviewed at length the voluminous data which this Department has compiled over many years in regard to the CAP.

In these proposals, I have adjusted the water-use priorities and allocation of water to Indians announced by Acting Secretary of the Interior, Kent Frizzell, on October 12, 1976. 40 FR 45883. I am proposing these adjustments to correct certain omissions in the 1976 notice and to accommodate certain supervening conditions.

Among the factors which have prompted me to propose these adjustments are the following:

(1) The 1976 allocations did not provide project water to all the Indian tribes which could reasonably benefit from the project. For example, the San Carlos Apache Tribe, which was mentioned specifically in the legislative history of the project as an intended recipient of project water, did not receive any allocation.

(2) Subsequent to the 1976 decision, Congress committed the United States Government to provide the Ak-Chin lands with a permanent water supply. Additionally, U.S. Congressman Morris Udall has introduced a bill, H.R. 7640, which would similarly provide permanent water for lands of the Papago Tribe.

(3) President Carter, in his Water Policy Message to Congress of June 6, 1978, recognized that Indian reservations are intended to be maintained as permanent tribal homelands. In an arid region such as central Arizona, a relatively dependable long-term water supply is critical if these homelands are to exist.

(4) Also in his June 6, 1978 message, the President announced his Administration's intent to settle Indian water claims through negotiation, wherever possible. Several water claims are now being litigated in Arizona and others are likely to be filed. On several occasions, I have stated that, pursuant to the President's policy, CAP water will be used in the settlement of outstanding claims, where possible.

Beside the factors listed above, there is another important reason for my proposed adjustment of the 1976 allocations. Under that proposal, Indian irrigation water would have been reduced drastically after the year 2005. From 257,000 acre feet per year in the first 20 years of the project, it would be decreased in the later years of the project to either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. It is my opinion that this abrupt reduction in Indian supply is unfair to the Indians. Under the post-2005 formula used in the 1976 allocations, the economic growth permitted on the reservations in the early years of CAP operation would be only temporary, and both the Government and the tribes would be faced with the costs of a return to

depressed economic conditions. Therefore, I have tried to assure the tribes of a more dependable supply of water throughout the life of the project.

Projected Water Supply

Before describing the procedures used to determine the allocations set forth below, I will point out certain hydrologically related aspects of the CAP. This is arid country with a limited supply of surface and groundwater, and many agricultural and M&I water users rely exclusively on groundwater. This dependence has been so great that the groundwater table has been dropping at an alarming rate. The Arizona Water Commission has estimated that the annual overdraft in the three counties of Maricopa, Pinal and Pima is 1.8 million acre feet. In response to this problem, the Arizona State Legislature, on June 11, 1980, enacted the Ground Water Management Act of 1980. This law is far-reaching and should help alleviate this serious drawdown of groundwater reserves. I commend the Governor, the Legislature, and the Arizona Groundwater Management Study Commission for their serious and sustained efforts to improve the management of Arizona's limited water resources.

Despite the virtues of this new law, however, no one expects it to "solve" Arizona's water problems; nor should anyone expect the CAP to work miracles. What the CAP will do is this: It will alleviate to some extent the agricultural drain on the groundwater supply in the early years of the project, and it will provide a supply of municipal and industrial water on a permanent basis.

In making my proposals, I have studied data prepared by the Arizona Water Commission (AWC) and by the Water and Power Resources Service. Both reports estimate the total CAP supply based on assumptions relating to the hydrology of the Colorado River Basin, local runoff, the way in which the mainstem Colorado River reservoirs are operated, the rate at which the Upper Basin states develop their supplies, and a variety of other factors. But while they are in general agreement as to the various factors involved in these calculations, the two reports make different predictions.

Based on its assumptions, the Water and Power Resources Service (WPRS) has projected that the minimum amount of Colorado River water available for diversion into the CAP during the most critical drought years will be 400,000 acre-feet. Due to losses, less than that, perhaps as little as 300,000 acre-feet, would be *delivered* to users during drought years, according to WPRS.

However, the Executive Director of the Arizona Water Commission (now the Department of Water Resources) has referred to his agency's CAP projection of 550,000 acre-feet of supply for diversion in drought years and 500,000 acre-feet for actual delivery as "quite conservative." The AWC conclusion relies on the assumption that the rate of development in the Upper Colorado River Basin will be slower than that predicted by WPRS, and on different assumptions regarding the operation of Hoover Dam.

From these numbers, the disagreement between the two agencies is obvious. For the purpose of this decision, however, I am accepting neither of these projections as definitive. My proposed allocations do not reduce the tribal amounts after 2005 as did the 1976 allocations. Instead, my proposed allocations rely on the concept of a "shared priority" between Indian users and municipal and industrial users throughout the life of the project. This concept, which is discussed in more detail below, provides that these two classes of users will suffer together and proportionally in shortage years.

Although it is important to all parties involved to have accurate forecasts of Colorado River water supplies, these projections are not as important to my allocation proposals—because of the shared priority concept—as they were to Acting Secretary Frizzell's. At this point, since only time will tell which agency made better predictions about the future, I have found it useful to consider both reports in calculating the possible long-term ramifications of various allocation scenarios.

Indian Allocations

I have considered 14 reservations for allocations of CAP water. (I should explain and emphasize what I mean by an "allocation." It is an offer to contract for CAP water. By no means does the allocation, by itself, commit the Department to deliver water to the various potential users to whom water is allocated. In all cases, contracts or subcontracts must be made and executed with the Secretary of the Interior as a party to them. It is only through the contracting process that water is firmly committed to the users.) I have tried to consider the particular and unique circumstances surrounding each tribe in making my tentative decisions. I have found that there is no single formula to be used in determining the allocations of all the tribes.

I first considered the five reservations allocated water in 1976. These reservations are the Ak-Chin, Gila River, Salt River, Papago (Chuichu) and Fort McDowell. The rationale used in making those allocations is explained in detail in the 1976 **Federal Register** notice. The procedure is this:

(1) The total acreage of presently developed lands on each reservation is determined.

(2) The total water requirement for each reservation is computed on the basis of a water duty of 4.59 acre-feet per acre.

(3) The number of acre-feet of non-project surface and groundwater available to each reservation is estimated.

(4) The number of acre-feet of project water required for each reservation is then obtained by subtracting the available surface and groundwater from the total water requirement.

(5) The number of acre-feet to be delivered to each tribe at the turnout points on the project canals is the amount as determined in #4 multiplied by 1.176 (which is the same as dividing by 0.85) to allow for a 15 percent loss in the distribution systems from the amount delivered canalside.

On the basis of this formula, the following allocations were made: Ak-Chin, 58,300 acre-feet; Gila River, 173,100 acre-feet; Salt River, 13,300 acre-feet; and Papago (Chuichu) 8,000 acre-feet.

In the case of the Fort McDowell tribe, it was found that the tribe had an adequate supply of water to satisfy all of its present farm requirements. However, 4,300 acre-feet were allocated to the tribe to irrigate new in-lieu lands which the tribe may receive pursuant to § 302 of the Colorado River Basin Project Act. This allocation was supported by the four other tribes.

I propose to affirm the 1976 allocations to these reservations with the stipulation, however, that they will not be reduced in the year 2005 as previously proposed.

In 1976, no allocation was made to the Camp Verde Reservation. On the basis of the formula described above, I am proposing to allocate 1,200 acre-feet of water to Camp Verde to be used on its 200 presently developed acres.

The San Carlos Tribe also did not receive an allocation, despite its eligibility for one. San Carlos presently has 1,800 developed acres. Using the above formula, the tribe would receive a gross allocation of 8,700 acre-feet, reduced by 6,000 acre-feet of available surface water, for a net allocation of 2,700 acre-feet. Additionally, I have decided that the San Carlos Reservation, because of its mountainous terrain, is in need of a supplemental

allocation to sustain it as a permanent tribal homeland. I have decided this supplemental allocation should be 10,000 acre-feet, bringing the total net CAP allocation to San Carlos to 12,700 acre-feet.

Four reservations of the Papago Tribe—San Xavier, Schuk Taok, Chuichu, and Gila Bend—have applied for an allocation of water. These reservations are the subject of H.R. 7640, which would direct the Secretary of the Interior to provide 180,000 acre-feet of "firm supplies" of water to them. My tentative allocation to Chuichu is described above. With respect to San Xavier and Schuk Toak, I have tentatively provided them with the minimum water supply needed to create an economic farming unit. For the San Xavier Tribe this is 27,000 acre-feet and for Schuk Toak, it is 10,800 acre-feet. The Gila Bend Reservation poses a different problem. This reservation is upstream of the Painted Rock Dam and virtually all irrigable lands are subject to extensive flooding. At this time, I have decided not to make a proposed allocation of water to Gila Bend; however, I invite the tribe to make its arguments as to the practicability of a CAP allocation during the public comment period.

The White Mountain Apache Tribe has asked that I not allocate any CAP water to it. I have complied with its request.

Finally, there are three small reservations within the project area to which I intend to make allocations. Two of these tribes, the Pascua Yaqui and the Tonto Apache, were recognized subsequent to the passing of the CAP authorizing legislation. The third, the Yavapai, was established prior to 1968, but was not allocated any water in 1976. My allocations to these three tribes will provide them with the minimum supply of water needed to maintain their reservations as tribal homelands. My tentative allocations are: 500 acre-feet to the Pascua Yaqui, 110 acre-feet to the Tonto Apache, and 500 acre-feet to the Yavapai.

As in the 1976 decisions, the allocations to AK-Chin, Gila River, Salt River, Fort McDowell, Chuichu, Camp Verde and 2,700 acre-feet of the San Carlos allocation are limited to irrigation uses on the reservation, except to the extent modified by the *Winters* rights discussion below.

The full allocation to San Xavier, Schuk Toak, Pascua Yaqui, Tonto Apache, and Yavapai and 10,000 acre-feet of the San Carlos allocation may be used for domestic, irrigation and M&I purposes, consistent with the purpose of maintaining tribal homelands. All of these allocations are also limited to uses on the reservations, except to the extent modified below.

Priority of Use in Times of Shortage

While the non-Indian agricultural supply of water will vary from year to year, even under pessimistic projections of water supply, Indian agricultural users and M&I users will receive their full allocations of water in most years. However, it is likely that there will be some years, probably after the turn of the century, in which there will not be enough water to satisfy Indian and M&I users completely.

It is my proposal that in these shortage years, Indian users and M&I users will *share* a first priority on water.

Under this concept, the scheme for reducing water deliveries in times of shortage will work this way: First, miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced in the same way until exhausted; thereafter, water for Indian and M&I uses would be reduced on a proportional basis, and within each class on a pro rata basis. The proportional basis between these two classes would be fixed as a ratio of the amount of water used by each class in the most recent year in which a full supply was available for both classes. (A year of "full supply" is one in which the total amounts of water specified in the M&I subcontracts and the Indian contracts are delivered). For instance, if in the last year of full supply preceding a shortage year, 500,000 acre-feet were used by M&I users and 300,000 acre-feet were used by the tribes, the water in the shortage year would be reduced between the two classes on a 5 to 3 basis, i.e., if only 500,000 acre-feet of water can be delivered in the shortage year. M&I users would receive 312,500 acre-feet and Indian users would receive 187,500 acre-feet.

The pro rata diminution within each class will be based on the actual use of water in the most recent year in which a full supply was available to the class.

Under the shared priority, the tribes should receive a relatively dependable supply of water *throughout* the life of the project. In the later years of the project, as non-Indian agricultural water becomes converted to M&I uses, the ratio will change in favor of M&I use. However, I believe that the Indian supply will be more dependable than provided by the 1976 scheme.

Possible Substitution of Non-CAP Water

By improving the Indian supply in the later project years, it is apparent that the position of the M&I users will be less favorable than under the 1976 notice. In an effort to make the M&I supply as dependable as possible, I intend to act upon suggestions by Governor Babbitt and his staff to consider the potential use of effluent water to "firm up" Indian supplies, thereby freeing more water for M&I use in shortage years.

I propose that contracts for tribal allocations and the subcontracts for M&I water contain terms which will allow the substitution of non-CAP water for Indian CAP allocations.

The general criteria for substitution will include:

(1) The suitability of the substitute water will be determined by the Secretary on stated criteria: (a) that the delivery facilities are equivalent to CAP facilities, (b) that the supply is available in comparable quantities at the time and place of need, (c) that the quality of the water meets all regulatory requirements, and (d) that the water is suitable for the beneficial use to which it is to be put;

(2) All costs of substitution will be borne by the Central Arizona Water Conservation District or by the subcontractor securing the benefit of CAP water by substitution (however, this requirement will not preclude the use of Environmental Protection Agency grants, or non-federal financial assistance, to deliver effluent water to the reservations);

(3) Any favorable cost differential for delivered water in any substitution plan must inure to the benefit of the tribes or the U.S. Government; and

(4) Negotiations for the proposed substitution of supply will be between the tribe and the party offering water. Under procedures to be developed by the Department, the Secretary will reserve the authority to approve a substitution if it is determined that tribal agreement is being withheld unreasonably.

It appears to me that there are at least two reservations on which effluent substitution could work—the Gila River and the Salt River, both in the Phoenix metropolitan area. The Phoenix area cities have reported to this Department that they are willing to discuss possible effluent substitution plans with us. They also pointed out that this is a particularly propitious time for such discussions, as they are currently considering where to build proposed waste-water treatment facilities.

No doubt, there are substantial legal, technical, and physical aspects of this concept to be worked out. But there is also no doubt that if appropriate use is made of the effluent, shortages will fall less severely on all users served by the Central Arizona Project.

Also, in an effort to identify more water which could be made available to mitigate the adverse effects of shortage years, I have directed the Assistant Secretary for Land and Water Resources to review whether operating criteria for lower-basin Colorado reservoirs permit, or could be modified to permit, the use of additional water for CAP purposes.

Credits Against Winters Rights

These proposed allocations to the tribes will be credited against the reservations' *Winters* rights, as and when finally adjudicated. This stipulation will be included in the contracts with the tribes for these allocated supplies.

To the extent that a CAP allocation is credited against finally adjudicated *Winters* rights, the reservation being so credited will be able to use such water in any manner and for any uses permitted under its *Winters* rights, as finally adjudicated.

In this context it should be added that the allocation of CAP water to the tribes will not constitute a taking, either directly or by implication, of any water rights of the tribes; nor will it constitute the Department's opinion as to the legal rights of these tribes.

Possible Additional Water for the Tribes

Except as specifically provided in the above proposed allocations, the tribal allocations are limited to irrigation uses on the reservations. The tribes, however, are not precluded from contracting for project M&I water just as any other entity in central Arizona may so contract. As long as such water has not been contracted to other users, such contracts may be made through the Secretary of the Interior. If the tribes do decide to contract for this M&I water, they should be prepared to execute a contract at the same time as other M&I users contract with the CAWCD and the Secretary.

In a related matter, the asserted needs for tribal irrigation water exceed the proposed allocations. It is my view that tribal irrigation requests above and beyond these proposed allocations should be treated in the same way as requests from other seeking irrigation water.

Non-Indian Water Use

In 1976, the Arizona Water Commission, now the Department of Water Resources, recommended water allocations for non-Indian M&I and agricultural users. In the four years since the recommendations various conditions have changed, including the proposed increased tribal allocation contained herein, and increased estimates of the potential cost of CAP water.

In light of these changed circumstances, I have asked the DWR to revise its original recommendations for both M&I and agricultural use. I have requested that these recommendations be made by the close of the comment period on this notice.

Compliance With the National Environmental Policy Act of 1969

The Bureau of Reclamation (now the Water and Power Resources Service) prepared an environmental assessment of the Indian allocations of CAP water as proposed on April 18, 1975. 40 FR 17927. The Bureau concluded in that assessment, dated June 4, 1976, that the proposed allocations did not significantly affect the quality of the human environment. The Solicitor reviewed the assessment and the negative determination and found them to be legally sufficient.

Since the preparation of that assessment, several other reports evaluating the potential environmental effects of CAP allocations have been written. These include:

An environmental assessment of the AWC-recommended M&I allocations (March, 1979);

A two-part conceptual and technical assumptions review of the AWC recommendations (November 9, 1979 and December 31, 1979);

A supplemental environmental assessment analyzing the potential M&I users rejected by the AWC (December, 1979);

A report on potential water use by non-Indian agriculture as recommended by the AWC (December, 1979).

These materials have been reviewed and considered in making the proposals contained herein. During the comment period, these reports will be considered further, as will any comments received from the public in regard to the potential environmental effects of these proposals.

Effect on Previous Decisions

My final decisions on the proposals contained herein will supersede the decisions published by Acting Secretary Frizzell on October 15, 1976 and by Secretary Morton on December 15, 1972, 37 FR 2802; and insofar as those decisions are inconsistent with my final decisions, they will be rescinded.

Dated: August 5, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 80-23876 Filed 8-7-80; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 80-18774, appearing at page 42051 in the issue for Monday, June 23, 1980, make the following correction:

On page 42087, in the first column, in the paragraph beginning "MC 29910 (Sub-5-26TA)" filed by Arkansas-Best Freight System, Inc., in the 18th line, "New Hwy 8" should read "New LA Hwy 8".

BILLING CODE 1505-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524 (b).

1. Parent corporation and address of principal office:

Alma Desk Company, P.O. Box 2250, 1301 Lincoln Drive, High Point, North Carolina 27261.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices.

(a) Custom Face Veneers, Inc., P.O. Box 1107, 2315 E. Kivett Drive, High Point, N.C. 27261.
(b) Dimension & Plywood, Inc., P.O. Box 586, 2315 E. Kivett Drive, High Point, N.C. 27261.
(c) Innerpack of Carolina, Inc., P.O. Box 242, 2315 E. Kivett Drive, High Point, N.C. 27261.
(d) Metal Stamping Works, Inc., P.O. Box 2002, 918 West Kivett Drive, High Point, N.C. 27261.

1. Parent corporation and address of principal office:

Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their principal offices: (See Attachment "A".)

Alcoa Steamship Company, Inc., One World Trade Center, Suite 8151, New York, NY 10048.
REA Magnet Wire Company, Inc., 3600 East Pontiac Street, Fort Wayne, IN 46896.
Tifton Aluminum Company, Inc., P.O. Box 88, Tifton, GA 31794.
H C Products Co., P.O. Box 68, Princeville, IL 61559.
Buckeye Molding Company, 49 Second Street, New Vienna, OH 45159.
Wear-Ever Aluminum, Inc., Box 459, Chillicothe, OH 45601.
Northwest Alloys, Inc., P.O. Box 115, Addy, WA 99101.
Lincoln Manufacturing Company, Inc., P.O. Box 1229, Ft. Wayne, IN 46801.

Alcoa Inter-America, Inc., 932 Ponce De Leon Boulevard, Coral Gables, FL 33134.
PEP Industries, Inc., 6115 Robertson Avenue, Nashville, TN 37209.
Alcoa Building Products, Inc., Suite 1200, Two Allegheny Center, Pittsburgh, PA 15212.
The Stolle Corporation, 1501 Michigan Street, Sidney, OH 45365.
Alcas Cutlery Corporation, 1116 East State Street, Olean, NY 14760.
American Powdered Metals Company, Powder Road, North Haven, CT 06473.
Adam Metal Supply, Inc., 625 Evans Street, Elizabeth, NJ 07207.
Jonathan's Landing, Inc., 17290 Jonathan Drive, Jupiter, FL 33458.
Alcoa Recycling Company, 1501 Alcoa Building, Pittsburgh, PA 15219.
Nash International, Inc., P.O. Box 151, East Palestine, OH 44413.
Norcold, Inc., 1501 Michigan Street, Sidney, OH 45365.

1. Parent corporation and address of principal office:

Bangor Punta Corporation, One Green Plaza, Greenwich, CT 06830.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(a) Bangor Punta Transportation, Inc. (MC–150281), One Greenwich Plaza, Greenwich, CT 06830.
(b) O & M Manufacturing Company, 8203 Market Street, Houston, TX 77029.
(c) Producers Cotton Oil Company, 2907 South Maple Avenue, Fresno, CA 93717.
(d) Pacific Technica Corporation, 460 Ward Drive, Suite E, Santa Barbara, CA 93111.
(e) Smith & Wesson Chemical Company, Inc., 2399 Forman Road, Rock Creek, OH 44084.
(f) S & W Ammunition Company, 2589 Forman Road, Rock Creek, OH 44084.
(g) Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, PA 17745.
(h) Identi-Kit Company, 17985 Sky Park Circle, Suite C, Irvine, CA 92714.

The parent corporation is the Gilbert and Bennett Manufacturing Company, located on Main Street, Georgetown, Connecticut.

The wholly owned subsidiaries which will participate in this operation are: Coatings Engineering Corporation, 33 Union Street, Sudbury, Massachusetts, and Roman Wire Company, Highway 56 West, Sherman, Texas.

1. Parent corporation and address of principal office:

Chemcentral Corporation, 7050 West 71st Street, Chicago, Illinois 60638.

2. Wholly-owned subsidiaries which will participate in the operations, and the addresses of their respective principal offices:

Chemcentral/Atlanta, 1 Alchemy Pl., Doraville, GA 30340.
Chemcentral/Buffalo, 3709 River Rd., Town of Tonawanda, NY 14150.
Chemcentral/Chicago, 7050 W. 71st St., Chicago, IL 60638.
Chemcentral/Cincinnati, 4619 Reading Rd., Cincinnati 45229.
Chemcentral/Cleveland, 21600 Drake Rd., Strongsville, OH 44136.
Chemcentral/Dallas, 2500 Vinson St., Dallas, TX 75211.
Chemcentral/Detroit, 13395 Huron River Dr., Romulus, MI 48174.
Chemcentral/Grand Rapids, 2940 Stafford Ave., S.W., Wyoming, MI 49509.
Chemcentral/Indianapolis, 1650 Luett Ave., Indianapolis, IN 46222.
Chemcentral/Louisville, 1825 Appleton Lane, Louisville, KY 40216.
Chemcentral/Milwaukee, 2400 S. 170th St., New Berlin, WI 53151.
Chemcentral/New Orleans, 333 River Rd., New Orleans, LA 70181.
Chemcentral/Oklahoma City, 7301 SW 29th St., Oklahoma City, OK 73144.
Chemcentral/Orlando, 8400 S. Orange Ave., Orlando, FL 32809.
Chemcentral/Pittsburgh, Parkway West, Montour Run, Pittsburgh, PA 15244.
Chemcentral/St. Louis, 2646 Metro Blvd., Maryland Heights, MO 63043.
Chemcentral/Toledo, 4051 South Ave., Toledo, OH 43615.

1. Parent corporation and address of principal office:

The Clorox Company, 1221 Broadway, Oakland, California 94612.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) The Kingsford Company, 1221 Broadway, Oakland, California 94612.
(b) Grocery Store Products, Union & Adams Streets, West Chester, Pennsylvania 19380.
(c) Moore's Food Products, Inc., 801 Rockwell Avenue, Box 128, Ft. Atkinson, Wisconsin 53538.
(d) The HVR Company, 1685 Industrial Way, P.O. Box 675, Sparks, Nevada 89431.

The parent corporation is Cold Spring Granite Company, 202 South Third Avenue, Cold Spring, Minnesota 56320.

Wholly owned subsidiaries which will participate in the operation and addresses of their respective principal offices are as follows:

(a) Raymond Granite Company, 36772 Road 606, Raymond, CA 93653.
(b) Texas Granite Corporation, Drawer Q, marble Falls, TX 78654.
(c) Lake Placid Granite Co., Au Sable Forks, NY 12912.
(d) Granit-Bronz, Inc., 202 South Third Avenue, Cold Spring, MN 56320.
(e) General Repair & Maintenance Co., 202 South Third Avenue, Cold Spring, MN 56320.
(f) Cold Spring Equipment Co., 202 South Third Avenue, Cold Spring, MN 56320.
(g) Cold Spring Granite (Canada) Ltd., 202 South Third Avenue, Cold Spring, MN 56320.

1. Parent corporation and address of principal office:

The Commodore Corporation, 400 West Brooklyn, Syracuse, Indiana 46567.

2. Wholly-owned subsidiaries which would participate in the operations and the address of their respective principal office.

(a) The Commodore Corporation Southern, State Road 729, Danville, Virginia 24541.
(b) The Commodore Corporation Southern, Haleyville, Alabama 35565.
(c) Commodore Properties, Inc., 400 West Brooklyn, Syracuse, Indiana 46567.
(d) The Commodore Corporation of Oregon, P.O. Box 578, Lebanon, Oregon 97355.
(e) Commodore Mobile Homes of Florida, 9430 Ulmerton Road, Largo, Florida 33541.
(f) Commodore Contract Carriers, Inc., 400 West Brooklyn, Syracuse, Indiana 46567.
(g) Commodore Home Systems, Inc., P.O. Box 349, Clarion, Pennsylvania 16214.
(h) Commodore Home Systems, Inc., 2245 West Valley Boulevard, Colton, California 92324.
(i) Commodore Home Systems, Inc., 2415 Griffin Road, Leesburg, Florida 32748.
(j) Commodore Home Systems, Inc., 2800 Archad Avenue, McMinnville, Oregon 97128.
(k) Commodore Home Systems, Inc., Route #1, Box 11, Middleburg, Pennsylvania 17842.
(l) Commodore Home Systems, Inc., 1550 Davis Street, Ottawa, Kansas 60067.
(m) Commodore Home Systems, Inc., Excellsior Drive, Santa Fe Springs, California 90670.
(n) Commodore Home Systems, Inc., P.O. Box 176, Syracuse, Indiana 46567.
(o) Commodore Home Systems, Inc., 2nd and Wake Village Road, Texarkana, Texas 75505.
(p) Commodore Home Systems, Inc., 11 North County Road 101, Woodland, California 95695.
(q) Commodore Home Systems, Inc., Northeast Industrial Park, Worthington, Minnesota 56187.

1. Parent corporation and address of principal office:

ConAgra, Inc., 200 Kiewit Plaza, Omaha, Nebraska 68131.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (See Exhibit "A").

Dated this 25th day of July, 1980.

1. Parent corporation and address of principal office:

Conoco, Inc., P.O. Box 2197, Houston, TX 77001.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Coastal Oil Company, 744 Broad Street, Newark, NJ 07102.
Conoco Coal Development Company, High Ridge Park, Stamford, CT 06904.
Conoco Communications, Inc., P.O. Box 1267, Ponca City, OK 74601.
Conoco Fuels, Inc., High Ridge Park, Stamford, CT 06904.
Conoco Minerals, Inc., High Ridge Park, Stamford, CT 06904.

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, PA 15241.
Continental Pipe Line Company, P.O. Box 1267, Ponca City, OK 74601.
Douglas Oil Company of California, 3160 Airway Avenue, Costa Mesa, CA 92626.
General Facilities, Inc., P.O. Box 2197, Houston, TX 77001.
Home Fuel Oil Company, 744 Broad Street, Newark, NJ 07102.
Kayo Oil Company, 1221 East Main Street, Chattanooga, TN 37408.
Onco Oil Company, 744 Broad Street, Newark, N.J. 07102.
Pitt-Consol Chemical Company, 191 Doremus Avenue, Newark, N.J. 07105.
Western Oil and Fuel Company, 1400 Lilac Drive, South, Minneapolis, MN 55416.

1. Parent corporation and address of principal office:

Cranston Print Works Company, 1381 Cranston Street, Cranston, Rhode Island 02920.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) Bercen Chemical Company, Inc., 1381 Cranston Street, Cranston, Rhode Island 02920.
(b) Cranston Trucking Company, 1381 Cranston Street, Cranston, Rhode Island 02920.
(c) I affirm that Cranston Print Works Company is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

1. Parent corporation and address of principal office:

Deere & Company, John Deere Road, Moline, IL 61265.

2. Wholly-owned subsidiary participating in the operation, and address of their respective principal office:

John Deere, Limited, P.O. Box 1000, Grimsby, Ontario L3M4H5.

1. Parent corporation and address of principal office:

Dillard Paper Company, 3900 Spring Garden Street (27407), P.O. Box 21767, Greensboro, NC 27420.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Dillard Paper Co. (Atlanta), 50 Best Friend Road, Doraville, GA 30340, P.O. Box 1061, Atlanta, GA 30301.
(b) Dillard Paper Company of Augusta, Inc., 1427 Marvin Griffin Road (30906), P.O. Box 1330, Augusta, GA 30903.
(c) Dillard Paper Company (of Birm), 541 Republic Circle (35214), P.O. Box 11367, Birmingham, AL 35202.
(d) Dillard Paper Company of Charlotte, Inc., 3100 Parkside Drive (28208), P.O. Box 668966, Charlotte, NC 28266.
(e) Dillard Paper Company of Greenville, Inc., Whitehorse Road (29605), P.O. Box 2067, Greenville, SC 29602.
(f) Dillard Paper Company of Macon, Inc., 3115 Hillcrest Avenue (31204), P.O. Box 4407, Macon, GA 31208.
(g) Dillard Paper Company of Raleigh, Inc., 3915 Beryl Drive (27607), P.O. Box 33354, Raleigh, NC 27606.
(h) Dillard Paper Company of Richmond, Inc., 2100 Jefferson Davis Highway (23234), P.O. Box 34748, Richmond, VA 23234.
(i) Dillard Paper Company, Inc., 2490 Patterson Avenue, SW. (24016), P.O. Box 13406, Roanoke, VA 24033.
(j) Dillard Paper Company of Rome Georgia, Inc., 305 Forsyth Street (30161), P.O. Box 1197, Rome, GA 30161.
(k) Dillard Paper Company of Wilmington, Inc., 4102 Emerson Street (28401), P.O. Box 1558, Wilmington, NC (28401),
(l) Dillard Paper Company of Winston-Salem, Inc., 3840 Kimwell Drive (27103), P.O. Box 10519, Salem Station, Winston-Salem, NC 27108.
(m) Dillard Paper Company of Bristol, Inc., 1330 Spencer Street Extension (24201), P.O. Box 60, Bristol, VA 24201.
(n) Dillard Paper Company, Inc., 2490 Patterson Avenue, SW. (24016), P.O. Box 13406, Roanoke, VA 24033.
(o) Dillard Paper Company of Knoxville, Inc., 5900 Middlebrook Pike, NW. (37921), P.O. Box 11607, Knoxville, TN 37919.
(p) The Old Dominion Paper Company, 3666 Progress Road (23502), P.O. Box 7254, Norfolk, VA 23509.
(q) The Old Dominion Paper Company, 1513 Edgemore Avenue (21801), P.O. Box 1558, Salisbury, MD 21801.
(r) Dillard Plastics, Inc., Prospect Church Road (27360), P.O. Box G, Thomasville, NC 27360.

1. Parent corporation and address of principal office:

The Dow Chemical Company, 2030 Abbott Road, Midland, Michigan 48640.

2. Wholly owned subsidiary participating in operations, and address of principal office:

Wanda Petroleum Company, P.O. Box 52120, Houston, Texas 77052.

1. Parent corporation and address of principal office:

General Signal Corporation, High Ridge Park, Stamford, Connecticut 06904.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Sola Basic Industries, Inc., P.O. Box 10077, Stamford, Connecticut 06904.
(b) OZ/Gedney Company, Main Street, Terryville, Connecticut 06786.

1. Parent Corporation:

Kirsch Company, Sturgis, Mich. 49091.

2. Wholly Owned Subsidiaries:

(a) Kirsch Window Treatments, 17352 Armstrong, Irvine, Ca. 92664.
(b) Hostess Industries, Inc., 212 Elm St., P.O. Box 276, New Canaan, Conn. 06840.
(c) Ideal Manufacturing Company, Pinesbridge Road, Beacon Falls, Conn. 06403.
(d) Johnson Leasing Company, Sturgis, Mich. 49091.
(e) Kirsch of Canada, Limited, P.O. Box 488, Woodstock, Ontario, Canada.
(f) Kirsch Services, Inc., 800 Center, Tempe, Ariz. 85282.
(g) Kirschrod International Corp., Sturgis, Mich. 49091.
(h) Rockware, Inc., 2124 Harlem Road, Rockford, Ill. 61111.
(i) Scotscraft, Inc., P.O. Box 463, Scottsville, Ky. 42164.
(j) Alex Stuart Designs, 20735 Superior, Chatsworth, Ca. 91311.
(k) The Union Pin Company, Greenwoods Industrial Park, P.O. Box 424, New Hartford, Conn. 06057.
(l) Vanguard Studios, 5775 N. Lindero Canyon Road, Westlake Village, Ca. 91361.
(m) Worldsbest Industries, Inc., 5025 S. Packard Ave., Cudahy, Wisc. 53110.

The parent corporation is:

Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, Ohio 43695.

The wholly owned subsidiaries which will participate in the operations are as follows:

LOF Glass Inc., P.O. Box 830, Laurinburg, North Carolina 28352.
Thermopane LOF Inc., P.O. Box 408, Clinton, North Carolina 28328.
Tuf-flex Glass Inc., 811 Madison Avenue, Toledo, Ohio 43695.
Aeroquip Corporation, 300 South East Avenue, Jackson, Michigan 49203.
LOF Plastics Inc., 7565 East McNichols Road, Detroit, Michigan 48234.
Modern Tools Division, 911 Matzinger Road, Toledo, Ohio 43695.

1. Parent corporation and address of principal office:

Morgan Trailer Mfg. Co., Morgantown, PA 19543.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Trail-R-Van, Inc., Morgantown, PA 19543.
(b) Janesville Truck Equipment Corp., 17 North Franklin Street, Janesville, Wisconsin 53545.

1. Parent corporation and address of principal office:

National Steel Corporation, 2800 Grant Building, Pittsburgh, PA 15219.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) National Aluminum Corporation, Pittsburgh, Pennsylvania.
(b) National Steel Service Center Inc. Parsippany, New Jersey.
(c) Hanna Furnace Corporation, Buffalo, New York.
(d) National Mines Corporation, Lexington, Kentucky.

(e) Delray Connecting Railroad Company, Detroit, Michigan.
(f) National Steel Products Company, Houston, Texas.
(g) National Pipe & Tube Company, Liberty, Texas.
(h) Bull Moose Tube Company, Gerald, Missouri.
(i) American Steel Corporation, Detroit, Michigan.
(j) United Financial Corporation of California, San Francisco, California.

1. Parent corporation and address of principal office:

Outboard Marine Corporation, 100 Sea Horse Drive, Waukegan, Illinois 60085.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) Cushman Motor Sales, Inc., 14133 Arbor Place, Cerritos, California 90701.
(b) Cushman Sales and Service of Florida, Inc., 2821 Pinewood Avenue, West Palm Beach, Florida 33407.
(c) Cushman Sales and Service of Illinois, Inc., 300 Laura Drive, Addison, Illinois 60101.
(d) Cushman Sales and Service of Nebraska, Inc., 1135 North 22nd Street, Lincoln, Nebraska 68503.
(e) Lawn-Boy Distributors, Inc.—New England, 122 South Street, Hopkinton, Massachusetts 01748.
(f) Lawn-Boy Distributors, Inc.—Indiana, 2725 Tobey Drive, Indianapolis, Indiana 46219.
(g) Lawn-Boy Distributors, Inc.—Michigan, 1365 North Cedar, P.O. Box 83, Holt, Michigan 48842.
(h) Lawn-Boy Distributors, Inc.—Southeast, P.O. Box 43784, Atlanta, Georgia 30336.
(i) OMC Distributors, Inc.—Dallas, 11440 Hillguard Road, Dallas, Texas 75243.
(j) OMC Distributors, Inc.—Kansas City, 6001 Equitable Road, Kansas City, Missouri 64120.
(k) OMC Distributors, Inc.—Minneapolis, 3070 Lunar, Eagan, Minnesota 55121.
(l) OMC Distributors, Inc.—Ft. Wayne, 4515 Merchant Road, P.O. Box 2738, Station D, Ft. Wayne, Indiana 46808.
(m) OMC Distributors, Inc.—San Francisco, 230 East Harris Avenue, South San Francisco, California 94080
(n) OMC Distributors, Inc.—Waukegan, 3504 Sunset Avenue, Waukegan, Illinois 60085.
(o) Outboard Marine Domestic, International Sales Corporation, 37 N.E. 179th Street, P.O. Box 693530, Norland Branch, Miami, Florida 33169.
(p) Outboard Marine International, Inc., 37 N.E. 179th Street, P.O. Box 3530, Norland Branch, Miami, Florida 33169.
(q) Outboard Marine Asia Limited, 2 Ice House Street, St. Georges Building, Hong Kong.
(r) Outboard Marine Belgium N.V., 72 Pathoekeweg, Brugge, Belgium.
(s) Outboard Marine Foreign International Sales Company Limited, Tsing Yi Town Lot No. 54, NT., Hong Kong.
(t) Ryan Equipment Co., 2055 White Bear Avenue, St. Paul, Minnesota 55109.
(u) Trade Winds Company, Inc., 1211 Depot Street, Manawa, Wisconsin 54949.
(v) Outboard Marine Danmark, A/S, Skovlunde Byvaj 94, DK 2740 Skovlunde.
(w) Outboard Marine Motoren Deutschland, G.M.B.H., Verb indungskanal, Linkes Ufer 18, D.6800 Mannheim (Federal Republic of Germany).
(x) Outboard Marine France S.A.R.L., 5–9 rue des Freres-Lumieres, Z.A. du Pont-Yblon, F.93150 Le Blanc Mesnil.
(y) Outboard Marine Nederland B.V., Flevolaan 13, NL.1382 JX Weesp.
(z) Outboard Marine Svenska A/B, Krossgatan 26–28, S–16226 Vallingby.
(aa) Outboard Marine (UK) Limited, 8 Harrowden Road, Brackmills—Northhamption.

1. Parent corporation and address of principal office:

Phillips Petroleum Company, Bartlesville, OK 74004.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Phillips Driscopipe, Inc., 12200 Ford Road, Suite 400, Dallas, TX 75234.
(b) Phillips Products Co., Inc., First National Building, 167 W. Main Street, Lexington, KY 40507.
(c) American Fertilizer & Chemical Co., P.O. Box 98, Highway 85, North of Denver, Henderson, CO 80640.
(d) American Thermoplastics Corp., 1235 Kress, Houston, TX 77020.
(e) Interplastic Corporation, 201 N.E. Broadway, Minneapolis, MN 55413.
(f) Phillips Fibers Corporation, P.O. Box 66, Greenville, S.C. 29602.
(g) Sealright Co., Inc., 605 W. 47th St., Kansas City, MO 64112.
(h) H. P. Smith Paper Co., 5001 W. 66th St., Chicago, IL 60638.
(i) Wall Tube & Metal Products Co., P.O. Box 330, Newport, TN 37821.
(j) Phillips Uranium Corporation, Box "J", Crown Point, NM 87313.
(k) Phillips Coal Company, Park Central 3, Suite 1400, 12700 Park Central Place, Dallas, TX 75251.
(l) Applied Automation, Inc., Pawhuska Road, Bartlesville, OK 74004.
(m) Phillips Pipe Line Co., 370 Adams Building, Bartlesville, OK 74004.

1. Parent corporation and address of principal office:

Ralston Purina Company, 835 South Eighth Street, St. Louis, Missouri 63188.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Foodmaker, Inc., 9330 Balboa Ave., San Diego, California 92112.
(b) Steak Mate Corporation, 835 South Eighth Street, St. Louis, Missouri 63188.

1. Parent corporation and address of principal office:

Reliance Universal Inc., 1930 Bishop Lane, 1600 Waterson Towers, Louisville, Kentucky 40218.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

Asterisk denotes 100% owned by parent

* Reliance Universal Inc., a Kentrucky corporation:
4730 Crittenden Drive, Louisville, Kentucky 40209.
1000 Industrial Park Road, Clinton, Mississippi 39056.
* Reliance Universal Inc., a California corporation:
1215 West Lambert Road, Brea, California 92621.
* Reliance Universal Inc., an Illinois corporation:
1915 Industrial Avenue, Zion, Illinois 60099.
* Reliance Universal Inc., a North Carolina corporation:
Progress Street, High Point, North Carolina 27261.
Post Office Box 580, Richmond Hill, Georgia 31324.
Post Office Box 5681, Virginia Beach, Virginia 23455.
* Reliance Universal Inc., an Oregon corporation:
1660 Cross Street, S.W., Salem, Oregon.
* Reliance Universal Inc., a Texas corporation:
6901 Cavalcade, Houston, Texas 77001.
* Reliance Universal Inc., a New Jersey corporation:
Somerset Valley Industrial Campus, 100 Belmont Drive, Somerset, New Jersey 08873.
* Reliance Universal Inc., a Virginia corporation:
2837 Roanoke Avenue Extension, Roanoke, Virginia 24015.
* Reliance Universal Inc., a Canadian corporation:
100 Daniel Johnson Boulevard, St. Jerome, Quebec, Canada.
* Reliance Universal (B.C.) Ltd., a Canadian corporation:
20100 Number 10 Highway, Langley, British Columbia, Canada V3A 5E7.
* Reliance Universal Inc., of Ohio, an Ohio corporation:
500 West Whittier Street, Columbus, Ohio 43215.
620 Liberty Road, Delaware, Ohio 43015.
7200 Grade Lane, Louisville, Kentucky 40213.
Route 8, Reliance Road, Melbourne, Kentucky 41059.
P.O. Box 3288, Knoxville, Tennessee 37917.
P.O. Box 850, Love Street, Johnson City, Tennessee 37601.
3701 North Graham Street, Charlotte, North Carolina 28201.
Shop Road, Columbia, South Carolina 29202.
6209 Old Rutledge Pike, Knoxville, Tennessee 37914.
Steen and Thoms Run Road, Bridgeville, Pennsylvania 15017.
* Leeder Chemicals Inc., a California corporation:
16961 Knott Avenue, La Mirada, California 90636.
* Reliance Brooks Inc., a Kentucky corporation:

3302 East 87th Street, Cleveland, Ohio 44117.

* Reliance Universal of Puerto Rico Inc., a Kentucky corporation:
G.P.O. Box 3126, San Juan, Puerto Rico 00936.

* Reliance International Sales Corporation, a Kentucky corporation:
P.O. Box 4427, Hialeah Lake Station, Hialeah, Florida 33014.

* Reliance Universal, N.V., a Belgium corporation:
Belgradestraat 54, 2800 Mechelen, Belgium.

* Reliance Western Hemisphere Inc., a Kentucky corporation:
1930 Bishop Lane, Louisville, Kentucky 40218.

1. Parent corporation and address of principal office:

Rexnord Inc., 4701 West Greenfield Avenue, Milwaukee, Wisconsin 53201.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Bellofram Corporation, Burlington, Massachusetts.
(b) Envirex Inc., Waukesha, Wisconsin.
(c) Fairfield Manufacturing Company, Inc., Lafayette, Indiana.
(d) Rexnord Exploration Limited, Milwaukee, Wisconsin.
(e) Rexnord International, Inc., Milwaukee, Wisconsin.
(f) Rexnord Puerto Rico, Inc., Coamo, Puerto Rico.
(g) Rockford Products Corporation, Rockford, Illinois.
(h) Rockford Aerospace Products, Inc., Irvine, California.
(i) Rockford Screw Products Co. of California, Montebello, California.
(j) Rockford International, Inc., Elk Grove Village, Illinois.
(k) Tridair Industries, Torrance, California.

1. Parent corporation and address of principal office:

Stonecutter Mills Corporation, Spindale, North Carolina 28160.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Henson Timber Products Corporation, Duke Street, Forest City, North Carolina 28043.
(b) Mitchell Company, Spindale, North Carolina 28160.
(c) Rutherford Warehouse Company, Spindale, North Carolina 28160.

1. Parent corporation and address of principal office:

United States Gypsum Company, 101 South Wacker Drive, Chicago, Illinois 60606.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their principal offices:

[100 percent of stock owned]

Corporation and principal office address	Owner
(a) A. P. Green Refractories Company, Green Boulevard, Mexico, MO 65265.	USG.
(b) The E. J. Bartells Company, 700 Powell S.W., Renton, WA 98055.	APG.
(c) Bigelow-Liptak Corporation, 21201 Civic Center Drive, Southfield, MI 48076.	APG.
(d) Bigelow-Liptak of Canada, Limited, 1631 Mattawa Avenue, Mississauga, Ontario, Canada L4X 1K7.	B-L.
(e) Bigelow-Liptak Export Corporation, 8921 Railwood, Houston, TX 77021.	APG.
(f) A. P. Green Refractories (Canada), Ltd., 234 Rosemont Avenue, Weston, Ontario, Canada M9N 3C4.	APG.
(g) A. Lynn Thomas Company, Incorporated, 10 East Belt Boulevard, P.O. Box 8926, Richmond, VA 23225.	APG.
(h) Canadian Gypsum Company, Limited, 790 Bay Street, Toronto, Ontario, Canada M5W 1K8.	USG.
(i) C.N.G. Distribution, Limited, 790 Bay Street, Toronto, Ontario, Canada M5W 1K8.	CGC.
(j) Fundy Gypsum Company, Limited, Windsor, Nova Scotia, Canada B0N 2T0.	CGC.
(k) Little Narrows Gypsum Company, Limited, 790 Bay Street, Toronto, Ontario, Canada M5W 1K8.	CGC.
(l) Peeters Carpets, Ltd., 790 Bay Street, Toronto, Ontario, Canada M5W 1K8.	CGC.
(m) Durabond Products Company, 7100 North Mannheim Road, Rosemont, IL 60018.	USG.
(n) Permalastics Products, Incorporated, 7100 North Mannheim Road, Rosemont, IL 60018.	DUR.
(o) Kinkead Industries, Incorporated, 2801 Finley Road, Downers Grove, IL 60515.	USG.
(p) L&W Supply Corporation, 101 South Wacker Drive, Chicago, IL 60606.	USG.
(q) Columbia Building Materials Corp., 101 South Wacker Drive, Chicago, IL 60606.	L&W.
(r) C-S-W Drywall Supply Company, 101 South Wacker Drive, Chicago, IL 60606.	L&W.
(s) Gypsum Services Corporation, 101 South Wacker Drive, Chicago, IL 60606.	L&W.
(t) North Bay Building Materials Co., Inc., Napa Jct. Road, Napa Junction, Vallejo, CA 94590.	L&W.
(u) Stocking Specialists, Inc., 101 South Wacker Drive, Chicago, IL 60606.	L&W.
(v) Sequoyah Carpet Corporation, Anadarko, OK 73005.	USG.
(w) Hollytex Carpet Mills, Inc., 300 North Baldwin Park Blvd., City of Industry, CA 91749.	SEQ/USG.
(x) United States Gypsum Export Company, 101 South Wacker Drive, Chicago, IL 60606.	USG.
(y) USG Insulation Company, 101 South Wacker Drive, Chicago, IL 60606.	USG.
(z) Wiss, Janney, Elstner and Associates, Incorporated, 330 Pfingsten Road, Northbrook, IL 60062.	USG.

Explanation of Abbreviations Used

(USG)—United States Gypsum Company—Parent Corporation.
(APG)—A. P. Green Refractories Co.—100% USG owned.
(B-L)—Bigelow-Liptak Corporation—100% APG owned.
(CGC)—Canadian Gypsum Company, Limited—100% USG owned.
(DUR)—Durabond Products Company—100% USG owned.
(L&W)—L&W Supply Corporation—100% USG owned.
(SEQ)—Sequoyah Carpet Corporation—100% USG owned.

1. The parent corporation and address of its principal office is:

W. R. Grace & Co., Grace Plaza, 1114 Avenue of the Americas, New York, New York 10036.

2. Wholly owned subsidiaries which are participating in the operations and address of their respective principal offices are:

(a) Grace Distribution Services, Inc., P.O. Box 308, Duncan, SC 29334.
(b) American Breeders Service International, Inc., Route 1, DeForest, WI 53532.
(c) A-1 Bit & Tool Company, P.O. Box 26292, Oklahoma City, OK 73126.
(d) Axial Basin Coal Corporation, Stapleton Plaza, Suite 8800, 3333 Quebec Street, Denver, CO 80207.
(e) Chance Collar Company of Louisiana, P.O. Box 899, Pearland, TX 77581.
(f) Daylin, Inc., 10960 Wilshire Blvd., Suite 2000, Los Angeles, CA 90024.
(g) DeZaan, Incorporated, Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036.
(h) El Torito-La Fiesta Restaurants, Inc., 2450 White Road, Irvine, CA 92714.
(i) Far West Services, Inc., P.O. Box 19561, Irvine, CA 92713.
(j) Gilbert/Robinson, Incorporated, P.O. Box 16000, Kansas City, MO 64112.
(k) Handy Dan Home Improvement Centers, Inc., 10960 Wilshire Blvd., Suite 2420, Los Angeles, CA 90024.
(l) Homco International, Inc., P.O. Box 2442, Houston, TX 77001.
(m) MSP Industries Corporation, 6400 E 11-Mile Road, Center Line, MI 48015.
(n) Rent-It, Inc., 9898 Bissonnet, Suite 450, Houston, TX 77036.
(o) Sheplers, Inc., P.O. Box 9021, Wichita, KS 67277.
(p) TRG Drilling Corp., P.O. Box 20020, Oklahoma City, OK 73156.
(q) W. R. Grace & Co. of Canada Ltd., Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-23912 Filed 8-7-80; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-88]

Certain Spring Assemblies and Components Thereof, and Methods for Their Manufacture; Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on June 23, 1980, and amended on July 8, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a, on behalf of Kuhlman Corp., 2565 West Maple, Troy, Mich. 48084. The amended complaint (hereinafter referred to as the complaint) alleges unfair methods of competition and unfair acts in the importation into the United States of certain spring assemblies, or in their sale, because such spring assemblies infringe claims 1, 2, and 7-11 of U.S. Letters Patent 3,782,708, and are made in accordance with claims 1-37 of U.S. Letters Patent 3,866,287. Moreover, the

complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests the Commission, following a full investigation, to order permanent exclusion from entry into the United States of the imports in question, and to provide such other relief as the Commission deems appropriate. Complainant also requests the Commission, during the pendency of the investigation, to order temporary exclusion from entry into the United States of the imports in question.

Having considered the complaint, the Commission, on July 22, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is reason to believe that there is a violation and whether there is a violation of subsection (a) of this section in the unauthorized importation of certain spring assemblies and components thereof into the United States, or in their sale, because such spring assemblies are alleged to be covered by claims 1, 2, and 7–11 of U.S. Letters Patent 2,782,708 and to be made in accordance with claims 1–37 of U.S. Letters Patent 3,866,287, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purposes of this investigation, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Kuhlman Corp., 2565 West Maple, Troy, Mich. 48084

(b) The respondents are the following companies alleged to be engaged in the unauthorized importation of such spring assemblies into the United States, or in their sale, and are parties upon which the complaint is to be served:

P. J. Wallbank Manufacturing Co., Ltd., P.O. Box 99, Highway 97, Plattsville, Ontario, Canada N0J150
Ford Motor Co., Ford World Headquarters, American Road, Dearborn, Mich. 48121
General Motors Corp., 3044 West Grand Boulevard, Detroit, Mich. 48202

(c) John Milo Bryant, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and components thereof" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission, which revealed that spring assemblies of the type alleged to infringe claims 1, 2, and 7–11 of U.S. Letters Patent 3,782,708 and to be made in accordance with claims 1–37 of U.S. Letters Patent 3,866,287 can be imported in component parts as well as entirely assembled units. In addition, General Motors Corp. and the Ford Motor Co. have been included as respondents in paragraph 2(b) above on the basis of the informal investigatory activities of the Commission.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York office, 6 World Trade Center, Suite 655, New York, N.Y. 10048.

Issued: August 4, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-23889 Filed 8-7-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 907-80]

Direction to the Counsel on Professional Responsibility

Pursuant to the authority vested in me by 28 U.S.C. 509, 510, 515(a), and 5 U.S.C. 301, I direct that the following functions be performed by the Counsel on Professional Responsibility, Office of Professional Responsibility:

(a) The Counsel on Professional Responsibility, hereinafter referred to as the "Counsel", shall have the authority to investigate for criminal, civil and administrative purposes, any offenses arising from the activities of "Billy" Carter in acting as an alleged agent of the Libyan government, including, but not limited to, the conduct of any and all Government employees or appointees, or any other persons, in connection with the investigation of those activities, the activities of Mr. Carter, improper disclosures of information relating to the investigation of Mr. Carter, and possible improper disclosure of confidential information to Mr. Carter, or others, relating to Mr. Carter's activities.

(b) In exercising his authority, the Counsel will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Counsel's decision or actions. The Counsel will determine whether and to what extent he will consult with the Attorney General or any other official about the conduct of his duties and responsibilities.

(c) The Counsel shall have full authority, with respect to these matters, including the power:

(1) To conduct proceedings before grand juries, and to conduct any other investigations he deems necessary.

(2) To obtain and review all documentary evidence from any source, and to have full access to such evidence.

(3) To determine whether any assertion of testimonial privilege should be contested, and to conduct any legal proceedings, including appeals, necessary to contest such privilege.

(4) To receive appropriate national security clearances and, if necessary, contest in court (including, where appropriate, participating in camera proceedings) any claim of privilege, or attempt to withhold evidence, on grounds of national security.

(5) To make application to any Federal court for warrants, subpoenas,

or other court orders necessary in the conduct of his investigation, and to conduct any legal proceedings necessary to obtain and enforce such orders, including appeals.

(6) To inspect, obtain, and use the original or a copy of any tax return, in accordance with applicable statutes and regulations.

(7) To determine whether or not application should be made to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, and to exercise the authority vested in the Attorney General for purposes of 18 U.S.C. 6004 and 6005.

(8) To recommend the institution of criminal or civil proceedings against any individual, entity, or group of individuals.

(9) To direct and coordinate the activities of Department of Justice personnel engaged in carrying out the functions of the Counsel.

(10) To make such reports to the Congress as he deems appropriate, including appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to the committees. The Counsel shall submit a final report to the Solicitor General. The Counsel may, to the extent permitted by law and as he deems appropriate, submit a final report to other Department officials and to the Congress.

(11) To require the temporary assignment of any employees within the Department of Justice to the Office of Professional Responsibility for the purposes of providing assistance and support for this investigation.

(d) In the event that the investigation uncovers circumstances which would invoke the provisions of the Ethics in Government Act of 1978, particularly 28 U.S.C. 591–598, the investigation shall thereafter be conducted in accordance with those provisions, and the Attorney General's functions under that Act shall be performed by the Counsel, notwithstanding current procedures applicable to other matters.

Dated: August 1, 1980.

Charles B. Renfrew,

Acting Attorney General.

[FR Doc. 80-23925 Filed 8-7-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Continuation Policy for All Grants Awarded Pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974

AGENCY: Law Enforcement Assistance Administration, Justice.

ACTION: Request for public comment on proposed continuation policy.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, proposes to announce a Continuation Policy for all grants awarded under the authority of the Juvenile Justice and Delinquency Prevention Act.

The Office of Juvenile Justice and Delinquency Prevention invites any interested comments and will consider such comments before the final publication of this policy. This policy is being announced for sixty days. All comments must be received within sixty days after publication.

For any additional information, please contact Mr. Vermont R. McKinney, at 202–724–7755, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531. The proposed text follows:

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Grant Continuation Policy of the Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503 and Pub. L. 95–115) provides the following general policy with respect to the continuation of programs funded under the Act:

> Section 228(a) in accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

The basis for this Congressional policy was a finding that juvenile justice program and project grantees have traditionally had difficulty in achieving continuity of funding, particularly in obtaining state or local government support when private or Federal government fund sources have ceased to be available. The OJJDP policy reflects a Congressional purpose to institutionalize carefully chosen and successful programs and projects, in particular, action programs and projects operated by public agencies and private non-profit organizations that result in an improvement of or the direct delivery of services to juveniles.

Policy

It is the policy of OJJDP that, subject to the limitations and exclusions noted below, action programs and projects funded through grants awarded under the Juvenile Justice Act will be eligible for continuation funding based on the general criteria specified below and any additional criteria for continuation specified in program continuation announcements issued by the Office of Juvenile Justice and Delinquency Prevention and published in the **Federal Register.** Projects that are continued will be funded at a level necessary to sustain essential project activities whether below, at, or above prior funding levels as OJJDP determines to be appropriate and necessary to successful continuation.

OJJDP will announce annually in the **Federal Register** the eligible continuation program areas, the level of funds that will be available, application submission deadlines, and any additional criteria which applicants must meet in order to qualify to receive continuation funding. Where fund limitations and program priorities do not permit the funding of eligible projects within a continuation program, a competitive continuation will be rated and ranked in accordance with both the general criteria and any additional criteria that have been established for the particular program. Only those applicants receiving the highest scores up to the level of funds available for continuation of the particular program would then receive continuation funding.

This policy does not apply to OJJDP contractors or recipients of funds under cooperative agreements because of the nature of activities carried out under those funding instruments. It also does not apply to sub-recipients (sub-grantees or contractors) of OJJDP grantees.

Program Coverage and Exclusions

The Office of Juvenile Justice and Delinquency Prevention administers five programs under the authority of the Juvenile Justice Act:

1. Formula Grant.
2. Concentration of Federal Efforts.
3. Technical Assistance.
4. Special Emphasis Prevention and Treatment.

5. National Institute for Juvenile Justice and Delinquency Prevention.

Formula Grant Program

Under the formula grant program established in Part B, Subpart I of the Act, sections 221–223, LEAA regulations (28 CFR 31.703(l)) require that the State Council establish a minimum project period for each juvenile justice and delinquency prevention program described in the state plan. Projects funded under the program are then entitled to funding for the established project period unless there is a substantial decrease in formula grant funding to the state, the applicant fails to comply with the terms and conditions of the grant award, or fails to receive a satisfactory annual evaluation.

The criteria established herein for continuation funding are not applicable to the formula grant program. However, State Councils, with the assistance and advice of the State Advisory Group, are strongly encouraged to formulate a specific policy to govern the continuation of action programs and projects funded with formula grant funds beyond the minimum period of funding established in the state plan. State policy should be consistent with the policy established herein as applicable to programs and projects awared and administered directly by OJJDP.

Concentration of Federal Effort

Funds under this program are used primarily for the support of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

These funds may also be used to assist operating agencies, to support evaluations and studies of Federal programs and activities, to implement coordinated Federal juvenile delinquency programs and support evaluations and studies of Federal programs and activities, to implement coordinated Federal juvenile delinquency programs and activities, to develop reports, to provide technical assistance at the Federal level, and to enter into joint funding agreements with other Federal agencies.

Because of the administrative nature of most of these activities and the demonstration purpose behind the funding of coordinated or jointly funded action programs and projects which might be funded under Concentration of Federal Efforts authority, these funds shall not be subject to the continuation policy and criteria specified herein unless specifically provided in a program annoucement issued by OJJDP.

Technical Assistance

The purpose of the OJJDP technical assistance program is to assist state and local governments, juvenile courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs. By its nature, technical assistance is a discrete activity to be provided by a technical assistance provider to identifiable recipients over a specific period of time. Therefore, all OJJDP technical assistance grants will be funded only for the period of time specified in the applicable program announcement plus any extensions or refunding necessary to complete the technical assistance activity.

Special Emphasis Prevention and Treatment

Under the Special Emphasis Prevention and Treatment Program established in Part B, Subpart II of the Act, sections 224–225, the LEAA Financial Guideline currently provides that Special Emphasis programs announced in the LEAA Discretionary Grants Guideline shall indicate the number of years for which an applicant may request support for a project (M 7100.1A, CHG–3, Chap. 7, Par. 12, October 29, 1975). This Guideline established a maximum initial project period of support. Projects funded under announced Special Emphasis programs whose project period expires on or after October 1, 1980, shall be eligible to apply for continuation funding under program continuation announcements issued by OJJDP, using the general criteria established under this policy for continuation determinations, provided that the program under which the project was funded is an action program intended to result in an improvement of or the direct delivery of services to juveniles. Action programs are those programs designed to employ specific methods and strategies to achieve identified objectives within a specified time frame.

From time to time, Special Emphasis funds will be used to support research and development programs in conjunction with the National Institute for Juvenile Justice and Delinquency Prevention. Such programs are designed to test methodology and strategy and refine program approaches for the purpose of replication if the program is effective. Projects funded under programs designated in advance as research and development programs are not eligible for continuation based on the criteria established under this policy. They will be funded only for the specific period of time needed to demonstrate the efficacy of a particular program approach, i.e. the project period plus any extensions or refunding necessary to complete the project.

National Institute for Juvenile Justice and Delinquency Prevention

The National Institute for Juvenile Justice and Delinquency Prevention, established under Part C of the Act has statutory authority to perform the following functions:

(1) Information collection and dissemination

(2) Research

(3) Program evaluation

(4) Demonstration of innovative techniques and methods for the prevention and treatment of delinquency

(5) Training

(6) Development of standards for juvenile justice and model state legislation.

The functions designated under (1), (2), (3), and (6) above represent discrete or time-limited activities for which the rationale for continuation funding is inapplicable. Where funds for such activities are awarded by the Institute, funding length shall be in accordance with the applicable program announcement and award document. The length of funding for projects funded under programs designated as demonstrations (4) shall similarly be determined by the program announcement and award document and excluded from the continuation policy. Demonstration programs serve a limited purpose and are intended, by the nature of their design, to be funded only for the period of time needed to demonstrate the efficacy of particular innovative techniques and methods which have been identified as having a potential to contribute to the prevention and treatment of delinquency.

Training programs and project grants (5) that are funded by the Institute shall be subject to the general continuation policy and criteria set forth herein where the objective of the training program or project is to provide ongoing training that will result in an improvement of or the direct delivery of services to youth.

Continuation Criteria

The following general criteria will be utilized by OJJDP in determining eligibility of projects for continuation funding under programs that qualify for continuation consideration under the above OJJDP policy:

(1) There has been a satisfactory evaluation of program or project performance as established by:

(a) project level monitoring of fiscal and program performance; and, if available,

(b) project level evaluation of the success of project implementation (process) and the success of the project in meeting its goals and objectives (impact); and, if available,

(c) program level evaluation of whether the program under which the project was funded has achieved anticipated results;

(2) The project has satisfactorily complied with the terms and conditions of the grant award;

(3) The project has proven to be cost effective in meeting the objectives of the program and has significantly contributed to meeting the goals and objectives of the Act and the program priorities established by OJJDP;

(4) The grantee has documented the need for continuation of project services or activities in order to achieve desired project outcomes and objectives;

(5) The grantee has documented efforts to obtain funding from governmental or private sources and has submitted an acceptable plan to continue such efforts over the project period of the continuation funding;

(6) Availability of appropriated funds for the OJJDP program under which the program and project were funded; and

(7) The rank order of the project where a competitive continuation program is announced by OJJDP.

[FR Doc. 80-23951 Filed 8-7-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 80-51]

Class Exemption for Certain Transactions Involving Bank Collective Investment Funds

Correction

In FR Doc. 80-22289, published in the issue of Friday, July 25, 1980, at page 49709, please make the following corrections:

1. On page 49709, second column, the second full paragraph, line 14, the date now reading "September 23, 1980" should read "October 23, 1980".

2. On page 49715, second column, the third full paragraph, now ending with "[date, 90 days after the publication in the Federal Register of the grant of this exemption], or" should read "October 23, 1980, or".

3. In the same column, paragraph (iv), the phrase in line 2 beginning with "having a stated maturity date * * *" should begin on a new line since it refers to paragraph (B).

BILLING CODE 1505-01-M

[Application No. D-1097]

Proposed Exemption for a Certain Prohibited Transaction Involving the Wichita Oil Co., Profit-Sharing Plan, Located in Wichita Falls, Tex.

AGENCY: Department of Labor, Pension and Welfare Benefit Programs Office.

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 the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of certain real property by the Wichita Oil Company Profit Sharing Plan (the Plan) to the Wichita Oil Company, Inc. (the Employer). The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before September 23, 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-1097. 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: Ms. Linda Hamilton, of the Department of Labor, telephone (202) 523-7462. (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 sanctions resulting from the application of section 4975 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 Employer and the Plan trustees, 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). The application was filed with both the Department and the Internal Revenue Service. However, 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 Plan, which has 10 participants, is a profit sharing plan established in 1973. It had total assets of $145,737 as of October 31, 1977. The two Plan trustees, who make all investment decisions, are Mrs. LaJoyce Foster and Mr. Robert Brown. Mr. Brown is the sole shareholder of the Employer and its President, and Mrs. Foster is the Secretary-Treasurer.

2. The Employer is a closely-held Texas corporation engaged in the retail gasoline business.

3. On July 3, 1975, the Plan purchased a 4.04 acre tract of land (the Property) from unrelated parties for $100,000. This purchase was financed by the Parker Square Savings and Loan Association of Wichita Falls (the Bank), which holds the deed of trust.

4. On July 3, 1975, the Plan entered into a 15-year lease agreement with the Employer for the lease of the Property. The Property is used by the Employer as its business premises. The Employer represents that it will pay the excise taxes which are applicable under the Code by reason of the leasing arrangement within 60 days of the publication in the Federal Register of a notice granting the proposed exemption.

5. The Employer now wishes to purchase the Property from the Plan. If an exemption is granted for the sale of the Property, the Plan will execute and deliver a warranty deed with an assumption clause to the Employer. The Employer will give the Plan cash for its equity in the Property and assume the Plan's indebtedness to the Bank. The Employer proposes to pay the fair

market value of the Property. The Property was appraised in April 1978 for $138,000 by J. B. Featherston, M.A.I.

6. The Plan has attempted to sell the Property to an unrelated party. For a 60-day period, from June 15, 1979 through August 15, 1979, the Plan solicited bids for the purchase of the Property by daily advertisement in a local newspaper. No written bids were received pursuant to such advertisement.

7. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) It would be a one-time transaction for cash which could be easily verified;

(b) The Plan will not pay any form of commission with respect to the proposed transaction;

(c) the Plan now has little or no liquidity inasmuch as the Property represents approximately ⅔ of the total assets of the Plan;

(d) The Plan will receive fair market value for the Property and relief from a long-term liability;

(e) The Plan will be able to dispose of property for which there appears to be no market; and

(f) The Plan trustees are of the opinion that the proposed transaction is in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

Notice will be provided to present Plan participants by posting this notice, as published in the **Federal Register**, on the employees' bulletin board on the business premises of the Employer along with a statement that interested persons have the right to comment and/or request a hearing. The notice will also be mailed to present Plan participants or hand delivered to them. The notice will be mailed to the last known address of beneficiaries and former participants with deferred vested benefits. Notice will be hand delivered to the trustees. All notices will be provided by August 25, 1980.

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 interests 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 or her duties respecting the plan solely in the interest of the 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 prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before in 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 sanctions resulting from the application of section 4975 of the Code, by reason ot section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a 4.04 acre tract of land located at Seymour Highway and Beverly Circle, Wichita Falls, Texas, by the Plan to the Employer for the greater of $138,000 or the fair market value at the time of the 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 1st day of August 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Progams, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–23936 Filed 8–7–80; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–1780]

Proposed Exemption for Certain Prohibited Transactions Involving the Carpenters Retirement Trust of Western Washington, Located in Seattle, Wash.

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 commitments and subsequent purchases, between the Carpenters Retirement Trust of Western Washington (the Plan) and certain financial institutions pursuant to which the Plan is obligated to acquire a given number of first mortgage loans originated by such financial institutions, when the loans are secured by industrial and commercial buildings constructed by persons who are contributing employers with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the financial institutions involved, contributing employers to the Plan, and other persons participating in the proposed transactions.

DATE: Written comments must be received by the Department on or before October 22, 1980.

ADDRESS: All written comments (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 NW., Washington, D.C. 20216. Attention: Application No. D–1780. 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 NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Antsen of the Department, telephone (202) 523–6915. (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) 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 (D) of the Code. The proposed exemption was requested in an application filed by counsel for the Plan, 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 applicant.

1. The Plan is a Taft-Hartley multi-employer pension plan which covers approximately 18,000 participants employed by both commercial and residential building contractors in western Washington. Plan assets total approximately $88,000,000.

2. Historically the Joint Board of Trustees of the Plan (the Board) had adopted an investment policy (Investment Policy) which provided the broad investment philosophy under which those Plan Trustees appointed by the Board to the Investment Committee (Investment Committee) were to use as a basis for investment decisions. The Investment Policy provided for the engagement of professional money managers or investment advisors as the Investment Committee should decide. The Investment Policy also permitted the Investment Committee to authorize investment in real estate mortgages subject to specified guidelines (discussed below). In late 1974, the authority to make such mortgage investments was delegated to the Investment Committee's investment managers. The experience of the investment managers has demonstrated to the Board that mortgage investments can be more efficiently and economically made for the Plan if they are handled by the Board and its administrative staff. For this reason, on June 14, 1979, the Board voted to adopt a practice of making mortgage investments through its internal Investment Committee.

3. In order to obtain construction loans, developers or owners of sites upon which buildings are to be constructed must have a commitment from a mortgage banking firm or other financial institution to provide permanent mortgage financing once construction has been completed. Such mortgage banking firms or other financial institutions often do not hold for their own investment those mortgage loans which they have made on such commercial and industrial buildings; but, instead sell the mortgage loans to long-term investors, pursuant to a written commitment made by such an investor. In many instances the mortgage banker or financial institution relies on the commitment of the long-term investor in giving its financial commitment for the original permanent mortgage loan.

4. The Plan has traditionally issued such written commitments to reputable banks, savings and loan institutions and mortgage bankers. Such commitments obligate the Plan to purchase from such mortgage banking firms or other financial institutions a specified amount of mortgage loans made by such firms or institutions and secured by first mortgages, both new and seasoned, which such firms or institutions have taken in exchange for their permanent financing of newly constructed commercial and industrial buildings. Many of the contributing employers to the Plan are potential contractors for the types of construction projects that would qualify within the Plan's guidelines for mortgage investment. The procedure for making such investment requires: that an original commitment to the mortgage investment program be executed; that the firm or institution selling the mortgage program approach the Plan with a specific mortgage to sell; that the mortgagor must be of the highest credit rating with the seller itself; that credit reports on the owner be furnished to the Plan; that upon the Plan's commitment to purchase the mortgage, a commitment fee be paid; that a commitment letter be issued setting forth the significant terms of the purchase agreement and mortgage; and that, in most instances, the seller agrees to service the mortgage for the Plan at a stated fee. At the time of the purchase of the mortgage, the note and deed of trust securing the mortgage are assigned to the Plan. Thereafter, in most instances, the seller will service the mortgage and be responsible for collecting payments, sending late notices and handling foreclosures. It is expected that more than one mortgage would be purchased from the same mortgage banker or other financial institution.

5. The Board has specifically designated the Administrator of the Plan (the Administrator) to act for it in the selection of mortgages for investment. The Administrator will screen all mortgage investments to determine that they satisfy the Investment Policy criteria for approved mortgage investments. Before a final commitment to any mortgage is given, the Investment Committee, acting on behalf of the Board, will give its approval to the mortgage investment. The Investment Policy states that purchases of mortgages for investment shall be limited to the following:

(a) Mortgages must be either a first lien mortgage or Deeds of Trust insured by a standard form ATA policy of mortgage insurance by a recognized title insurance company.

(b) No mortgage shall be authorized on a building constructed by a contributing employer where a principal of the contributing employer is a member of the Board of the Plan.

(c) Mortgages of industrial or commercial property (including multiple unit residential dwellings) must be located within the geographical limits of the Plan. Mortgages explicitly excluded for investment purposes are motels, nursing homes and bowling alleys. These explicit exclusions shall not limit the board from excluding other types of property from mortgage purchases.

(d) No single mortgage shall exceed in amount 5% of the value of the total Plan assets.

(e) No mortgage may be considered for investment by the Plan where the mortgagor (owner) is a contributing employer to the Plan, a union signatory to the collective bargaining agreement, or other party in interest to the Plan under the Act.

(f) Mortgages are restricted to federally insured FHA (Federal Housing

Administration) or GI (sic VA) mortgages, GNMA (Government National Mortgage Association) packages, FNMA (Federal National Mortgage Association) packages, conventional mortgages either insured by MGIC (Mortgage Guarantee Insurance Corporation) or equivalent, or does not exceed 75% of MAI appraised market value of the mortgaged property.

(g) Procedures—Any mortgage or mortgage commitment proposed for purchase by the Plan shall be submitted to a designee of the Plan for the purpose of verifying that it meets the financial and other criteria, other than legal. It shall be submitted to legal counsel of the Plan for the purpose of passing upon the legal sufficiency of the mortgage and mortgage insurance.

(h) A mortgage servicing company shall be a recognized going concern, of sufficient capital, reputation and expertise to service the mortgage for its lifetime and shall execute with the Plan its Letter of Understanding concerning the above guidelines for mortgage purposes and their adherence thereto.

(i) In accordance with Article IV of the Investment Policy, Diversification, no more than 20% of the Plan assets shall be invested in mortgages at any given time.

(j) No mortgage shall be entered into for a period longer than 30 years.

6. The sale and servicing of mortgages by mortgage bankers is a customary practice in the field of investments. The terms of the commitment are similar to commitments made by other lenders, for example, insurance companies, banks and savings and loan associations. The interest rates on the mortgages and the servicing fee are determined by the rate then prevailing in the market place.

7. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) the exemption provides that the terms of the proposed mortgage investments would be not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties; (2) during the course of the proposed transactions, the Plan will have no dealings with contributing employers or other parties in interest with rsepect to the Plan but will be dealing with commercial lending institutions and owners of property who are not parties in interest or otherwise related to the Plan; (3) the mortgages securing the loans will be either federally insured, insured by private mortgage insurance or not exceed 75% of the MAI appraised market value of the mortgaged property; (4) single mortgages shall be limited to 5% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets with cumulative investment in such mortgages not to exceed 20% of Plan assets (as defined above); and (5) the Board has represented that the proposed investments are in the best interest of the Plan.

Notice to Interested Persons

Within ten days following the publication in the **Federal Register** notice of the proposed exemption will be mailed to all associations which represent employees of covered employers, and all current parties to the collective bargaining agreement creating the Plan; and within forty-five (45) days following publication in the **Federal Register**, notice of the proposed exemption will be summarized and printed in the "Carpenters Family Health" a quarterly publication which is mailed to all participants and beneficiaries. Such summary shall include notice of participants and beneficiaries right to comment within the period set forth in the notice.

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 interested 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 the 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 prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (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

All interested persons are invited to submit written comments 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 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) 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 (D) of the Code shall not apply to the issuance by the Plan through its Investment Committee of commitments to certain financial institutions, in accordance with the guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans originated by such financial institutions, when the loans are secured by industrial and commercial buildings constructed by persons who, as contributing employers, are parties in interest or disqualified persons with respect to the Plan; and shall not apply to the purchase of mortgage loans which meet the criteria of the guidelines and procedures set forth in the application, from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they previously have sold to the Plan.

The foregoing exemption will be applicable only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's-

length transactions between unrelated parties;

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the 6-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained, or not available for examination as required by paragraph (c) below;

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any Trustee of the Plan or any duly authorized employee or representative of such Trustee;

(3) The Plan's investment manager(s) or any duly authorized employee or representative of such investment manager(s);

(4) Any employer of Plan participants;

(5) Any employee organization or duly authorized representative of such organization, whose members are covered by the Plan; and

(6) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participants or beneficiary.

In addition, the proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately described all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23937 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-900]

Proposed Exemption for Certain Transactions Involving the Building Trades United Pension Trust Fund; Milwaukee and Vicinity, Located in Milwaukee, Wis.

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 making of long-term mortgage loans by the Building Trades United Pension Trust Fund, Milwaukee and Vicinity (the Plan) in situations where the loans would be arranged by and purchased from mortgage bankers which are service providers to the Plan and, therefore, parties in interest. The proposed exemption, if granted, would affect the Plan, participants and beneficiaries of the Plan, the mortgage banking institutions involved, contributing employers to the Plan, and any other persons participating in transactions to which the exemption might be applicable.

DATES: Written comments must be received by the Department of Labor on or before September 29, 1980. If granted, the exemption will be effective from the date of grant.

ADDRESS: All written comments (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 NW., Washington, D.C. 20216, Attention: Application No. D-900. 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 NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for examption from the restrictions of section 406(a) 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 (D) of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the Plan, 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). The application was filed with both the Department and the Internal Revenue Service. However, 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 applicant.

1. The Plan is a multi-employer, multi-trades plan, participants in which are employed in the construction industry. There are approximately 23,000 Plan participants. Plan assets total approximately $142,000,000.

2. The board of trustees of the Plan is composed of 45 members, 23 appointed by employers and 22 union-appointed, with power to cast an equal number of aggregate votes. Because of the size of the full board of trustees, standing committees have been established to perform on-going administrative and management functions for the Plan.

Fiduciary duties expressly are delegated to standing committees. Of such standing committees, the Plan Investment Committee and the Plan Mortgage Committee are charged with decisions regarding management of Plan assets. Moreover, investment managers may be appointed for the Plan.

3. Four employer-appointed and four union-appointed trustees comprise the Investment Committee. The primary duties of the Investment Committee are to oversee the activities of investment managers, who are responsible for approximately two-thirds of Plan assets. Additionally, the Investment Committee oversees management of Plan assets, the responsibility for which does not fall upon either the investment managers or the Mortgage Committee.

4. Three employer-appointed and three union-appointed trustees comprise the Mortgage Committee. The Mortgage Committee acts on all applications for permanent mortgage financing. Such financing is provided only after completion of the construction project

involved, replacing the short-term construction loan. Exemption for construction financing is not sought.

No application for mortgage financing is considered by the Mortgage Committee unless the loan meets published criteria promulgated by that Committee. Mere satisfaction of the published criteria does not result in automatic Mortgage Committee approval of a particular loan, inasmuch as all loan applications are considered on an individual basis, the published criteria serving only as minimum requirements which must be met before a loan application will be considered at all. Also, the Plan will not extend permanent mortgage financing to any persons who are parties in interest or disqualified persons with respect to the Plan.

5. The Plan makes mortgage loans secured by commercial real property. Construction of such commercial properties may be performed by persons who are parties in interest or disqualified persons with respect to the Plan. Specifically, the transactions for which exemption is sought are commitments on the part of the Plan both to provide a borrower with long-term mortgage financing and to purchase the construction mortgage loan held by the short-term lender. Such purchase is upon completion of the construction project involved.

At the closing of the permanent mortgage loan commitment, the Plan is assigned the first mortgage held by the short-term lender. Such assignment includes the outstanding note, as well as the mortgage, upon receipt of which the plan advances funds to the short-term lender in satisfaction of the assignment.

6. The Plan regards investments in permanent mortgage loans on commercial real property as being particularly attractive. According to the application, such investments in the past have proved to be an excellent medium for meeting the Plan's long-term investment objectives of principal preservation, investment return, stability of return, and diversification. In addition, the application states that the Plan's investment experience with mortgage loans has been more favorable than with investments managed by outside investment managers. Further, the Plan would be unable to continue its policy of making investments in permanent mortgage loans on commercial real property if the proposed exemption were not granted.

In the past, the Plan has invested slightly less than one-third of its total assets in mortgage loans. If the proposed exemption is granted, the Plan would not invest more than 30 percent of its assets in mortgage loans to which the exemption would be applicable, such percentage to be determined as of the time the commitment for a particular mortgage loan is closed by assignment of the loan from a mortgage banker, as the process more fully is described below. Moreover, if the proposed exemption is granted, the Plan would not invest more than five percent of its assets in any one mortgage loan, such percentage also to be determined as of the time the commitment is closed.

7. The process through which the Plan issues a commitment to make permanent mortgage financing in a particular instance can be summarized as follows.

A prospective borrower approaches a mortgage banker to discuss financing of an anticipated construction project. If the banker reacts favorably to the proposed project, it enters into an arrangement with the borrower, pursuant to which the banker agrees to act as agent for the borrower in attempting to obtain long-term financing. Typically, the agreement provides that the banker will receive an origination fee from the borrower if it is successful in obtaining long-term financing.

The banker prepares a loan offering for submission to potential lenders. The offering typically is upon the terms and conditions then prevailing for such financing, as being carried out by a variety of lenders, including the Plan. The Plan Mortgage Committee may receive such an offering from a banker, and will review it accordingly. The Mortgage Committee may accept the terms of the offering as presented, or it may present a counter-proposal. Upon the Mortgage Committee's being satisfied with a particular offering, or upon acceptance by the potential borrower of the Plan's counter-proposal, the Plan issues its commitment to provide permanent financing for the project involved.

The Plan's commitment imposes certain conditions, in non-satisfaction of which the Plan will not accept the mortgage loan upon completion of the construction project. The conditions include issuance of an appraisal of the completed building, showing that the loan will not exceed 75 percent of the appraised value; issuance of a title policy insuring the Plan's first mortgage status in an amount at least equal to the amount of the loan; receipt of an architect's certificate that construction conforms to requisite plans and specifications and meets applicable zoning and ordinance restrictions; issuance of a certificate from the appropriate building inspector that the building is ready for occupancy; and presentation of a hazard insurance policy in an amount at least equal to the loan, naming the Plan as payee.

The borrower obtains construction financing, normally through the banker which he approached initially. The borrower, the banker and the Plan become parties to an agreement which confirms the understanding of the parties that upon completion of the project the Plan will provide permanent financing.

Throughout construction, the banker monitors the project. Upon completion of the project, the banker makes the necessary inspections and then schedules the loan closing, at which time the mortgage and note are assigned to the Plan as discussed above.

The Plan considers only those loan offerings presented by corporate mortgage bankers which the Mortgage Committee considers experienced and responsible. The application states that an exemption is sought for entering into loan commitments with none other than those mortgage bankers who are parties in interest with respect to the Plan solely as a consequence of servicing other mortgage loans.

According to the application, the use of mortgage bankers for servicing of such loans is of benefit to the Plan by assuring availability of loan servicing at lesser expense than would be required if the Plan were to service such loans itself.

8. Determinations to make commitments with respect to particular mortgage loans result from exclusive decisions of the Mortgage Committee. Such decisions are not subject to review or conformation by the trustees as a whole.

9. In summary, the applicant represents that the statutory criteria contained in Section 408(a) of the Act have been satisfied because:

(a) the process by which the Plan makes mortgage loans is well established and subject to review, with a history of successful long-term mortgage investments;

(b) the applicant represents that long-term mortgage loans provide stable investment returns at attractive yields;

(c) the Plan has rigorous standards for acceptance of any loan; and

(d) The trustees have determined that the transactions are appropriate for the Plan and in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

Within twenty days of publication in the **Ferderal Register**, notice of the proposed exemption will be sent by bulk mailing to all contributing employers to the Plan, and to each union, members of

which are participants in the Plan, for conspicuous posting by such union. Notice of the proposed exemption also will be published in the "Milwaukee Labor Press" in the first issue in which such publication is possible.

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. Among other things, section 404 requires that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B). Moreover, an exemption does not 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 prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (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 in 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

All interested persons are invited to submit written comments on the proposed exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed 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) 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 (D) of the Code shall not apply to issuance by the Plan of commitments, in accordance with the limitations and procedures discussed above, obligating the Plan to purchase mortgage loans on commercial real estate, where such commitments are made to financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgage loans for the Plan. Moreover, the foregoing exemption shall apply only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arms-length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the six-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any employer, or duly authorized representative of such employer, of employees who are covered by the Plan;

(iii) Any employee organization, or duly authorized representative of such organization, members of whom are covered by the Plan;

(iv) Any participant or beneficiary of the Plan or any duly authorized representative of such participant or beneficiary.

The proposed exemption, if granted, will be subject to the express conditions that the materials facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administation, U.S. Department of Labor.

[FR Doc. 80-23934 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1227]

Proposed Exemption for Certain Transactions Involving Drs. Batten & Chicurel, Inc. Profit-Sharing Plan and Trust Located in Charlottesville, Va.

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 of certain real property by the Drs. Batten & Chicurel, Inc. Profit Sharing Trust (the Trust) to C & B Associates Limited Partnership (the Partnership), a party in interest to the Trust. The proposed exemption, if granted, would affect the Trust, its participants and beneficiaries, the Partnership, and its partners who are fiduciaries of the Trust, and other persons who would be parties to the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before September 10, 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–1227. 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:

C. E. Beaver, of the Department of Labor, telephone (202) 523–7901. (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), 406(b)(1) and (b)(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 Dr. James R. Batten and Dr. Joseph Chicurel, 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). The application was filed with both the Department and the Internal Revenue Service. However, 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 Partnership was established on February 3, 1978, in accordance with the Virginia Uniform Limited Partnership Act to acquire, improve, lease, operate, and hold for investment real properties, including property located in Augusta County, Virginia, as professional office complexes. Its general and limited partners are Dr. James R. Batten and Dr. Joseph Chicurel. Both of these individuals are dentists who are highly compensated employees, officers, directors, and the sole shareholders of Drs. Batten & Chicurel, Inc. (the Employer) which is the sponsor of the Drs. Batten & Chicurel Profit Sharing Plan (the Plan).

2. The funding instrument for the Plan is the Trust for which the sole trustee is Dr. Batten (the Trustee). Alice Batten, Dr. Batten, and Dr. Chicurel are the members of the administrative committee which is the Administrator for the Plan. As of December 31, 1978, the Plan had 15 participants, including Dr. Batten and Dr. Chicurel, and total assets of $185,282.01 of which the subject land was included at a value of $47,461.27.

3. On December 23, 1977, Dr. Batten and Dr. Chicurel entered into a contract with the Red Carpet Inns-Waynesboro, Inc. and the Sproul Real Estate Corporation to purchase for $45,400 an undeveloped tract of land described as having 4.45 acres but actually consisting of 4.54 acres.

4. However, regardless of the above contract, on or about May 9, 1978, the Trust purchased the above mentioned 4.54 acres of undeveloped land (Tract A), located in Augusta County, Virginia from the Red Carpet Inns-Waynesboro, Inc., an unrelated party, for the sum of $47,461.27. This sum included a purchase price of $45,400 plus $2,061.27 for title insurance, legal fees, closing costs, and interest.

5. Although the deed conveying Tract A to the Trust provided a 100 foot wide easement over adjacent land to a service Road (the Service Road), Tract A did not front on a public street as required by the local zoning law. In order to bring Tract A into conformity, unrelated owners of land adjacent to Tract A, conveyed to the Trust a strip of land (Tract B), 59 feet wide by 208.7 feet or 0.24 acres in exchange for the reconveyance by the Trust of the 100 foot easement previously conveyed by the unrelated owners. No additional monetary consideration was paid by the Trust to acquire Tract B. This conveyance provided Tract A with a 50 foot frontage on and an access to the Service Road, which terminates after approximately 500 feet with a Federal highway. The Service Road was conveyed to Augusta County, Virginia by deed of dedication, dated June 14, 1978, and recorded, July 28, 1978. This conveyance and dedication of the Service Road permitted Tracts A and B, collectively, to conform with the local zoning law which requires all lots to front on a public street.

6. In addition to the above conveyances, improvements to these properties were contracted for by the Partnership and completed during 1978. the Partnership paid Farrier Paving Company a total of $22,403 for constructing the Service Road, constructing a roadway over Tract B from the Service Road to Tract A, grading part of Tract A, and constructing a parking lot on Tract A. the Partnership paid Continental Homes $38,799.03 for the delivery and erection of 3 module commercial buildings on Tract A. Also, the Partnership paid the Home Center $22,274.20 for the preparation and completion of the erection of the 3 module commercial buildings on Tract A. The Partnership paid others a total of $3,749.30 for utilities, plumbing, landscaping, sidewalks, cabinets, and building permits.

7. The applicants regard all the above mentioned improvements as the property of the Partnership and not that of the Employer or the Trust. Dr. Batten and Dr. Chicurel originally planned for the Partnership to own a one-acre portion of Tract A (the Office Lot) and for the Trust to own the remainder of Tract A. When Dr. Batten and Dr. Chicurel became aware that the Trust owned all of tract A, including the Office Lot, they believed it was a simple matter for the Trust to convey the Office Lot to the Partnership. In addition to being unaware of the prohibited transaction provisions of the Act with respect to the proposed coneyance, they were unaware of the local zoning law which precluded the splitting of Tract A between the Trust and the Partnership. It was only upon the advice of the present legal counsel that the sale and conveyance of Tracts A and B from the Trust to the Partnership were not carried out in August 1978. Instead, a timely application for exemption was prepared and filed on December 5, 1978, with the Department and the Internal Revenue Service.

8. An independent appraisal by Barnwell & Jones, Inc. of Waynesboro, Virginia, an unrelated party, dated October 20, 1978, and amended in October 1979, has determined that the fair market value of Tracts A and B is $57,000. the applicants desire the Trust to sell Tracts A and B for cash to the Partnership for the higher of either $57,000 or the current fair market value at time of conveyance. All expenses of the sale will be paid by the Partnership. In addition, the Partnership will pay to the Trust a fair market ground rent (which was appraised at $350 per month as of August 13, 1979) for use of the property from May 8, 1978, until the date of the conveyance of the Tracts A and B from the Trust to the Partnership.

9. Any tax imposed by section 4975 of the Code upon any prior prohibited transaction with respect to the Plan or Trust for which no exemption is granted

will be paid to the Internal Renvenue Service by Dr. Batten and Dr. Chicurel.

10. The applicants believe that the sale of Tracts A and B by the Trust to the Partnership would be in the best interest of the Trust because it will minimize the risk of the Trust receiving less consideration for the sale of the tracts to an unrelated party. If the Trust were not permitted to sell the Tracts to the Partnership, the applicants believe that a sale to an unrelated party would be impossible because of the Partnership's claim to the improvements made on the Tracts. The appliants doubt that the sales price paid by an unrelated party, if located, would be sufficient to recover the expenditures already made by the Trust and the Partnership. The buildings on Tract A are custom designed to meet the specifications of a dental office specializing in periodontics. The Tracts are located behind and below the Red Carpet Inns and are not visually accessible to the public from the Federal highway on which the Service Road terminates. Businesses dependent upon being visually identifiable to the public would have little interst in the site. Part of Tract A may be unusable because of its rolling to steep terrain lying mostly in its low rear area. If Tract a were fully developed, extensive grading and fill dirt would have to be added along with expensive sewage pumping facilities, plus another street across Tract B from the Service Road.

11. In summary, the appliants represent that the proposed sale of the Tracts A and B by the Trust to the Partnership meets the statutory criteria for an exemption under section 408(a) of the Act because (1) it is a one time transaction for cash, (2) the selling price for the Tracts would be determined by an independent appraiser, (3) it would extract all involved parties from an otherwise inextricable situation at the best possible return to the Trust and at no expense to the Trust, and (4) the Partnership is the most likely purchaser when considering the location and nature of the property involved herein.

The Department notes that the proposed exemption, if granted, would not extend to the use of Tracts A and B (i.e., under an unwritten lease) by the Partnership, nor to any other transaction in connection with the acquisition, holding, and use of the Trust's property. Such transactions, if prohibited, must be "corrected" within the meaning of section 4975(f)(5) of the Code.

Notice to Interested Persons

Notice of the proposed exemption, including a copy of the notice of pendency of the exemption as published in the **Federal Register**, will be given to the participants and beneficiaries of the Plan and other interested persons. The notice will be in writing, giving a brief description of the transaction and informing the interested persons of their right to comment or request a hearing, and informing interested persons of the period for comments to be received as published in the **Federal Register**. This notice will be hand delivered or sent by registered mail within 10 days after the notife of pendency of the exemption is published in the **Federal Register**.

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 the 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 requirment of section 401(a) of the Code that the plan must operate for the exclusive benefit of the emloyees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited 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), 406(b)(1) and (b)(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 Trust selling for cash to the Partnership, within 30 days of the published grant of this proposed exemption, certain real property, consisting of 4.78 acres located in the Wayne District of Augusta County, Virginia, for the higher of either the then current fair market value of the subject real property or the sum of $57,000. The proposed exemption is subject to the conditions (1) that any prohibited transactions committed in connection with the Trust's acquisition, and Partnership's use, of the real property is "corrected" within the meaning of section 4975(f)(5) of the Code, and (2) that the excise taxes imposed by section 4975 of the Code by reason of such prohibited transactions are paid within 90 days of the published grant of this proposed exemption.

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 31st day of July, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23933 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. L-1737 and L-1738]

Proposed Exemption for Certain Transactions Involving Food Store Employees Union and Employers Pension Plan and Food Store Employees Union and Employers Health and Welfare Plan Located in Charleston, W. Va.

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). The proposed exemption would permit the leasing of office space by Food Store Employees Union Local 347 (the Union) to Food Store Employees Union and Employers Pension Plan (Pension Plan) and Food Store Employees Union and Employers Health and Welfare Plans (Welfare Plan, collectively the Plans). The proposed exemption, if granted, would affect the trustees, participants and beneficiaries of the Plans, the Union and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before September 29, 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 NW., Washington, D.C. 20216, Attention: Application Nos. L-1737 and L-1738. The applications 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 NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Department of Labor, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of applications for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in applications filed on behalf of the Plans, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. The Plans are jointly administered Taft-Hartley plans which provide benefits to employees covered by collective bargaining agreements between participating employers and the Union. As of April 30, 1978, there were six employers, including the Union, contributing to the Pension Plan and 17 employers, including the Union, contributing to the Welfare Plan. While the Plans are entirely separate entities, the membership on the Plans' Board of Trustees (Trustees) is exactly the same. There are three employer Trustees and three Union Trustees. The three Union Trustees are officers of the Union.

2. Until 1969, the Plans' offices were located within the same office space as the Union, and the lessor was an unrelated third party. Subsequently, because of the need for additional office space, the Plans moved to the Bank of Commerce building, nearby. In 1979, the Union, through a subsidiary title-holding organization, constructed its own office building, (the Building). In the design of the Building, the Union included office and parking space that could accommodate the Plans' needs. On August 1, 1979, the Union and the Plans entered into a lease of a portion of the Building.

3. Prior to the location of the Plans' offices in the Building, the Plans' offices, as well as the Union offices, were located in the central downtown business area of Charleston, West Virginia. Neither the Union nor the Plans could find office space in downtown Charleston to suit its expanded needs. The unavailability of suitable office space in downtown Charleston is documented in an appraisal of the fair rental value of office space in the Building dated August 1, 1979, performed by John W. Campbell, Jr., of Campbell Realty Company, an independent realtor in Charleston, West Virginia.

4. The applicants state that there were a number of reasons for the Plans' move to the building. The Union lease terms are more favorable to the Plans than the Plans' prior lease terms. The Plans will save approximately $.50 to $.60 per square foot for the period August 1, 1979 through July 31, 1980 and approximately $1 per square foot for the period August 1, 1980 through July 31, 1981. The Bank of Commerce lease provided only one parking space to the Plans, whereas the Building provides 18 parking spaces at no charge. Also, there is additional on-street parking in close proximity to the Building, which was not generally available in the area of the Bank of Commerce building. Additionally, the location of the Plans' administrative office in close proximity to the Union office facilitates processing applications for benefits in a much more timely manner and minimizes the inconvenience to personnel and participants.

5. The Building is a two-story structure. The first floor is occupied entirely by the Union. The second floor of the Building contains office space for rental to the general public. The tenants occupying the office space on the second floor are a marriage counseling service, a law office and the Plans' office. The offices of the Union and of the Plans are clearly identified and differentiated. The Plans' office space comprises approximately 20 percent of the net rentable area and the remaining 80 percent is rented to the other parties mentioned above. The terms of the rental arrangement between the Plan and the Union building are as favorable to the Plan as the rental arrangement with any of the other lessees, and the Plans pay the same rental ($8 per square foot per year) that the other tenants pay. Mr. Campbell stated in his appraisal that as of August 1, 1979, the Plans' office space would bring $8 per square foot per year if rented on the open market. The initial lease term is for fourteen months and provides for renewals on a year-to-year basis. All terms and conditions of the lease, including renewals, will at all times be as favorable to the Plans as those with an unrelated third party would be.

6. Although the Trustees entered into the lease with the Union prior to obtaining an exemption, they had submitted an advisory opinion request to the Department on March 7, 1979, approximately five months before entering into the lease with the Union. The Trustees entered into the lease because the Bank of Commerce building lease was to expire on March 31, 1979, and the Plans were provided the alternatives of renewing for a five year term or vacating the premises. Based on

negotiations by the Plans' Administrative Manager, Tolley International Corporation (Tolley), and the representation to the Bank of Commerce building managers that the Plans' offices would move to the Building within a few months, the lessor agreed to permit the Plans' offices to remain at the Bank of Commerce building on a month-to-month basis until construction of the Building was completed. This was projected to be a three or four month period. The Plans would not have been allowed to stay in the Bank of Commerce building for an indefinite period without being required to sign the five-year renewal. Therefore, if the Plans' office was to remain in the Bank of Commerce building until the exemption was granted, the Plans would have been required to renew the lease for the five-year term.

7. Tolley, which has no relationship to the parties involved other than as administrative manager, or its successor, would monitor the terms and conditions of the lease to ensure the parties' continued compliance therewith.

8. In summary, it is represented that the statutory criteria have been satisfied due to the following:

a. the Union lease terms were more advantageous to the Plan than the Bank of Commerce lease terms;

b. the Union Building presented unique advantages to the Plans that the Plans could not have secured elsewhere, as documented by an independent realtor;

c. the Union Building lease terms, including the rental, have been and will continue to be the same as those negotiated with unrelated tenants;

d. the Trustees entered into the lease prior to securing an exemption because the Bank of Commerce lease was expiring and the Trustees' alternative was to sign a five-year renewal of the Bank of Commerce lease. Also, the Trustees submitted an advisory opinion request approximately five months before they entered into the lease; and

e. the terms and conditions of the lease have been and will continue to be monitored by the Plans' independent Administrative Manager, currently Tolley.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 20 days of the date of publication in the **Federal Register.** Notice will be given to all active participants by posting the notice at all places of business where participants work on the bulletin boards normally used for labor relations notices. Notice will be given to all inactive participants and beneficiaries by first class mail. The notice will contain a copy of the proposed exemption and will inform each recipient of his right to comment on or request a hearing regarding the proposed exemption.

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 does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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 the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a) and 406(b)(1) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, 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, 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 comment 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 applications for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act 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(b)(2) of the Act shall not apply to the above-described lease between the Plans and the Union. The effective date of the exemption shall be August 1, 1979.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in these applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 1st day of August 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23932 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-1600]

Proposed Exemption for Certain Transactions Involving the 1978 Retired Construction Workers Benefit Plan and Trust of Rockville, Md.

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). The proposed exemption would exempt an arrangement whereby the trustees of the 1978 Retired Construction Workers Benefit Plan and Trust (the Trust) would offer their opinion so as to assist in resolution of certain questions arising in connection with the provision of health and welfare benefits through the Coal Mine Construction Workers Benefit Plan (the Plan). The proposed exemption, if granted, would affect the trustees of the Trust, the participants and beneficiaries of the Trust, the administrators, participants and beneficiaries of the Plan, the United Mine Workers of America (UMWA), the members of the Association of Bituminous Contractors (the Employers), and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by

the Department on or before October 22, 1980.

EFFECTIVE DATE: If granted, the proposed exemption will be effective from April 6, 1978 through the duration of the National Coal Mine Construction Agreement of 1978 (the Agreement).

ADDRESS: All written comments and requests for a public 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. 20016, Attention: Application No. L–1600. 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: Mrs. Miriam Freund of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a) and 406(b)(1) of the Act. The proposed exemption was filed by the trustees of the Trust, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

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 UMWA and the Employers are parties to the Agreement, which became effective April 6, 1978. The Agreement covers all work related to the development, expansion, or alteration of coal mines and all other such related work which is performed at or on coal lands by Employers for coal mine operators, when such operators require construction work to be performed under the jurisdiction of the UMWA.

2. The Trust was established pursuant to Article XIX of the Agreement. It provides health and welfare benefits, but no pension benefits. The persons covered by the Trust include retired construction workers, certain disabled coal mine construction workers, and eligible dependents of such pensioners nd disabled workers. The Trust does not cover active coal mine construction workers. Such active workers and their dependents receive health and welfare benefits from the Plan.

3. The Plan also was established pursuant to Article XIX of the Agreement. It provides for benefits which are to be identical to those provided by the Trust. Prior to the Agreement, both active and retired coal mine construction workers received health care benefits from the UMWA 1950 Benefit Plan and Trust.

4. Article XIX of the Agreement further provides that the trustee of the Trust will resolve any disputes so as to assure consistent application of the provisions of the Plan, such provisions being identical to the benefit provisions of the UMWA 1974 Benefit Plan and Trust (the 1974 Plan), as successor to the UMWA 1950 Benefit Plan and Trust. Article XVI of the Trust specifically authorizes the trustees to act as final arbiter of any dispute arising as a result of a denied benefit claim under the Plan. Thus, in accordance with Article XIX of the Agreement, the trustees of the Trust are to serve the collective bargaining parties by interpreting the extent of benefits and coverage provided by the Plan.

To the extent that the trustees of the Trust, in performing advisory functions in connection with the Plan, would be causing the Trust to render services to the UMWA, the Employers, or both, the rendering of such services is a prohibited transaction pursuant to sections 406(a) and possibly 406(b)(1) of the Act.

The trustees propose to participate in the resolution of three types of disputes: (1) generic disputes relating to the nature of benefits to be provided under identical provisions of the Trust and the Plan; (2) generic disputes involving the eligibility criteria of the Plan; and (3) eligibility disputes involving individual participants of the Plan.

5. The applicants represent that the role of the trustees of the Trust in settlement of disputes arising under the Plan was provided so as to assure a consistent level of benefits to those covered by the Plan. It is anticipated by the applicants that very few disputes would arise requiring settlement by the trustees of the Trust. As of the time of the applications, two disputes had been brought to the trustees for resolution.

The applicants anticipate that most of the questions brought to the trustees for resolution will involve disputes as to eligibility, as opposed to generic questions relating to the nature of benefits or the specific amount of health benefit coverage. According to the applicants, the trustees of the Trust are uniquely well-qualified to resolve such disputes, inasmuch as determinations of eligibility are one of the principal functions with which they are concerned in performing their duties with respect to the Trust.

6. The trustees of the Trust have determined that the transactions for which the exemption is requested are appropriate and in the interests of the participants and beneficiaries of the Trust.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act for the following reasons:

(a) It is anticipated that the activities involving the trustees' determinations with respect to the Plan would be minimal, with such determinations being made efficiently, and without hardship to the Trust;

(b) The parties to the Agreement negotiated the applicable provisions thereof in anticipation of the trustees of the Trust filling the role of arbitrator of disputes as discussed herein, so that the benefits provided under both the Plan and the Trust would remain consistent with those provided under the 1974 Plan;

(c) The proposed exemption would apply only for the period in which the Agreement is in effect; and

(d) The trustees of the Trust would remain subject to the general fiduciary obligations of section 404 of the Act, regardless of their activities on behalf of the Plan.

Notice to Interested Persons

The participants and beneficiaries of the Trust, the UMWA, and the Association of Bituminous Contractors will be notified by letters containing copies of the notice of pendency of the proposed exemption as published in the **Federal Register.** The letters also will advise these persons of their rights to comment on and request that a hearing be held with respect to the proposed exemption within the time period set forth above. Notification will be provided by September 22, 1980.

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 does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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 interests of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(2) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, 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, 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 on the proposed 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 proposed 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 in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective April 6, 1978 and throughout the duration of the Coal Mine Construction Agreement of 1978, the restrictions of section 406(a) and 406(b)(1) of the Act shall not apply to resolution by the trustees of the 1978 Retired Construction Workers Benefit Plan and Trust of disputes involving the nature of benefits to be provided through the Plan established pursuant to Article XIX of such Agreement, to generic questions of eligibility under such Plan, and to individual questions of eligibility under such Plan, provided that the trustees maintain and make available to the Department of Labor upon request those records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the types of disputes which the trustees may consider.

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 transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of July, 1980

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23935 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-60; Exemption Application No. L-378 and L-474]

Exemption From the Prohibitions for Certain Transactions Involving the Carpenters Pension Trust for Southern California and Carpenters Apprenticeship and Training Committee Fund for Southern California Located in Los Angeles, California

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the leasing of certain real property by the Carpenters Pension Trust for Southern California (the Pension Plan) to the Carpenters Joint Apprenticeship and Training Committee Fund for Southern California (the Training Plan, collectively the Plans).

FOR FURTHER INFORMATION CONTACT: Richard Small of 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, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 27, 1980, notice was published in the **Federal Register** (45 FR 43504) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) for the leasing of certain real property by the Pension Plan to the Training Plan. the notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have complied with the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include 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 or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b)(1) and 406(b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans. Accordingly, the restrictions of section 406(b)(2) of the Act shall not apply to the leasing by the Pension Plan to the Training Plan of certain real property which is adjacent to real property located at 1750 West San Bernadino Ave., Colton, California which is presently leased by the Pension Plan to the Training Plan.

The availability of this exemption is 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 this exemption.

Signed at Washington, D.C., this 31st day of July, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23926 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-59; Exemption Application No. D-1858]

Exemption From the Prohibitions for Certain Transactions Involving the First Pennsylvania Savings Plan Located in Philadelphia, Pa.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the cash sale of certain mortgages (the Mortgages) by the First Pennsylvania Savings Plan (the Plan) to PENNAMCO, Inc., a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of 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, (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 24, 1980, notice was published in the **Federal Register** (45 FR 42428) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale of the Mortgages by the Plan to PENNAMCO, Inc. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) it is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(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 cash sale of the Mortgages by the Plan to PENNAMCO, Inc. at their outstanding balance plus accrued interest to the date of the sale provided that the price paid for the mortgages is not less than fair market value of the Mortgages at the time of the sale.

The availability of this exemption is 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 this exemption.

Signed at Washington, D.C., this 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor

[FR Doc. 80-23927 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1401]

Proposed Exemption for Certain Transactions Involving Guaranty State Bank of St. Paul Profit-Sharing Plan and Trust Located in St. Paul, Mo

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 temporary 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 temporary exemption would exempt transactions involving the purchase, holding and repurchase (if necessary) of Participation Certificates in certain Small Business Administration (SBA) guaranteed loans between the Guaranty State Bank of Saint Paul Profit Sharing Plan and Trust (the Plan) and the Guaranty State Bank of Saint Paul (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before September 17, 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–1401. 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: Paul R. Antsen of the Department, telephone (202) 523–6915. (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 sections 406(a), 406(b)(1) and (b)(2), and 407 (a) and (b) 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 Harry J. Jensen and Elsie C. Dokmo, trustees of the Plan, pursuant to 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). 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.

Temporary Nature of the Exemption

Because the Department is in the process of developing experience in dealing with transactions involving Participation Certificates secured by SBA guaranted loans, the proposed exemption is temporary and will expire five years after the date of such exemption. However, the Department expects that its determination of whether the exemption should be made permanent, modified or extended will be made and published in the **Federal Register** sufficiently in advance of the expiration date so as to avoid any undue disruption of Plan investment activities.

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 complete representations of the applicants.

1. The Plan is a profit sharing plan. As of February 2, 1979 the Plan had 17 participants. The Plan trustees are Harold Rutchick, Chairman of the Board of the Employer, Harry Jensen, President of the Employer and majority shareholder and Elsie Dokmo, Vice President and an employee of the Employer. As of December 31, 1979, the Plan had total assets of $142,610.

2. The Employer is a state bank holding a charter to operate within the State of Minnesota. Prior to the effective date of the Act, the Employer, in the normal course of business, has granted loans protected by SBA guaranty agreements (the SBA Loan(s)). The SBA Loans are secured by individual assets of the borrowers, both real and personal, and business assets, both real and personal, including accounts receiveable. The SBA Loans may be for a definite period of time or demand notes depending on the amount of the loan.

3. In December of 1975 a decision was made that the return of Plan investments could be substantially increased if Plan investments were made in SBA guaranteed loans originally executed by the Employer.

4. The application requested retroactive relief for transactions previously entered into; however, the Department is unable to make a finding that such transactions satisfy the statutory requirements upon which administrative relief is granted.

5. The Plan contemplates entering into prospective transactions involving the purchase of Participation Certificates which assign to the Plan an undivided interest in the SBA Loans and represents that the following conditions will apply with respect to all prospective transactions: (a) none of the loan customers would have either an interest in the Employer or in an ownership or vested interest in the Plan; (b) all purchases of Participation Certificates would be for cash; (c) no sales commission will be charged to the Plan in connection with the acquisition; (d) the interest rate and duration of the Participation Certificate would be identical to the terms of the SBA Loan; (e) the purchase price of the Participation Certificate would be determined by comparing the market interest rate at the time the participation interest would be purchased with the interest rates of the SBA Loan; however, in no event would the purchase price to the Plan be less favorable than a similar transaction would be with an unrelated third party; (f) the Employer would service the entire SBA Loan at no fee to the Plan; (g) the Participation Certificate would contain a provision requiring repurchase by the Employer (at a purchase price equal to the unpaid principal balance plus accrued interest), such requirement for repurchase to be at the absolute discretion of the Plan, upon fifteen (15) days written notice by the Plan; (h) the Plan would purchase only that portion of the loan which is guaranteed by the SBA; (i) the Employer would continue to hold at least a fifty (50) percent interest in that portion of the SBA Loan not transferred to the Plan by a Participation Certificate; and (j) the Plan would limit combined acquisitions of such Participation Certificates to fifty (50) percent of Plan assets with not more than ten (10) percent of Plan assets committed in any single transaction or involve the same borrower.

6. Since only that portion of the SBA Loan originated by the Employer which is subject to the SBA guarantee is sold to the Plan, the conditions of the guarantee governing default are critical to this exemption. Should there be a default (based on the SBA provisions governing the guaranty) the SBA would honor the guaranteed portion of the loan by paying the Employer based on the amount in default. The SBA may then independently, or acting through the Employer as its agent, initiate whatever legal processes are needed against the borrower and the collateral that had been pledged as security to obtain satisfaction for amounts paid pursuant to the guaranty. In the event of a default the Plan must make a demand on the Employer pursuant to the repurchase provision.

7. The Plan will receive its proportionate share of payments of principal and interest which the Employer receives on the SBA Loan; the Employer is to retain custody of such loan with full authority to conduct or control, in his own name, the collection, utilization and enforcement of such loan and collateral by suit, foreclosure, or otherwise.

8. The Federal Deposit Insurance Corporation (the FDIC) and the State of Minnesota Banking Department audit the Employer annually. These audits entail confirming the outstanding loan balances and cross checking all collateral. It is alleged that such actions encompass more than an audit by an outside accounting firm. The SBA also maintains internal audit procedures to ensure the continuing payment on loans which it has guaranteed. It is further alleged that the acquisition of Participation Certificates which include a repurchase provision does not violate any State of Minnesota or FDIC banking law.

9. In summary, the applicant represents that any Participation Certificate to be purchased meets the criteria of section 408(a) of the Act because: (a) the Plan would purchase only that portion of the SBA Loan that is protected by the SBA guaranty; (b) the Participation Certificate is sold to the Plan with no sales commission; (c) the Employer agrees to service the entire SBA Loan at no fee to the Plan; (d) all loans by the Employer are subject to annual audit by the FDIC, the Minnesota State Banking Authority and the oversight of SBA examiners; (e) the Participation Certificate provides a net return to the Plan which reflects market conditions at the time of purchase; (f) the Participation Certificate contains a written guaranty of repurchase by the Employer upon a fifteen (15) days written notice from the Plan; (g) the Employer will continue to have an interest in the timely repayment of the SBA Loan because he will retain at least a fifty (50) percent interest in that portion of the SBA Loan not subject to the Participation Certificate; and (h) no more than fifty (50) percent of Plan assets would be involved in the combined acquitions of such Participation Certificates with not more than ten (10) percent of Plan assets in any single transaction or involve the same borrower. With respect to all transactions covered by this exemption the trustees represent that the subject transactions are appropriate for and in the best interests of the Plan.

Notice to Interested Persons

Within ten (10) days of publication of the proposed exemption in the **Federal Register**, all participants and beneficiaries of the Plan will receive by personal delivery or first class mail a copy of the notice of pendency and a statement to the effect that interested persons have the right to comment on the proposed exemption, and the right to request that a hearing be held. Prior to publication of the final exemption, the applicants must document that they have fully complied with this notice provision.

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 the participants and beneficiaries of the plan and in a prudent fashion in acordance 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 prohibited 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 transition 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 sections 406(a), 406(b)(1) and (b)(2), and 407(a) 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:

1. from the date of this exemption until five years thereafter to the purchase, holding and repurchase; and

2. subsequent to the expiration date of this exemption to the holding and repurchase (provided such interest was acquired during the period such exemption was in effect)[1] of Participation Certificates in the SBA Loans from the Employer, provided that the following conditions are met:

A. Only that portion of the SBA Loan that is actually covered by the guaranty shall be the subject of a Participation Certificate acquisition by the Plan.

B. The Participation Certificates are sold to the Plan with no sales commission and the Employer agrees to

[1]The Department has traditionally viewed a guarantee to repurchase from the plan by a party in interest as a prohibited transaction under ERISA. Because the terms of the Participation Certificate provide for a guaranteed repurchase on demand during the entire term of such Participation Certificate, the terms of the exemption must necessarily extend to provide relief for the operation of the safeguards incorporated in the conditions. Therefore, the relief provided includes the "holding and repurchase" of the Participation Certificates. Additionally, in order that the Plan not be required to dispose of its holdings in Participation Certificates issued by the Employer during the period such exemption was in effect the Department intends tht the language of the exemption also be construed to provide continuing relief for the "holding" after the expiration of the exemption for those Participation Certificates purchased before such date in accordance with the terms of the exemption.

service the entire SBA Loan at no fee to the Plan.

C. The purchase price of the Participation Certificate would be determined by comparing the market interest rate at the time the participation interest would be purchased with the interest rates of the SBA Loan; however, in no event would the purchase price to the Plan be less favorable than a similar transaction would be with an unrelated third party.

D. Any Participation Certificate acquisition by the Plan shall include a written repurchase provision by the Employer at the demand of the Plan upon fifteen (15) days written notice, such requirement for repurchase to be at the absolute discretion of the Plan. Should the repurchase provision be exercised, the purchase price shall be the unpaid principal balance, provided this amount is not less than fair market value at the time of sale, plus any accrued interest payments.

E. In the event of a default by the borrower on any payment due under the terms of the SBA Loan, the Employer will be called upon to honor his obligation under condition D of this exemption. A loan shall be considered to be in default for purposes of this exemption when it would be considered in default under the SBA provisions governing a guaranty for such loans.

F. The Employer shall continue to hold at least a fifty (50) percent interest in that portion of the SBA Loan not transferred to the Plan by a Participation Certificate.

G. The acquisition of a Participation Certificate from the Employer involving an SBA Loan shall not cause the Plan to hold:

(1) more than fifty (50) percent of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in such participation interests; and

(2) more than ten (10) percent of Plan assets (as defined above) in any single transaction or involve the same borrower.

H. The Plan shall maintain or cause to be maintained for a period of six years from the date of each transaction such records as are necessary to enable the Department to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of the trustees or other Plan fiduciaries, such records are lost or destroyed prior to the end or such six year period; and

(2) The Employer shall not be subject to civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph I below.

I. Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph H are unconditionally available at their customary location for examination during normal business hours by:

(1) The Internal Revenue Service;

(2) The Department of Labor;

(3) Plan participants and beneficiaries;

(4) Any employer of Plan participants;

(5) Any employee organization any of whose members are covered by the Plan; or

(6) Any duly authorized employee or representative of a person described in subparagraph (1) through (5) of this paragraph.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are tree 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 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23928 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-58; Exemption Application No. D-1309]

Exemption From the Prohibitions for Certain Transactions Involving the R. H. Grover, Inc., Profit-Sharing Plan and Trust Located in Missoula, Mont.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of real property by the R. H. Grover, Inc., Profit Sharing Plan and Trust (the Plan) to R. H. Grover, Inc. (the Employer), a party interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Charles Humphrey of 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, (202) 523-8973. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 2, 1980, notice was published in the Federal Register (45 FR 29431) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a)(1)(A) and (D) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A), (D) and (E) of the Code, for the transaction described in an application filed by the administrator of the Plan pursuant to 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). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments of the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

After the notice of pendency was published, however, a question arose as to whether, under the terms of the lease described in the notice, the building was not to have become the property of the plan until termination of the first 10 year lease period, or whether it was a plan asset immediately upon commencement of the lease. In order to resolve this question, the Employer has now represented that it will purchase the building for $25,600 (its appraised value) rather than for $13,137 (the present value of the plan's right to receive the building upon expiration of the first 10 year lease term) as represented in the notice. The exemption granted herein reflects the revised offer.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(a)(1)(B) and (C), 406(b)(3), and 407 of the Act and section 4975(c)(1)(B), (C) and (F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a)(1)(A) and (D), and 406(b)(1) and (b)(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), (D), and (E) of the Code shall not apply to (1) the sale of real property by the R. H. Grover, Inc. Profit Sharing Plan and Trust to R. H. Grover, Inc. for the greater of $128,777 or the fair market value of the real property; and (2) to the sale by the Plan to the Employer of the building for the greater of $25,600 or the fair market value of the building at time of sale.

The availability of this exemption is 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 this exemption.

Signed at Washington, D.C., this 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–23929 Filed 8–7–80: 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 80–57; Exemption Application No. D–1234]

Exemption from the Prohibitions for Certain Transactions Involving the Textile Workers Pension Fund, Greater New York Joint Board Textile Workers Welfare Fund, and the TWUA Health Plan, All Located in New York, N.Y.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts the purchase by the Textile Workers Pension Fund, Greater New York Joint Board Textile Workers Welfare Fund, TWUA Health Plan, and the Greater New York Joint Board, Textile Division, of the Amalgamated Clothing and Textile Workers Union of all the shares of stock in the TWUA Realty Corporation from the Amalgamated Clothing and Textile Workers Union and the joint operation and occupany of a building at 99 University Place, New York, New York. The TWUA Realty Corporation holds as its sole asset a building located at 99 University Place, New York, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Edelstein of 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, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 25, 1980, notice was published in the **Federal Register** (45 FR 28024) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by the Textile Workers Pension Fund, Greater New York Joint Board Textile Workers Welfare Fund, TWUA Health Plan, Greater New York Joint Board, TWUA Pension Fund, Greater New York Joint Board, Textile Division of the Amalgamated Clothing and Textile Workers Union, and the Amalgamated Clothing and Textile Workers Union. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that the notice to interested persons requirement contained in the notice of pendency has been complied with. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions

of the Act and the Code. These provisions include 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 or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plans and their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plans.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(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 purchase by the Textile Workers Welfare Fund, Pension Fund, Greater New York Joint Board Textile Workers TWUA Health Plan, and the Greater New York Joint Board, Textile Division, of the Amalgamated Clothing and Textile Workers Union of all the shares of stock in the TWUA Realty Corporation from the Amalgamated Clothing and Textile Workers Union, and the joint operation and occupancy of a building at 99 University Place, New York, New York, provided that the sum paid for the stock is the lesser of $485,000 or the fair market value of the stock at the date of sale.

The availability of this exemption is 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 which is the subject of this exemption.

Signed at Washington, D.C., this 1st day of August, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23930 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-61; Exemption Application No. D-996]

Exemption from the Prohibitions for Certain Transactions Involving Leep Homes Profit Sharing Plan and Leep Homes Pension Plan Located in San Francisco, California

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This temporary exemption permits the sale of model homes by Leep Homes (Leep) to the Leep Homes Profit Sharing Plan and the Leep Homes Pension Plan (the Plans), the leasing of those homes by the Plans to Leep and the personal guarantee of Leep's obligations by Elwood J. Leep, sole shareholder of Leep.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 28, 1979 and May 9, 1980, notices were published in the **Federal Register** (44 FR 76878 and 45 FR 30739 respectively) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above transactions. The second notice (the Notice) added additional safeguards for the protection of the Plans and their participants and beneficiaries. The Notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The Notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the Notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the Notice was provided to interested persons in accordance with the requirements set forth in the Notice. One comment was received from a person who professed no knowledge of any of the persons or facts involved in the proposed transaction, beyond those stated in the Notice. The commentator generally objected to the proposed exemption for several reasons relating to: (1) whether the transaction would be for the exclusive benefit of the participants and beneficiaries of the Plans; (2) whether the transaction was prudent; (3) whether the assets of the Plans would be adequately diversified; and (4) whether there were objective criteria relative to the proposed transaction. The Department has carefully considered each of the commentator's objections and has determined that the facts and representations developed during the course of the proceeding present sufficient benefits and protections to the Plans to warrant the granting of the requested exemption as proposed in the Notice. No requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the Notices of pendency were issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is

applicable from certain other provisions of the Act and the Code. These provisions include 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 or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by resson of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of model homes by Leep to the Plans, and the leasing of such model homes back to Leep, as long as the Plans' investment in the model homes does not exceed 25% of each Plan's assets, or to Elwood Leep's personal guarantee of Leep's obligations to the Plans. The exemption is a temporary exemption, expiring five years from the date it is published in the **Federal Register.**

The availability of this exemption is 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 this exemption.

Signed at Washington, D.C., this 31st day of July, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-23931 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 1980. The groups or fields represented are as follows: employee organizations, employers, insurance, accounting, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph may submit recommendations to the Secretary of Labor, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Recommendations must be delivered or mailed by October 1, 1980. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which the candidate would represent for the purposes of section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 1st day of August 1980.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs.

[FR Doc. 80-23870 Filed 8-5-80; 8:45 am]

BILLING CODE 4510-29-M

[TA-W-7444]

Firestone Tire & Rubber Co., Decatur, Ill.; Affirmative Determination Regarding Application for Reconsideration

On June 23, 1980, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Firestone Tire and Rubber Company's Decatur, Illinois, plant.

The application for reconsideration claimed that the Department place excessive reliance on the customer survey and made no mention in its negative determination about increased

U.S. imports of passenger car and truck tires in 1979. The union further claimed that other URW-represented plants, including a Firestone plant in Salinas, California, have been certified within the last two years.

Conclusion

After review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 30th day of July 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-23942 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-28-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period July 28th–August 1, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA–W–7632; Central Transport, Inc., Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7642; Trucker Freight Lines, Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7899; C & J Commercial Driveway, Inc., Lansing, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7904; Interstate United Food Service, New Castle, Indiana

Investigation revealed that the workers do not produce an article as required for certification under section 223 of the Act.

TA–W–8123; Pittsburg Tube Company, Jake Lew Division, Jake Lew, West Virginia

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of Steel Tubing did not increase as required for certification.

TA–W–7637; Interstate Freight System, Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7691; Don Smith Pontiac Cadillac, Inc., Fremont, Ohio

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7628; Associated Truck Lines, Inc., Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–8023; Hunt-Wilde Corporation, Dayton, Ohio

Investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–7918; Gladieux Corporation, Toledo, Ohio

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7742, 7742A; Viscose Employee Federal Credit Union, Nitro, West Virginia

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–7445; Tarra Hall Clothier, Inc., New York, New York

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–8033; Chrysler Corporation, St. Louis Zone Service Office, Hazlewood, Montanna

TA–W–8265; Chrysler Corporation Service & Parts Division, Center Line, Michigan

Investigation revealed that criterion (3) has not been met. The Zone Service Offices and Service and Parts headquarters are not substantially integrated into the production of import impacted automobiles produced by Chrysler Corporation.

TA–W–7844; Somerset Shirt & Pajama Company, Somerset, PA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of boy's pajamas are negligible.

TA–W–8645; Trevor Steel Co., Roseville, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA–W–8709; Arvin Industries, Inc., Dexter, Misssouri

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–7758; Wilwin Cedar Products, Inc., Port Angeles, Washington

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–7724; Prophet Food Co., St. Louis, Missouri

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7697; R & R Mfg., Hoquiam, Washington

Investigation revealed that criterio (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7785; IPM Development Engineering Gr., Coloma, Michigan

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7723; Detroit Tap & Tool Company, Cheboygan, Michigan

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7767; Avis, Ford, Inc., Southfield, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7801, 7802; Stauffer Chemical Company, Yardville, New Jersey, Roebling, New Jersey

Investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-7715; Sevaque Company, Inc., Port Angeles, Washington

A certification was issued covering all workers of the firm engaged in employment related to the assembly of turntable motors who were separated on or after December 1, 1979 and before January 26, 1980.

With respect to workers engaged in employment related to the production of injection molded plastic parts for turntables and trophies, investigation revealed that criterion (3) has not been met. Production and sales of such parts did not decline.

TA-W-9042; Paragon Mike of the Amherst Coal Company, Lundale, West, Virginia

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of Coal & Coke did not increase as required for certification.

TA-W-7515; Duraloy Blaw—Knox, Division of White Consolidated Industries, Scottsdale, Pennsylvania

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8670; Owens—Illinois, Inc. Bridgeton, New Jersey

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of glass containers are negligible.

TA-W-7743; Charles J. Merlo, Inc., Johnstown, Pennsylvania

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7766; Reedman Corporation, Longhorne, Pennsylvania

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7894; Par Company, Forks, Washington

Investigation revealed that criterion (3) has not been met. Sales declines at the firm resulted from a decline in demand for shakes and shingles resulting from declines in new housing starts.

TA-W-7895; DeWitt Motor Company, Inc., Akron, Ohio

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7768; Prophet Foods Division, Greyhound Food Management Inc., Baltimore, Maryland

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8615; Eastern Associated Coal Corp., Keystone No. 4 Mine, Sophia, West Virginia

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal & coke did not increase as required for certification.

TA-W-7635; Genessee Cartage Company, Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8020; Walco Enterprises, Inc., Warren, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8194; Robert R. Campbell, Inc., Lansing, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8622; Megacity Warehousing Center, Inc., Dayton, Ohio

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7687; Tajon Warehouse Corporation, Mercer, Pennsylvania

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7640; Roadway Express, Inc., Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7705; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Flint, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7871; Brace, Mueller, Huntley, Inc., Tonawanda, New York

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7774; Motor Convoy, Inc., Winston-Salem, North Carolina

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7900; Seymour Ford Mercury, Inc., Lakeview, Michigan

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7901; Claremont Ford Sales, Inc., Claremont, New Hampshire

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8826; Mead Corp., Flint, Michigan

Investigation revealed that criterion (3) has not been met. Aggregate U.S.

imports of Corrigated boxes are negligible.

TA–W–8076; Mida Mfg., Inc., Philadelphia, Pennsylvania

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to the worker separations at the firm.

TA–W–7897; T–R Automobile handling Corp., Mahwah, New Jersey

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

Affirmative Determinations

In each of the following cases, it has been concluded that of the criteria have been met, and certifications have been issued covering workers totally or partially separated from employment on or after the designated dates.

TA–W–8201; Caprice Footwear, Inc., Bridgeport, Connecticut

A certification was issued covering all workers of the firm separated on or after May 1, 1979.

TA–W–7819; Garden City Pottery Co., Ltd.

A certification was issued covering all workers of the firm separated on or after March 21 and before June 13, 1980.

TA–W–7916; Columbian Rope Co., Auburn, New York

A certification was issued covering all workers of the firm separated on or after December 24, 1979.

TA–W–7843; Pierce Shoe Co., Inc., Blackshear, Georgia

A certification was issued covering all workers of the firm separated on or after August 7, 1979.

TA–W–8418–20, 8420A; Bank Village Sportswear, New Ipwich, New Hampshire, Keene, New Hampshire, New York, New York

A certification was issued covering all workers of the firm separated on or after May 16, 1979.

TA–W–7790; Charming Miss, Hoboken, New Jersey

A Certification was issued covering all workers of the firm separated on or after March 9, and before January 4, 1980.

TA–W–7956; The Moore Co., Inc., Springfield, Massachusetts

A certification was issued covering all workers of the firm separated on or after April 23, 1979.

TA–W–7718, 7718A, 7725; Allied Chemical Corp., Spivey Mine

A certification was issued covering all workers of the firm separated on or after March 25, 1979.

TA–W–7400; Westinghouse Electric Corp., Richmond, Kentucky

A certification was issued covering all workers of the firm separated on or after January 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period July 28th–August 1, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal working hours or will be mailed to persons to write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-23943 Filed 8-7-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL CONSUMER COOPERATIVE BANK

Credit, Interest Rate, Low Income Definition, and Technical Assistance Policies

AGENCY: National Consumer Cooperative Bank.

ACTION: Final policies.

SUMMARY: These policies provide guidelines for the implementation by the National Consumer Cooperative Bank of its assistance programs. Specifically, they include the credit and interest rate policies for technical assistance delivery. These policies describe assistance available to the public from the Bank, and the general terms and conditions which apply to such assistance.

EFFECTIVE DATE: August 8, 1980.

ADDRESS: National Consumer Cooperative Bank, 2001 S St., N.W., Washington, D.C. 20009. Copies of complete NCCB policies are available from this address also.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Rofsky, Secretary to the Board of Directors, (202) 376–0957.

SUPPLEMENTARY INFORMATION: These policies are published in the **Federal Register** in compliance with National Consumer Cooperative Bank Act, P. Law 95–351, as amended. They were originally issued by the Bank's Board of Directors for a 60 day comment period, ending February 25, 1980. The proposed policies were available from the Bank in printed form during the comment period. Public hearings were held in 13 cities with over 1,500 people in attendance. Over 400 oral and written comments were received by the Bank. Consideration was given to all comments prior to the adoption of these final policies by the Board of Directors.

These policies explain the capital investment and interest supplement advances available to eligible cooperatives. In addition, they explain how the interest rate on these advances will be determined. The scope of technical assistance which is available from the Bank, and the means by which such assistance will be delivered are also described. The low income definition and policies provide the income limits which must be met by eligible cooperatives and/or their members, in order to receive assistance as low income cooperatives from the Bank.

(National Consumer Cooperative Bank Act, as amended 92 Stat. 499 (12 U.S.C. 3001–3150)

Dated: August 4, 1980.

Stanley Straughter,

Coordinator of Low Income Programs.

At the Direction of the Board of Directors,

Michell A. Rofsky,

Secretary.

Credit Policies for the Bank's Self-Help Fund

I. General

The Bank's Office of Self-Help Development and Technical Assistance provides financial assistance to organizations that cannot obtain adequate assistance from the Bank's operations under Title I or from other commercial lenders.

The Office intends to provide capital investment advances to: eligible cooperatives, as defined in the Bank's eligibility policy, which cannot obtain sufficient funds from the Bank or other lenders and (1) do not meet the statutory requirement of creditworthiness which the Act imposes upon the Bank's loans under Title I or (2) satisfy the Bank's definition of a cooperative substantially comprised of low-income persons or of a cooperative serving low-income persons. An eligible cooperative must have sufficient business prospects to satisfy the Office; it must also present a plan which the Office determines will permit replacing the capital investment advance out of member equities within a period not to exceed 30 years.

These funds will be used to assist new and existing cooperatives and will provide special assistance, as the statute makes clear, to low-income

cooperatives. The Bank recognizes its responsibilities to organize an aggressive outreach program to provide assistance to low-income groups.

Interest supplement advances are available to eligible cooperatives which the Office determines cannot pay a market rate of interest because they satisfy the Bank's definition of selling goods or services to, or providing facilities for the use of, persons of low-income. The capital investment advances and interest supplement advances will be structured to maximize the long term operational and financial health of the cooperatives being served.

Every effort will be made to leverage the Office's resources by initiating participations with the Bank's Title I program, other financial institutions, cooperative organizations, foundations, government agencies, and any other interested organizations in loans, guarantees, insurance and subsidies.

The Director of the Office may, with approval of the Board, allocate percentages and priorities to balance the spread of Office resources among various types of cooperative enterprises, geographic areas and urban/rural settings, and to ensure that low-income persons receive the benefit of cooperation.

II. Authority for Making Advances

Authority for making capital investment advances and interest supplement advances is vested in the Office Advance Committee. This committee will be comprised of no less than five individuals, including the Director of the Office, the President of the Bank or his/her designee, the chief credit officer, and two or more members appointed by the Director. The Director will designate alternates and otherwise define procedures for conducting business when one or more members is absent. Authority for making advances may be delegated by the Office Advance Committee to the regional field officers.

III. Advance Purposes

Advances by the Office shall be for those purposes needed to facilitate the development and growth of cooperatives, consistent with the goals and priorities of the Office. This will include, but not be limited to, advances for start-up costs, the acquisition of assets, the expansion of working capital, the refinancing of loans made by other institutions, and special needs in support of the above purposes.

The Office will seek to help remedy the four principal and recurring problems facing low-income cooperatives in the early stages of their operation: an inadequate capital structure stemming from members' inability to make substantial equity contributions; the resulting lack of access to working capital; inadequate organization and project definition growing out of an inability to afford appropriate front-end planning; and a need for especially intensive on-going management assistance.

IV. Terms and Conditions

The terms, conditions, and schedules of repayment of Office advances will take into consideration the abilities of cooperatives to generate revenues, meet operational expenses, and maintain viability, while minimizing the impact of inflation and economic depression.

In accordance with Section 203(b)(2) of the Act, Office Advances will carry a repayment schedule not to exceed thirty (30) years. Individual schedules will be based upon a cooperative's plan to replace the Office advance with member equities, the time period projected for the cooperative to be financially viable, and the debt carrying capacity of the cooperative. Office policies may provide for deferring principal payments or subordinating to debt, when necessary, in order to enhance the operational and financial viability of the cooperative.

The Office will assist cooperatives to obtain supplemental equity resources which might otherwise be subordinated to Section 108 loans or funds from other lending institutions. The Office will generally take a security interest in cooperative assets when giving an advance. The security interest taken may be renegotiated if a cooperative has a chance to obtain outside financing. At the discretion of the Director, the Office may periodically review advances to determine the effectiveness of existing and continuing Office assistance to a cooperative.

The Director will conduct a regular review also, to determine which advances should be considered for the portfilio of the Bank's Title I program. Prior to the full amortization of an advance, some cooperatives may achieve sufficient viability to obtain a Section 108 loan to replace an Office advance.

Advance agreements may include limitations on the ability of a cooperative to accept additional financing, make unbudgeted capital expenditures or dividend payments, or retire member equity. Interest rates will be set by the Bank's Board of Directors, and may be lower than market rates.

V. Guidelines for Advances

Before a cooperative receives an advance, the Office must first determine that:

The applicant's initial or supplemental capital requirements exceed its ability to obtain such capital through a Section 108 loan or from other sources; or

The membership of the applicant is or will consist substantially of low-income perons; or

The applicant proposes to serve the needs of low-income persons, and

The applicant cannot obtain sufficient funds through a Section 108 loan or otherwise, and presents a plan to repay to the Office the capital investment advance from member equities within thirty (30) years.

Cooperatives which demonstrate a need for supplemental assistance in order to receive funding from other sources or from the Bank under section 108, will be eligible for Office technical assistance. This link with the Bank's Title I program and other lending sources is designed to benefit the cooperatives involved and to spread Office benefits to a broader range of cooperatives whose formation and growth have been hampered by lack of access to adequate cooperative credit facilities and technical assistance.

The process of making advances will require a thorough analysis of the operational and financial prospects of a cooperative. This analysis will include an assessment of a cooperative's potential to maintain organizational stability, achieve sufficient market potential, and maintain technical and operational management capacity and financial strength sufficient to achieve long term viability. The analysis should permit the analyst to understand conditions a cooperative will have to meet in order to achieve economic stability and repay the advance. Analysis of the cooperative will consider factors unique to the types of cooperatives that the Office is committed to assist. All advances to cooperative ventures through the Office will be closely coordinated with the technical assistance program of the Office and lending program of the Bank.

Interest Rate Policies for the Bank's Self-Help Fund

The Bank's Office of Self-Help Development and Technical Assistance may make capital investment advances and interest supplement advances to eligible cooperatives as defined in the Eligibilities and Priorities Policy Statement. The Board of Directors will determine the interest rates on capital investment advances and interest supplement advances made by the Office. The rate may be lower than the rate applicable to loans made by the Bank under Section 108. The Director of the Office shall administer the interest

rate policy set by the Board of Directors and the limitations set forth in this policy. Advances shall carry a redemption or repayment schedule not to exceed thirty years and will be based on a cooperative's ability to meet such schedule as determined by the Office.

The Office will consider the following factors in making such a determination:

1. The effectiveness of a cooperative's plan to replace Office advances with member equity.

2. The time period projected for a cooperative to be financially viable; and

3. The debt carrying capacity of a cooperative.

The Office may reduce the interest paid to the Bank's Title I program (or another lender) through an interest supplement advance. The Act prohibits an interest supplement advance from exceeding four percent of the principal of the loan. These interest supplement advances must be repaid, and could theoretically increase the cost of borrowing over the term of the loan. The Office will be careful when using this tool to ensure that supplements do provide help and that borrowers are not overburdened with additional payments.

When the Office determines that a cooperative is sufficiently creditworthy, its advance may be "sold" to the Bank's Title I program at a higher interest rate, subject to changes in terms and conditions which would enable a cooperative to meet the requirements of Section 108 funding. Any such change will be preceded by a six-month notice to a cooperative. A cooperative shall have the right to appeal such a change through procedures established by the Board. The conditions for Title I purchase of Title II advance shall be described in the original agreement between a cooperative and the Office.

Low Income Definition and Policies

Except as otherwise stipulated in the low-income definition for housing, a low-income person is an individual whose family's income is equal to or less than the cost of the lower family budget adjusted for family size, composition, and residence in a metropolitan area, as established by the Bureau of Labor Statistics of the U.S. Department of Labor, for that region of the country in which she/he resides. If the person resides in one of the Standard Metropolitan Statistical Areas for which the Bureau publishes urban family budget costs, then the lower budget cost for that SMSA shall apply.

A cooperative will be presumed to be a "low-income cooperative," or to have a "membership consisting substantially of low-income persons," or to have "a majority of low-income persons," if more than fifty percent of its members are low-income persons and it affirmatively encourages the effective participation of low-income persons.

A cooperative will be presumed to be "using the loan to finance a facility, activity, or service used predominantly by low-income persons," or to "provide specialized goods, services, or facilities to serve the needs of low-income persons", or "to sell goods or services to, or provide facilities for the use of, persons of low-income", if it is either:

a. located in a census tract, county, on apportionment district, or other statistical subsection where the median income satisfies the above definition of a low-income individual, is designed to serve low-income persons, and affirmatively encourages the membership and effective participation of low-income persons, or

b. more than fifty percent of the patrons of the cooperative facility are low-income persons, as defined above. The cooperative must also take affirmative steps to encourage the membership and effective participation of low-income persons.

The low income definition for housing will use the same individual income standards as used in any other housing program used by the applicant to leverage Bank assistance. If the housing assistance is not going to be leveraged with any other Federal, state, or local program, the income definitions of HUD's rent subsidy program (Section 8) will be used. If the loan is being made in conjunction with more than one housing program, the Bank will use the income definition which it determines to be most appropriate.

The Bank expects the full cooperation of any applicant which claims low-income status in verifying that claim. The Bank reserves the right to audit an applicant asserting low-income status under any of the definition described above. As part of the loan application, the Bank may require the governing body of an applicant to certify income status in an official resolution. A cooperative which knowingly makes false representations in the course of the Bank's effort to establish low-income status may have any or all of its assistance terminated, and may be declared ineligible for future assistance. A cooperative which does not fulfill its commitment to ensure the membership and participation of low-income persons may be declared in technical default, face termination of current financial and technical assistance and/or denial of future assistance.

Policy Guidelines for Technical Assistance Delivery

The National Consumer Cooperative Bank Act authorizes the Bank to provide technical assistance to eligible cooperatives.

To best achieve the purposes of the Act, the Bank will provide:

- organizational and developmental assistance,
- financial and management assistance to emerging and existing cooperatives;
- special assistance in exploring innovative and locally initiated services to consumers which can most effectively be provided through self-help, not-for-profit cooperative organizations;
- educational services that will work with existing institutions to develop a comprehensive cooperative educational program aimed at training directors, staff and members of eligible cooperatives, as well as informing consumers and the general public of the advantages of cooperative action; and
- information on all Federal agencies and programs available to eligible cooperatives.

Depending on the volume of the services made available, the Bank will establish a scale of fees for technical assistance based on the applicant's ability to pay. Any fees collected shall be accounted for separately and be available for technical assistance. The Bank will also explore options of in-kind assistance repayment.

The Bank will provide for the delivery of technical assistance on a contractual basis. The Bank may contract for the delivery of technical assistance through third party agreements with appropriate and qualified individuals, cooperatives, and organizations.

The Bank will, on an on-going basis, seek outside assistance from resource people and organizations with cooperative experience to provide information and guidance on technical assistance delivery and program development. In addition, the Bank may enter into agreements with agencies of Federal, state, and local governments, colleges and universities, foundations, and other organizations to develop and disseminate information and services described in the Act.

The Bank will develop regions and establish NCCB Regional Offices and field representatives to assist in delivering, monitoring, and evaluating technical assistance at the local level. Further, field offices and staff will facilitate communications from local to regional to national levels, and advise the Bank in program development and modification.

The Bank will make a concerted effort to ensure that regional technical assistance workshops are encouraged and conducted whenever feasible, in close association with cooperative organizations, community-based organizations, and economic development institutions where they exists. This will provide maximum delivery capacity at minimum expense.

The Bank will implement a plan for aggressive outreach and follow-up activities, including orientation to the Cooperative Principles, to inform consumers and the general public about the benefits of cooperative action and involvement.

The Bank will play a lead role in developing and coordinating information and educational materials, resources, and programs on cooperatives in general and on specific areas of self-help cooperative activities. The Bank will assist existing support systems within the cooperative movement in developing new educational activities, as well as expanding and improving on-going efforts.

In this way, the Bank will increase citizen access to information, tools, skills, and resources aiding cooperative and overall community-based economic development. Special attention will be paid to providing skills in managerial and technical areas.

One of the major tenets of cooperative development is that people learn best through their own personal experience and interaction with others. A major objective of technical assistance delivery is to help cooperatives to learn and grow through the personal experience of carrying out the responsibilities of organization, decision-making, policy setting, and enhancing the process of community development. The Bank will seek to strengthen all eligible cooperative organizations by assisting them to become self-reliant and self-sufficient.

The Bank will also coordinate its activities with Federal agencies and provide leadership in working with cooperative and other organizations to leverage additional technical and financial assistance.

[FR Doc. 80-23898 Filed 8-7-80; 8:45 am]

BILLING CODE 4810-25-M

NATIONAL SCIENCE FOUNDATION

Availability of Advisory Committee Reports

The National Science Foundation has filed with the Library of Congress reports of two NSF advisory committees.

The reports were filed as required by the Federal Advisory Committee Act and are available for public inspection and use at the Library of Congress, Room 1032, Thomas Jefferson Building, Washington, D.C. 20540 and at the Committee Management Office, National Science Foundation, Room 248, Washington, D.C.

The names and titles of the committees submitting reports are:

(1) Advisory Committee for Behavioral and Neural Science Oversight Report March 20–21, 1980.

(2) Advisory Committee for Materials Research Report of Oversight Review Team for the Metallurgy Program December 18–19, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

August 5, 1980.

[FR Doc. 80-23999 Filed 8-7-80; 8:45 am]

BILLING CODE 7555-01-M

Federal Employees Part-time Career Employment Act of 1978; Proposed Implementation

AGENCY: National Science Foundation.

ACTION: Proposed Implementation of the Federal Employees Part-time Career Employment Act of 1978.

SUMMARY: The National Science Foundation (NSF) is proposing to issue personnel instructions to implement the Federal Employees Part-time Career Employment Act of 1978, 5 U.S.C. 3401 et seq. by establishing a continuing program which provides career part-time employment opportunities within the Foundation. In accordance with 5 U.S.C. 3401, agencies are required to publish their instructions in proposed form and provide an opportunity for interested parties to comment. After comments have been received and reviewed, final instructions will be issued as an NSF Circular.

DATES: Written comments will be considered if recevied by the official named below on or before November 8, 1980. The final instructions will be effective on the date issued.

ADDRESS: Fred K. Murakami, Director, Division of Personnel and Management, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Bransford, Phone: 202–357–9680.

Personnel

SUBJECT: Part-Time Career Employment Program.

1. Purpose. This Circular establishes a continuing program in the National Science Foundation to provide career part-time employment opportunities in implementation of Pub. L. 95–437, the Federal Employees Part-Time Employment Act of 1978. The purpose is to provide an opportunity to match well qualified people who need to work on a part-time basis with National Science Foundation work situations where part-time work is more appropriate or full-time employees cannot be obtained. Appropriate situations for part-time employment may be to (a) provide parents with opportunities to balance family responsibilities with the need for additional income, (b) provide employment opportunities to handicapped individuals or others who require a reduced workweek, (c) allow employees a gradual transition into retirement, and (d) assist students who generally finance their own education and training.

2. Policy. It is the policy of the National Science Foundation to provide career part-time employment opportunities to the maximum extent consistent with resources and mission requirements. Managers are encouraged to use part-time employment as an alternative to full-time employment.

3. Scope. This Circular covers all competitive and excepted positions in the National Science Foundation at the GS–1 through GS–15 level and equivalent and hourly paid blue collar positions. Positions covered must have a prearranged tour of duty from 16 to 32 hours per week and be any position currently appropriate for full-time employment.

4. Exemptions. The Director or his designee may exempt positions from inclusion in this program as necessary to carry out the mission of the Foundation. However, an exemption may not be made to employ part-time workers under a 33 to 39 hours per week tour duty unless the employee was on such a work schedule prior to April 8, 1978.

5. Definitions.

a. Part-time career employment means regularly scheduled work of 16 to 32 hours a week, performed by an employee who has an appointment in Tenure Group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

b. Tenure Group I applies to employees in the competitive service under career appointments who are not serving in a probationary period and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

c. Tenure Group II applies to employees in the competitive service in a probationary period and career-conditional employees.

6. Responsibilities.

a. The Deputy Director is responsible for control of the Foundation's personnel

ceiling and for allocating part-time employment ceilings. Part-time ceiling allocations will be assigned by the Deputy Director to directorates and staff offices at the beginning of each fiscal year.

b. The Director, Division of Personnel and Management (DPM), is responsible for developing and administering a Foundation-wide plan for promoting part-time employment opportunities. This plan will be developed in conjunction with directorates and staff offices and will establish goals, and set target dates for achieving these goals, taking into consideration such things as:

(1) agency mission and occupational mix;

(2) workload fluctuations;

(3) size of work force, turnover rate and employment trends;

(4) potential for improving service to the public;

(5) affirmative action;

(6) patterns of overtime utilization; and

(7) current employee interest in part-time employment.

c. DPM will inform managers, supervisors and employees of the basic rules and regulations applicable to part-time employment, and position management and work assignment techniques which can lead to the most productive use of part-time workers.

7. Reporting and Program Evaluation. The Part-Time Career Employment Program will be reviewed through continuous standard reporting procedures to determine the increase in part-time career employment. Various types of additional reports will be requested of the directorates and staff offices, as necessary, to review and evaluate the program. Evaluation of the program may also be accomplished through personnel management reviews.

8. Part-Time Employment Practices.

a. DPM, in conjunction with the employing office, will review positions as they become vacant to determine the feasibility of using a part-time career employee. Criteria to be used in this process include: mission requirements, budget and ceiling limitations, and applicant availability.

b. Employees will be afforded the opportunity to request and receive consideration to convert from full-time to part-time work schedules. An employee desiring a change in employment from full-time to part-time should consult with the immediate supervisor who should evaluate the request in terms of the criteria specified in paragraph 8.a. above. Requests for conversion recommended by the immediate supervisor should be submitted in the form of a Standard Form 52 through normal reporting channels to DPM. DPM will be responsible for advising the employee of the effects the change will have on his/her rights and benefits.

9. Notifying the Public of Part-Time Vacancies. DPM will notify the public of vacant part-time positions through appropriate advertising mechanisms. This may be accomplished by publicizing part-time vacancies through Merit Promotion Announcements, Excepted Vacancy Announcements, Federal Job Information Announcements, newspapers and professional journals, State Job Service Offices, etc.

10. Limitations. The National Science Foundation shall not abolish any position occupied by an employee in order to make the duties of such a position available to be performed on a part-time career employment basis. Neither shall it require any person who is employed on a full-time basis to accept part-time employment as a condition of continued employment.

Thomas Ubois,

Assistant Director for Administration.

August 5, 1980.

[FR Doc. 80-23998 Filed 8-7-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 413A]

Duke Power Co.; Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters

Duke Power Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information concerns two proposed additional ownership participants, the North Carolina Electric Membership Corporation and the Saluda River Electric Cooperative, Inc. for the Catawba Nuclear Station, Unit 1. The current holder of the construction permit is Duke Power Company.

The information was filed in connection with the application by Duke Power Company for construction permits and operating licenses for two pressurized water reactors. Construction was authorized on August 7, 1975 at the Catawba site located in Mecklenburg County, North Carolina. Although the Catawba facilities consist of two nuclear power plants, the proposed action affects only Catawba Nuclear Station, Unit 1.

The original application was dated November 10, 1972. The Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters was published in the **Federal Register** on December 7, 1972 (37 FR 26053). Previously, the Notice of Hearing had been published in the **Federal Register** on December 1, 1972 (37 FR 25560).

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 York County Library, 325 South Oakland Avenue, Rock Hill, South Carolina.

Any person who wishes to have his views on the antitrust matters with respect to the North Carolina Electric Membership Corporation and the Saluda River Electric Cooperative, Inc. 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 October 7, 1980.

Dated at Bethesda, Maryland, this 30th day of July, 1980.

For the Nuclear Regulatory Commission,

A. Schwencer,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-24004 Filed 8-7-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Senior Executive Service Performance Review Board; Membership

July 21, 1980.

Pursuant to the Civil Service Reform Act, Section 4314(c)(4) requires the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Board for the coming year. This Board oversees the utilization and evaluation of the Office of Management and Budget's Senior Executive Service:

Performance Review Board—

James M. Frey, Chair (term expires July 1981).

Harrison Wellford.

Donald E. Crabill (term extended to September 30, 1980).
Nathaniel Scurry (term expires July 1981).
John Merck (term extended to September 30, 1980).

The Assistant to the Director for Administration will serve as Executive Secretary for the Board.

This notice is a revision to the notice published in 45 23558 April 7, 1980.

Linda L. Smith,

Assistant to the Director for Administration.

[FR Doc. 80-23968 Filed 8-7-80; 8:45 am]

BILLING CODE 3110-01-M

Uniform Procurement System; Public Hearings and Request for Public Review and Comment

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget

ACTION: Rescheduling of Public Hearing.

SUMMARY: On July 31, 1980, the Office of Federal Procurement Policy published a notice in the **FEDERAL REGISTER** (45 FR 51016) which established a schedule of public hearings on the Uniform Procurement System proposal. Inadvertently, hearings in Washington, D.C. were scheduled for September 11 and 12 which coincide with the high holy days of the Jewish faith. The purpose of this notice is to change those hearing dates.

DATES, TIMES, AND LOCATIONS OF HEARINGS: Hearings will remain as scheduled and as announced for all cities except Washington, D.C. Public hearings in Washington will commence at 9:30 a.m. and will continue until 4:30 p.m. (with a one hour adjournment at 12:00 noon) on September 9, 1980. The hearings will be conducted in Room 2008 of the New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. A second day of hearings will be held on September 10 if the first day does not provide sufficient time to hear all who wish to present views.

PRESENTATION OF VIEWS AT HEARINGS: Persons may appear on their own behalf or as representatives of any entity or of any interested group whether public or private to make oral presentations. Persons who wish to provide oral testimony should notify the Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, N.W., Room 9013 New Executive Office Building, Washington, D.C. 20503 (Telephone: 202/395-7207) at least one week in advance of the scheduled hearing at which they wish to speak. (Such notification may be made by telephone.) Oral presentation at the hearings shall be limited to approximately 15 minutes and a written summary of the oral presentation should be provided to the hearing officer on the day of the hearing.

PRESENTATION OF WRITTEN VIEWS: In lieu of, or in addition to, the presentation of oral views, written comments may be submitted on the task group reports no later than September 17, 1980. Such comments should be addressed to the Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, N.W., Room 9013 New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: Mr. David F. Baker, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, N.W., 9013 New Executive Office Building, Washington, D.C. 20503 (Telephone: 202/395-7207).

Karen Hastie Williams,

Administrator.

[FR Doc. 80-24087 Filed 8-7-80; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 80-10]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 181.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1980 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents.

The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated August 28, 1979 (44 FR 50422; 51695).

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].

Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tretrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitroparaffins and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade].
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5,-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetraxapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT:

Explosives Technology Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7087).

Signed: August 4, 1980.

Stephen E. Higgins,

Acting Director.

[FR Doc. 80–23897 Filed 8–7–80; 8:45 am]

BILLING CODE 4810–31–M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $5,030,000 has been established for the company.

Name of Company: Unigard Mutual Insurance Company.

Business Address: 1215 Fourth Avenue, Seattle, Washington 98161.

State of Incorporation: Washington.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1980 Revision, at page 44513 to reflect this addition. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: August 4, 1980.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 80–23994 Filed 8–7–80; 8:45 am]

BILLING CODE 4810–35–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Articles Being Considered for Possible Duty Modification

Summary: This publication gives notice of (I) International Trade Negotiations and of Articles Which May be Considered in Such Negotiations, and (II) Articles Which May be Considered for Designation as Eligible Articles for Purposes of the Generalized System of Preferences.

I. Articles Which May be Considered in Trade Negotiations

In conformity with section 131(a) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2151(a)), notice is hereby given of the intention of the United States to participate in international trade negotiations, and of articles which may, during such negotiations, be considered for reduction or continuance of United States duty-free treatment under the authority contained in section 124 of the Trade Act (19 U.S.C. 2134 and 2119).

A. *Trade Negotiations.* It is intended that the authority conferred by section 124 of the Trade Act will be employed to conclude bilateral trade agreements with developed and/or developing countries.

B. *Lists of Articles Which May be Considered in Trade Negotiations.* The articles listed in Annex I to this notice will be considered for reduction or continuance of the existing duty-free treatment, as appropriate, to the extent permitted by section 124 of the Trade Act. The term "existing" as used in this notice is defined in section 601(7) of the Trade Act (19 U.S.C. 2481(7)). The articles are identified by reference to five-digit item numbers of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) and consist of all articles in such listed item numbers except as limited by footnote descriptions. The Tariff Schedules of the United States Annotated (1980) is for sale by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 and is also available for inspection at any field office of the U.S. Customs Service or the Department of Commerce. A list giving informal abbreviated descriptions of the articles contained in the TSUS items identified in this notice is available upon written request from the Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Executive Office of the President, 1800 G Street, N.W., Room 735, Washington, D.C. 20506.

Articles included in this notice may be reserved from negotiations or may be subject to smaller tariff reductions than those authorized by section 124 of the Trade Act.

II. Articles Which May be Considered for Designation as Eligible Articles for Purposes of the Generalized System of Preferences

In conformity with sections 503(a) and 131(a) of the Trade Act (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given of articles which may be considered for designation as eligible articles for purposes of the Generalized System of Preferences (GSP). The articles listed in Annex II to this notice will be considered for designation as eligible articles for purposes of the GSP. The listed articles are identified by reference to five-digit item numbers. An article which is determined to be import sensitive in the context of the GSP cannot be designated as a eligible article. It is anticipated that decisions with respect to the import sensitivity of any of the listed articles will be made after public hearings have been held and advice has been received from the International Trade Commission on the probable economic effect of GSP designation on industries producing like or directly competitive products, and on consumers.

III. Supplemental Notices

From time to time as may be appropriate, other notices may be published for the purpose of informing the public of proposed actions under the Trade Act not announced in this notice.

IV. Public Hearings

Section 133 of the Trade Act (19 U.S.C. 2153) requires that the President afford an opportunity for any interested person to present his or her views concerning any United States or foreign tariff concession, modification or continuance which should be offered or sought by the United States, any nontariff barrier to trade or any other matter relevant to proposed trade agreements. Sections 503(a) and 133 of the Trade Act require that the President afford an opportunity for any interested person to present his or her views concerning the possible designation of any article listed in paragraph II of this notice as an eligible article for purposes of the GSP. The time and place of these hearings, to be held by the Office of the United States Trade Representative through the Trade Policy Staff Committee, in accordance with sections 133 and 503(a) of the Trade Act, will be announced in the near future.

V. Advice of the International Trade Commission

On behalf of the President and in accordance with sections 131(a) and 503(a) of the Trade Act the International Trade Commission is being furnished with the lists of articles published in this notice for the purpose of securing from the Commission its advice on the probable economic effect on United States industries producing like or directly competitive articles and on consumers, (a) with respect to the articles listed in paragraph I:B above, of the reduction of United States duties by the maximum amount permissible under section 124 of the Trade Act, or continuance of United States duty-free or excise treatment, and (b) with respect to articles listed in paragraph II, above, of the designation of such articles as eligible articles for purposes of the GSP.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

Annex I

Articles Which May Be Considered In Trade Negotiations

TSUS item	TSUS item	TSUS item	TSUS item
100.20	112.90	126.77	141.45
100.25	112.94	126.79	141.77
100.30	113.11	126.91	141.78
100.31	113.20	126.93	141.87
100.35	113.25	130.37	141.88
100.45	113.30	130.50	145.02
100.60	113.60	130.63	145.22
100.63	114.01	131.12	145.54
100.77	114.06	131.25	145.58
100.79	114.15	131.38	145.65
105.84	114.20	131.40	145.70
106.55	114.25	131.45	146.14
106.70	114.36	131.50	146.69
106.75	114.50	131.70	146.77
107.20	115.00	131.75	146.79
107.25	115.05	131.80	146.82
107.65	115.10	131.85	146.86
107.78	115.25	132.25	147.02
110.45	117.67	132.55	147.26
110.50	118.00	135.30	147.50
111.44	118.10	135.50	147.75
111.60	118.15	135.70	147.80
111.88	118.30	135.75	148.32
112.05	121.10	135.94	148.40
112.08	121.15	136.30	148.46
112.14	121.25	136.40	148.48
112.22	121.30	136.61	148.52
112.30	121.35	136.80	148.54
112.34	121.40	136.97	149.28
112.36	121.45	137.04	150.05
112.40	121.50	137.40	150.50
112.48	121.55	137.75	152.05
112.50	121.64	137.79	152.26
112.52	123.50	137.80	152.34
112.58	124.20	137.87	152.38
112.62	124.60	140.20	152.60
112.66	124.65	140.56	152.62
112.71	124.70	140.60	152.72
112.73	125.25	140.65	152.76 [2]
112.74	125.34	140.75	153.04
112.79	125.67	141.05	153.16
112.80	125.84	141.15	153.20
112.82	126.07	141.20	153.28
112.86	126.63	141.25	153.32
154.15	177.22	222.20	305.08
154.20	177.24	222.30	305.09
154.25	177.26	222.32	305.12
154.30	177.30	222.34	305.14
154.35	177.40	222.36	305.16
154.50	177.52	222.41	305.18
154.60	177.56	222.44	305.50
155.10	177.58	222.60	307.50
155.40	177.62	222.62	307.52
155.60	177.67	222.64	307.62
155.65	177.69	240.16	309.28
160.35	177.72	240.32	309.29
161.05	178.05	240.36	316.10
161.07	178.30	240.52	408.08
161.41	182.05	240.56	408.12
161.53	182.10	245.45	409.22
161.57	182.11	245.80	409.26
161.60	182.15	251.10	409.30
161.71	182.32	251.15	410.52
161.80	182.33	251.20	410.60
161.83	182.40	251.25	410.64
161.88	182.45	252.13	410.68
161.92	182.46 [3]	252.15	410.76
162.03	182.50	252.30	410.80
162.07	182.52	252.35	410.88
165.70	182.53	252.40	410.92
167.05	182.60	252.50	410.96
167.20	182.90	252.59	411.00
167.25	183.01	252.61	411.04
167.34	183.05	252.73	411.12
167.40	184.53	253.10	411.16
167.42	184.54	253.15	411.20
167.50	186.10	253.40	411.24
167.90	186.15	253.45	411.32
168.04	186.50	254.25	411.36
168.06	186.60	254.30	411.44
168.09	188.50	254.35	411.52
168.11	190.25	254.40	411.60
168.14	190.87	254.42	411.64
168.16	192.07	254.54	411.68
168.42	192.30	254.56	411.72
168.54	192.35	254.63	411.76
168.59	192.45	256.10	411.90
168.74	192.55	256.15	411.98
168.76	192.66	256.35	412.14
168.80	192.85	256.40	412.22
168.96	192.90	256.60	412.26
168.98	200.06	256.65	412.30
169.04	200.25	256.67	412.38
169.07	200.95	256.75	412.42
169.08	202.66	256.80	412.52
169.31	203.10	256.84	412.60
169.32	203.30	256.87	412.64
169.37	204.05	256.90	412.68
169.39	204.10	273.30	412.76
169.46	204.20	273.65	415.10
169.47	204.50	273.70	415.27
169.48	206.45	273.75	415.30
169.49	206.53	273.90	415.40
169.58	206.54	273.95	415.50
169.59	206.60	274.00	416.40
170.25	206.85	274.05	416.45
170.55	206.95	274.23	417.14
170.64	206.96	274.33	417.20
170.78	206.98	274.35	417.26
175.33	207.00	274.70	417.28
176.14	220.10	274.90	417.32
176.18	220.15	300.45	417.36
176.22	220.20	300.50	417.38
176.52	220.25	304.08	417.40
176.54	220.35	304.18	417.42
176.55	220.36	304.26	417.44
176.70	220.39	304.48	417.52
177.12	220.41	304.52	417.54
177.16	220.48	305.04	417.64
177.20	222.10	305.06	417.70
417.80	422.60	460.20	514.24
417.90	422.62	460.30	514.34
417.92	422.70	460.60	514.41
418.00	422.74	461.10	514.44
418.18	422.78	461.15	515.11
418.26	422.80	461.30	515.14
418.30	422.82	461.35	515.61
418.40	422.90	461.40	516.21
418.42	422.92	461.45	516.91
418.44	422.94	465.05	517.81
418.50	423.00	465.10	517.91
418.52	423.80	465.15	517.91
418.68	423.84	465.20	519.31
418.72	423.86	465.25	519.83
418.74	423.88	465.30	519.84
418.78	423.92	465.35	519.86
418.80	423.94	465.40	519.91
418.94	425.04	465.45	519.93
419.00	425.06	465.50	519.97
419.04	427.88	465.55	520.31
419.10	430.20	465.60	520.54
419.20	432.10	465.80	520.71
419.34	432.15	465.85	522.21
419.38	432.25	465.87	522.24
419.40	435.45	465.90	522.41
419.42	436.00	465.95	522.45
419.44	437.02	466.05	522.81
419.50	437.04	466.10	523.91
419.52	437.06	466.15	523.94
419.54	437.10	466.20	531.21
419.60	437.12	466.25	531.33
419.70	437.13	470.15	531.35
419.74	437.14	470.25	531.39
419.76	437.18	470.85	532.41
419.80	437.20	474.04	532.61
419.82	437.32	474.06	534.11
419.90	437.38	474.08	534.21
420.00	437.40	474.22	534.97
420.06	437.44	474.30	535.31
420.20	437.47	474.35	535.41
420.22	437.49	474.40	540.11
420.28	437.52	474.44	540.13
420.30	437.54	474.50	540.15
420.34	437.55	474.62	540.21
420.36	437.56	485.30	540.41
420.40	437.57	490.14	540.43
420.54	437.60	490.20	540.47
420.60	437.65	490.22	540.51
420.68	437.70	490.24	540.55
420.78	437.72	490.26	540.71
420.92	437.82	490.65	545.17
421.06	438.01	490.73	545.57
421.10	438.02	490.75	545.61
421.22	439.50	491.00	545.63
421.36	440.00	493.18	545.67
421.52	450.10	493.30	546.21
421.56	450.20	493.42	546.25
421.60	450.30	493.46	546.35
421.62	450.40	493.50	546.47
421.72	450.50	493.65	547.11
421.74	452.24	493.66	547.21
421.76	452.28	495.15	547.41
421.84	452.54	495.20	547.43
421.86	455.06	511.25	547.53
421.90	455.16	511.51	548.01
422.00	455.18	511.61	548.03
422.10	455.20	511.71	548.05
422.12	455.22	512.24	601.33
422.14	455.24	512.31	601.54
422.20	455.32	512.41	602.10
422.24	455.34	512.44	603.40
422.26	455.40	513.51	603.45
422.30	455.42	513.74	603.49
422.40	455.44	513.81	603.54
422.42	455.46	513.84	605.06
422.58	460.10	513.94	605.27

TSUS item	TSUS item	TSUS item	TSUS item
605.46	628.17	644.95	650.53
605.48	628.20	646.17	650.56
605.60	628.25	646.34	650.61
605.65	628.30	646.36	650.63
610.74	628.57	646.41	650.65
610.80	628.59	646.42	650.73
612.05	628.70	646.51	650.75
612.17	628.72	646.53	650.77
612.20	628.74	646.57	650.81
612.30	628.90	646.60	650.85
612.34	628.95	646.65	651.03
612.36	629.05	646.72	651.04
612.38	629.07	646.75	651.09
612.40	629.10	646.76	651.21
612.41	629.14	646.77	651.27
612.43	629.20	646.78	651.29
612.45	629.25	646.81	651.31
612.50	629.29	646.82	651.33
612.52	629.30	646.83	651.37
612.55	629.32	646.84	651.47
612.56	629.33	646.85	651.49
612.61	629.35	646.86	651.51
612.63	629.60	646.87	651.53
612.70	629.62	646.89	651.55
612.71	629.65	646.90	651.60
612.72	632.12	646.92	652.09
612.73	632.18	646.95	652.13
612.80	632.24	646.97	652.15
612.81	632.34	646.98	652.18
612.82	632.38	647.01	652.35
613.06	632.46	647.03	652.36
613.08	632.52	647.05	652.38
613.11	632.58	648.53	652.42
613.12	632.62	648.61	652.60
613.15	632.66	648.67	652.65
618.17	632.88	648.71	652.70
618.20	633.00	648.73	652.84
618.22	640.10	648.75	652.86
618.25	640.25	648.85	652.88
618.29	642.27	648.89	653.20
618.42	642.45	649.14	653.25
618.47	642.47	649.17	653.30
620.08	642.50	649.19	653.35
620.10	642.52	649.23	653.37
620.12	642.56	649.24	653.45
620.16	642.58	649.26	653.52
620.20	642.60	649.27	653.60
620.22	642.62	649.29	653.62
620.26	642.64	649.31	653.70
620.42	642.66	649.32	653.80
620.50	642.68	649.35	653.90
622.22	642.70	649.43	654.03
622.25	642.72	649.46	654.05
622.35	642.74	649.47	654.15
624.02	642.76	649.48	656.15
624.03	642.78	649.49	656.20
624.14	642.80	649.53	656.35
624.16	642.85	649.57	657.25
624.18	642.87	649.67	657.30
624.20	642.91	649.91	657.35
624.24	644.06	650.01	657.40
624.32	644.09	650.03	657.50
624.34	644.11	650.05	657.60
624.40	644.12	650.07	657.75
624.42	644.17	650.13	657.80
624.52	644.18	650.15	658.00
624.54	644.24	650.17	660.10
626.15	644.26	650.19	660.15
626.18	644.30	650.31	660.20
626.20	644.32	650.35	660.25
626.22	644.36	650.37	660.30
626.24	644.38	650.43	660.35
626.30	644.46	650.45	660.42
626.31	644.68	650.47	660.48
626.35	644.80	650.49	660.62
628.15	644.84	650.51	660.67
660.71	676.10	687.10	710.67
660.74	676.15	687.20	710.68
660.76	676.20	687.43	710.70
660.85	676.23	688.04	710.72
660.97	676.25	688.06	710.76
661.06	676.30	688.15	710.78
661.12	676.52	688.20	710.80
661.15	678.20	688.25	711.04
661.25	678.30	688.30	711.08
661.30	678.32	688.35	711.25
661.35	678.35	688.44	711.38
661.50	678.40	688.45	711.42
661.56	678.45	690.05	711.47
661.68	678.50	690.10	711.49
661.85	680.05	690.20	711.55
661.90	680.07	690.35	711.60
661.95	680.12	690.40	711.67
662.10	680.13	692.02	711.75
662.15	680.14	692.04	711.78
662.20	680.25	692.14	711.88
662.26	680.27	692.16	712.10
662.30	680.30	692.32	712.15
662.35	680.33	692.50	712.20
662.50	680.37	692.55	712.25
666.25	680.39	694.50	712.47
668.04	680.59	696.15	712.49
668.07	680.92	696.50	715.20
668.10	680.95	700.58	720.42
668.15	681.07	702.45	722.04
668.23	681.13	702.47	722.18
668.36	681.27	703.60	722.32
670.00	681.36	703.65	722.34
670.02	681.39	706.04	722.52
670.04	682.05	706.06	722.56
670.06	682.25	706.16	722.60
670.12	682.30	706.18	722.64
670.14	682.41	706.22	722.72
670.16	682.50	706.30	722.75
670.17	682.52	706.45	722.80
670.18	682.80	706.47	722.83
670.19	682.90	706.55	722.85
670.20	682.95	708.01	722.88
670.22	683.10	708.23	722.94
670.23	683.15	708.43	722.96
670.25	683.30	708.45	723.05
670.27	683.32	708.47	723.15
670.29	683.50	708.76	723.25
670.33	683.60	708.80	723.30
670.35	683.80	708.82	723.32
670.41	684.20	708.85	723.35
670.42	684.40	708.87	724.25
670.43	684.50	709.03	724.45
670.50	684.62	709.06	725.01
670.52	684.64	709.07	725.03
670.54	684.70	709.09	725.04
670.56	685.10	709.10	725.12
670.60	685.13	709.11	725.14
670.64	685.16	709.15	725.16
670.68	685.18	709.17	725.18
670.70	685.19	709.19	725.22
670.90	685.24	709.21	725.24
672.16	685.33	709.25	725.32
672.20	685.34	709.27	725.34
672.22	685.36	709.40	725.40
674.20	685.40	709.45	725.52
674.30	685.42	709.50	726.05
674.32	685.50	709.57	726.10
674.35	685.60	709.66	726.15
674.40	685.90	710.14	726.25
674.42	686.18	710.16	726.40
674.50	686.24	710.30	726.45
674.52	686.30	710.40	726.50
674.53	686.40	710.60	726.52
674.55	686.50	710.61	726.60
674.60	686.60	710.63	726.62
674.80	686.70	710.65	726.63
726.65	732.60	741.35	760.40
726.70	734.10	741.50	760.48
726.85	734.15	745.08	760.56
726.90	734.20	745.25	760.58
727.02	734.30	745.28	766.30
727.04	734.32	745.30	770.40
727.06	734.34	745.34	771.55
727.11	734.40	745.45	772.35
727.12	734.71	745.54	772.40
727.15	734.72	745.60	772.42
727.29	734.77	745.65	772.60
727.40	734.85	745.66	772.80
727.52	734.86	745.68	772.85
728.10	734.87	748.25	772.97
728.15	734.88	748.32	773.10
728.25	734.91	748.34	773.25
730.05	735.02	748.36	773.30
730.19	735.06	748.40	774.35
730.31	735.07	750.15	790.03
730.45	735.09	750.20	790.30
730.51	735.10	750.47	790.47
730.53	735.11	750.50	790.50
730.55	735.12	750.55	790.55
730.63	735.20	750.60	791.20
730.81	737.07	750.80	791.27
730.85	737.09	751.11	791.28
730.86	737.15	751.25	791.30
730.88	737.30	755.20	791.35
730.91	737.45	755.25	791.48
731.15	737.55	755.30	791.57
731.22	737.65	755.35	791.60
731.24	737.85	756.02	791.65
732.04	740.05	756.30	791.70
732.16	740.10	756.35	792.10
732.21	740.50	756.50	792.22
732.30	740.55	756.60	792.60
732.32	740.60	760.20	792.70
732.34	741.25	760.30	792.75
732.43	741.30		799.00

Annex II

Articles Which May Be Considered For Designation As Eligible Articles For Purposes Of The Generalized System Of Preferences

TSUS item	TSUS item	TSUS item	TSUS item
100.20	112.86	126.91	146.77
100.30	112.90	126.93	146.79
100.35	113.11	130.50	146.86
100.45	113.20	131.12	147.02
100.60	113.25	131.25	147.26
100.63	114.01	131.38	147.50
100.77	114.06	131.40	147.75
100.79	114.15	131.45	148.32
108.55	114.20	131.50	148.40
110.50	114.36	131.70	148.46
111.44	114.50	131.75	148.48
111.88	115.00	131.85	148.52
112.05	115.05	132.25	148.54
112.08	115.10	135.75	149.28
112.14	115.25	136.61	150.05
112.22	118.00	137.80	150.50
112.30	118.10	137.87	152.26
112.34	118.15	140.60	152.34
112.48	118.30 [1]	140.65	152.38
112.50	121.40	140.75	152.62
112.52	121.45	141.15	152.76 [2]
112.58	121.50	141.25	153.04
112.62	125.25	141.78	153.20
112.66	125.67	141.87	154.15
112.71	126.07	141.88	154.20
112.73	126.63	145.22	154.25
112.74	126.77	145.58	154.30
112.80	126.79	146.14	154.35
112.82			

TSUS item	TSUS item	TSUS item	TSUS item
154.50	192.90	415.30	632.46
155.10	200.25	415.40	632.52
155.65	200.95	416.40	632.58
160.35	204.50	417.40	632.88
161.05	206.85	418.30	642.91
161.07	206.96	420.92	646.60
161.41	222.20	421.56	646.81
161.57	300.45	422.40	646.83
161.60	300.50	422.42	646.84
161.80	304.08	423.92	650.03
161.88	304.18	427.88	650.47
165.70	304.26	430.20	650.49
167.20	304.52	432.10	670.60
167.42	305.04	432.25	680.30
167.90	305.06	435.45	680.33
168.04	305.08	436.00	680.37
168.06	305.09	437.47	680.39
168.09	305.12	450.30	680.95
168.11	305.14	450.40	681.07
168.74	305.16	450.50	685.13
168.76	305.18	452.28	685.16
168.80	307.50	455.40	685.18
169.04	307.52	455.42	685.19
169.31	307.62	460.20	685.33
170.25	309.28	490.14	685.36
170.55	309.29	490.20	685.50
170.64	316.10	490.22	687.43
170.78	411.12	490.26	692.02
175.33	411.16	490.65	700.58
176.18	411.24	490.73	706.06
176.22	411.32	490.75	706.16
176.52	411.36	491.00	706.18
176.54	411.44	493.42	706.22
176.55	411.52	493.65	706.30
177.20	411.60	493.66	706.55
177.30	411.64	522.24	720.42
177.52	411.68	546.35	726.85
177.56	411.72	605.46	727.11
177.67	411.76	624.03	730.19
178.05	411.90	628.17	731.15
182.33	411.98	628.57	731.22
182.50	412.14	628.72	732.04
182.53	412.22	629.07	732.16
182.60	412.26	629.14	732.21
183.01	412.30	629.29	732.30
184.53	412.38	629.30	732.32
184.54	412.42	629.32	732.34
186.60	412.52	629.33	737.85
190.87	412.60	629.35	755.35
192.07	412.64	629.62	760.48
192.30	412.68	632.24	766.30
192.35	415.10	632.38	

[1] Only goat's milk products not containing any other type of milk.

[2] Only pineapple and quince pastes and pulps.

[FR Doc. 80-23950 Filed 8-7-80; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 155
Friday, August 8, 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).

CONTENTS

1

COUNCIL ON ENVIRONMENTAL QUALITY.

August 6, 1980.

TIME AND DATE: 11:30 a.m., August 18, 1980.

PLACE: Conference room, 722, Jackson Place NW., Washington, D.C. 20006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Briefing on the Bureau of Land Management's California Desert EIS.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III, (202) 395-4616.

[S-1500-80 Filed 8-6-80; 10:56 am]

BILLING CODE 3125-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, August 12, 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: Modification of the fiscal year 1979 Backlog and fiscal year 1980 New Charge Resolution Contracts of the Washington State Human Rights Commission.
2. Report on Commission Operations by the Executive Director.

Closed to the public:

1. Litigation Authorization; General Counsel Recommendations.
2. Budget for fiscal year 1982.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Office Executive Secretariat, at (202) 634-6748.

[S-1502 Filed 8-6-80; 3:12 pm]

BILLING CODE 6570-06-M

3

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, August 13, 1980.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal under the Monetary Control Act to establish guidelines to be followed by nonmember depositary institutions if their required reserves are passed through another depositary institution to the Federal Reserve. (Proposed earlier for public comment; docket No. R-0309).
2. Proposal for annual Board financial support of the University of Michigan's Survey Research Center.
3. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 6, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1498-80 Filed 8-6-80; 9:58 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM.

(Committee on Employee Benefits of the Board of Governors).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR, 51041, July 31, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, August 5, 1980.

CHANGE IN THE MEETING: Addition of the following closed item(s) to the meeting: Designation of new officers for the Committee on Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 5, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1499-80 Filed 8-6-80; 9:59 am]

BILLING CODE 6210-01-M

5

NATIONAL SCIENCE BOARD.

DATE AND TIME: August 21, 1980 1 p.m., open session; August 22, 1980 9 a.m., closed session.

PLACE: 1800 G Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Open session:

1. Minutes—Open Session—217th Meeting.
2. Chairman's Report.
3. Director's Report.
   a. Report on Grant and Contract Activity—6/17/-8/20/80.
   b. Organizational and Staff Changes.
   c. Congressional and Legislative Matters.
   d. NSF Budget for Fiscal Year 1981.
   e. Science and Engineering Education Report to the President.
   f. Proposed Ocean Margin Drilling Program.
   g. Other Items.
4. Board Committees—Reports on Meetings.
5. Reports on Advisory Group Meetings, Site Visits, and Other Events.
6. Representation at Future Site Visits to Materials Research Laboratories.
7. Continued Consideration of Reports of Discussion Groups 80-A, B, and C.
8. Presentation by the Acting Director of the Proposed Reorganization of NSF.
9. Program Review—Environmental Biology.
10. Grants, Contracts, and Programs.
11. Other Business.
12. Next Meeting National Science Board, September 18-19, 1980.

Closed session:

A. Minutes-Closed Session—217th Meeting.
B. Grants and Contracts.
C. NSB and NSF Staff Nominees.
D. NSB Annual Reports.
E. NSF Budgets for Fiscal Year 1982 and Subsequent Years.
F. Science and Engineering Education Report to the President.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, (202) 357–9582.

[S–1501–80 Filed 8–6–80; 1:40 pm]

BILLING CODE 7550–01–M

6

[NM–80–29]

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 51987, August 5, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, August 12, 1980.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

1. *Railroad Accident Report*—Derailment of Amtrak Train No. 7 the Empire Builder, on Burlington Northern Track, Glacier Park, Montana, March 14, 1980, and *Recommendations* to the Federal Railroad Administration, the National Railroad Passenger Corporation, and the Burlington Northern.
2. *Special Investigation Report*—Increased Shipper Involvement in Hazardous Materials Transportation and *Recommendations* to the U.S. Department of Transportation.
3. *Safety Effectiveness Evaluation* of the Materials Transportation Bureau's Pipeline Data System, and *Recommendations* to the Resarch and Special Programs Administration of the U.S. Department of Transportation.
4. *Railroad Accident Report*—Head-end Collision of Nine Burlington Northern Locomotive Units with the Standing Freight Train, Angora, Nebraska, February 16, 1980, and *Recommendations* to Burlington Northern.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

August 6, 1980.

[S–1503–80 Filed 8–6–80; 3:27 pm]

BILLING CODE 4910–58–M

federal register

Friday
August 8, 1980

Part II

Department of Agriculture

Food Safety and Quality Service

Department of Health and Human Services

Food and Drug Administration

Net Weight Labeling

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

9 CFR Parts 317 and 381

Net Weight Labeling

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat and poultry products inspection regulations to provide more uniform labeling requirements and to prescribe uniform procedures for determining compliance with label statements of net contents of containers of meat and poultry products. The proposal would establish objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures. This proposal is designed to enhance the ability of Federal, State and local agencies to enforce strict net weight standards at the retail level and would establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration for other types of foods.

DATE: Comments must be received on or before November 6, 1980.

ADDRESSES: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Room 2637, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. Oral comments on the poultry products inspection regulations to: Mr. Bill F. Dennis, (202) 447–3840.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3840. the Draft Impact Analysis detailing the options considered in developing this proposed rule and the impact of implementing each option is published in its entirety below as an appendix to this proposal.

SUPPLEMENTARY INFORMATION:

Significance

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to Implement Executive Order 12044, and has been classified "significant."

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Regulations Coordination Division and should bear a reference to the date and page number of this issue of the **Federal Register.** Any person desiring opportunity for oral presentation of views on the poultry product inspection regulations must make such request to Mr. Dennis so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented on the poultry product inspection regulations. All comments submitted pursuant to this notice will be made available for public inspection in the office of the Regulations Coordination Division during regular hours of business. For more information about how to participate in this proceeding, contact the FSQS Public Participation Office at (202) 447–7804.

The Proposal

The Department of Agriculture (USDA) is proposing regulations setting forth more uniform net weight labeling requirements for federally inspected meat and poultry products and prescribing procedures for determining compliance with these requirements. These proposed regulations would establish objective, numerical standards for determining compliance to insure that consumers receive valid information regarding the actual weight of meat and poultry products and to provide for increased iniformity of regulation at the Federal, State and local levels.

Under the Federal Meat Inspection Act (21 U.S.C 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), the Department must assure that meat and poultry products sold and distributed in commerce are properly labeled and are not misbranded in any way. The Acts require an accurate statement of net quantity of contents, but allow the Secretary to establish reasonable variations by regulation (21 U.S.C. 451(h)(5), 601(n)(5)).

The Department's current net weight regulations for meat products (9 CFR 317.2(h)) and poultry products (9 CFR 381.121) state that the labeled net weight shall not be false or misleading and shall express an accurate statement of the quantity of contents, exclusive of wrapping and packing substances. The regulations allow for reasonable variation from the labeled net weight caused by (1) moisture loss or gain during the course of good distribution practices or (2) unavoidable deviations during good manufacturing practices.

While Department studies show substantial compliance with these regulations, consumers and State law enforcement officials have voiced concerns with their application. Some consumers say that product labels may not be supplying accurate information about the product being purchased. The permitted variations attributable to moisture loss cause some consumers to believe that they may be paying too much for a meat or poultry product. State enforcement personnel indicate that they believe they are unable to protect consumers adequately because of the lack of objective, numerical procedures and standards for determining the allowable variations. As one commenter suggested on behalf of a State Department of Agriculture regarding a recent Department study of the net weight issue, the permitted variations in the present USDA regulations ". . . confound the attempts of any inspection agency to determine if quantity labeling is correct when inspection takes place at any point in the distribution chain. Further, such condition leads to the inability of a prospective purchaser to successfully accomplish value comparison, based on quantity and between commodities." [1]

The Department proposes to amend its current net weight regulations by:

1. Replacing the currently permitted "reasonable variations" due to loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices with allowable numerical variations which appear to be reasonable when determined by specified procedures. The allowable variations are based on recognized, unavoidable deviations which occur during the manufacturing process. Allowance for moisture loss was not made in development of these variations. Proposed allowable variations were determined after extensive consultation with the National Bureau of Standards. These variations would be used and enforced at the time of production, during distribution, and at retail sale by Federal, State, and local regulatory officials within their respective regulatory authorities.

2. Establishing a definition of "tare" [2] in which the net weight of a product

[1] Comments submitted by the Maryland Department of Agriculture in a letter dated October 26, 1979, in response to a request for comments on the results of the ESCS study published in the **Federal Register** on August 31, 1979 (44 FR 51275–51277).

[2] "Tare" is the term used to refer to the weight of those parts of the gross weight of a packaged product not included in the labeled net weight. Typically, tare includes the weight of packaging materials or container of a product.

equals the package and contents minus the weight of the packaging materials. With regard to liquids absorbed by the packaging material, the Department has developed two alternatives as to whether or not such liquids should be included in net weight. Under the proposed regulations, too, free liquid (liquid which has separated itself from the product but which has not been absorbed by the packaging material) is included in the net weight of the product, except for those few products which are packed in substances which are normally discarded before consumer preparation and/or serving.

3. Establishing specific sampling procedures to assure consistent weight measurements and compliance determinations by Federal, State and local regulatory personnel. Under the procedures, while an allowable variation may be permitted for individual packages, the net weight of all the sample packages must meet or exceed the stated net weight.

4. Establishing consistent limited labeling exemptions for meat and poultry products which meet criteria for "small packages" and "multi-unit packages."

This proposed regulation would have an impact upon the Department and any federally inspected meat and poultry establishment packaging products affected by the proposed changes. State and local agencies responsible for enforcement of net weight labeling rules, any wholesale and retail establishments subject to the rules applying to meat and poultry products, and consumers.

Purpose and Need for Action: A revised regulation would serve several purposes. It would:

1. Create standards that will be easily enforceable so that the net weight statement is as accurate as can reasonably be required at the time meat and poultry products are purchased by consumers.

2. Enable State and local regulatory agencies to enforce strict net weight standards at retail and other locations within their jurisdictions where meat and poultry products are sold.

3. Establish net weight regulations that are generally uniform with those used by the Food and Drug Administration (FDA) for other food products.

Background

The need for this proposal is based on three developments, the first of which occurred in 1972.

1. *Rath v. Becker.* In the course of developing weights and measures regulations over the years, some State and local governments did not provide for any "reasonable variation" in net weight caused by moisture loss or gain during the course of good distribution practices, as is provided under the Department's regulations pursuant to Federal law. California was one of these States. In 1972, a local official in California ordered "off-sale" a federally inspected meat product with a net weight below the declared net weight as determined by the State procedure. The food product's manufacturer sought relief in Federal district court.

The manufacturer alleged that its product was in compliance with the Federal requirements at the time of Federal Inspection and that California could not impose additional or different State requirements. In this case, *Rath Packing Company v. Becker,* 357 F. Supp. 529 (C.D. Cal. 1973), the United States District Court for the Central District of California in 1973 held that the Federal Meat Inspection Act (FMIA) pre-empts State and local governments from imposing net weight labeling requirements on federally inspected meat products that are in addition to or different from the Federal requirements. Furthermore, the misbranding and mislabeling provisions of the FMIA were held to apply not only at the official establishment packing the product, but at all levels in the distribution chain including retail. The court held, however, that the Federal regulation allowing "reasonable variations" with respect to net weight (9 CFR 317.2(h)(2)) was void to vagueness.

This decision was appealed to the United States Court of Appeals for the Ninth Circuit. In October 1975, this Court affirmed the decision on pre-emption, but reversed the decision that the "reasonable variations" regulation (9 CFR 317.2(h)(2)) was void due to vagueness (530 F.2d 1295 (9th Cir. 1975)).

The decision on the pre-emption issue was further appealed to the U.S. Supreme Court, where it was affirmed in March of 1977. (*Jones* v. *Rath Packing Company,* 430 U.S. 519 (1977)).

2. *The 1973 Proposal.* The Department believed it was a practical necessity to allow reasonable variations from the declared net weight. Therefore, after the District Court voided the existing "reasonable variations" regulation, the Department proposed a new regulation on December 3, 1973 (38 FR 33308–33313). Procedures were proposed for determining allowable net weight variations at the producing plant and during distribution. With explicit numerical allowed net weight variations, packers would have needed to target the fill weight above the stated contents to assure compliance. Recoverable liquids that drained from the product would have been considered as part of the net weight. For compliance purposes, each federally inspected establishment packing containers for sale to household consumers would have had to implement an approved quality control program, in accordance with specific recommendations contained in the proposal.[3] In addition, existing provisions exempting shingle packed sliced bacon from various general net weight labeling requirements would have been eliminated.

Public hearings held during 1974 in five locations (New York City, Washington, D.C., Atlanta, Dallas, and San Francisco) to explain this proposal revealed widespread dissatisfaction on the part of consumers, industry representatives, and State and local weights and measures officials. Over 1,600 comments on the proposal were recorded. Twenty-one consumer groups responded. Eight of these groups objected to paying for water, blood, and packing media, and wanted the label to bear the actual net weight of the product. Six expressed the opinion that there is no effective way to prevent the sale of short weight products. A total of 69 industry groups responded, 33 of which wanted controls directed only to the marked consumer-size packages. Twenty others believed the limits to be "too tight," and 16 believed the industry would have to resort to vacuum packaging to comply. Over 1,300 individuals submitted comments of which 70 percent wanted labels to contain an accurate net weight statement, 25 percent objected to paying for fluid and packing media as part of the net weight, and the remainder objected to Federal pre-emption of State and local rules. In essence, no group expressed unqualified support for the proposal.

3. *The 1977 Proposal.* The third development occurred following the U.S. Supreme Court decision in 1977 which upheld Federal pre-emption. California and 47 other States, the District of Columbia and American Samoa acting as cosigners petitioned the Department, the Food and Drug Administration (FDA) and the Federal Trade Commission to amend the existing Federal regulations (9 CFR 317.2(h)(2), 9 CFR 381.121(c)(6), 21 CFR 101.105(q), 21 CFR 501.105(q) and 16 CFR 500.22) to create a more enforceable net weight regulation.

The petitioners and supporters claimed that the Federal net weight

[3] Currently and at the time of the 1973 proposal, at official establishments where retail products bearing net weight labels are packaged, USDA inspectors periodically weigh lots of product for net weight compliance.

labeling regulations are unfair to consumers who do not receive the full measure as represented on the package and that these regulations create a situation that precludes enforcement by State and local officials at the retail level because the phrase "reasonable variations" is undefined and vagued. The petitioners proposed to require a minimum declared weight, suggesting either overfilling to compensate for moisture loss or improving the food packaging to impede moisture loss to insure the minimum weight of food at any point during distribution. The petitioners contended that industry has the capability to evaluate all the variables affecting moisture loss for their products and can, therefore, adjust the processing and target weights accordingly to minimize excessive overfilling.

In response to the petitions, consumer complaints, and comments received concerning the 1973 proposal, the Department published a new net weight labeling proposal in the **Federal Register** on December 2, 1977 (42 FR 61279–61284). The intent of the proposal was to provide consumers with labeling information based upon the *usable* weight of the meat and poultry contents of the package at the time of purchase. To accomplish this, it proposed several changes:

a. *Adopt weight definitions.* The 1977 proposal would have defined the new weight as the gross weight of the unopened container minus the tare weight. The tare weight was to be the gross weight of the unopened container minus the drained weight of the product therein. To determine the drained weight, the package would be opened and the contents allowed to drain for 2 minutes on a specified size mesh screen. By the use of these definitions and procedures, the new weight statement on the container would not include all of the drainable liquids in the container.

b. *Adopt a new definition of reasonable variation.* Currently, reasonable variations are allowed for unavoidable deviations in good manufacturing practice and for loss or gain of moisture during the course of good distribution practices. The proposal would have eliminated this allowance. In its place, the proposed rule would have established numerical variations to be determined by prescribed procedures, including defined sampling plans. The average net weight of the samples was required to equal or exceed the stated net weight. An individual sample was to be allowed a specified numercial deviation below the stated net weight. Homogeneous products that are fluid when filled would have been allowed less variation than heterogenous products which are not as easily packaged.

C. *Adopt a mandatory net weight quality control program.* A net weight quality control program, approved and monitored by USDA, would have been required for establishments under Federal inspection for immediate containers bearing net weight labels (see footnote 3).

d. *Adopt a tightened inspection sampling procedure.* Under current in-plant practices, if 40 or more sample packages are taken from a lot, one of those packages can have an unreasonably large deviation from the labeled weight, as long as the average net weight of all of the sample packages equals or exceeds the labeled net weight. Under the 1977 proposal, the entire lot would be out of compliance if any sample package had a deviation from its labeled net weight larger than the numercial amount specified in the proposal.

e. *Bulk shipments would continue to be covered by the regulation.* The proposal would have required a net weight statement on the labels on the immediate (shipping) containers of bulk shipments, and shipping containers of small packages after the product is shipped from the plant. The 1973 proposal had proposed to provide manufacturers and packers broad leeway in the bulk package net contents statement.

Comments on the 1977 Proposal

Over 3,000 comments were received on this proposal, many questioning its need and contending that it would raise prices. It had been recognized that the proposal would be controversial for several reasons. First, since the net weight would not include all of the drainable liquids, the compliance procedures would require the opening and repackaging of contents and a possible loss of product during distribution and before final sale—a far more expensive technique for industry and more time consuming for Federal and State regulators than checking for compliance by weighing the entire package and subtracting the weight of the dry packaging material before the product is packaged (the "dry tare"). Second, in order to achieve compliance, product packagers would have to develop estimates of possible shrink and liquid loss in net weight between the times of packaging and final sale to consumers and compensate accordingly or otherwise provide assurance that the declared net weight on the package is correct throughout the rest of the distribution system by overpacking.

Over 2,700 comments came from individuals, with 71 percent of them opposed, contending it would over-regular the industry and increase foods costs. Twenty-six percent of consumers commenting supported the proposal, and the balance objected specifically to the provision to exclude the free liquid in the container from the net weight. State and local weights and measures officials were almost unanimous in supporting the proposal, with only four out of 114 objecting. The 31 industry groups were all opposed because they believed that there were no sufficient variations for bulk packed items and that it was unclear who would be responsible for short weights at retail. University groups were almost evenly split with 15 supporting the proposal, and 12 against because it would raise consumer costs. All but one of the 21 consumer groups supported the proposal. Of all the respondents, slightly over two-thirds opposed the proposal.

Events following the 1977 Proposal. As a result of the strong negative response to the 1977 proposal, the Department sought additional data on which to reconsider its proposal. These documents helped shape the present proposal:

1. *The GMA Petition.* In 1978, USDA and FDA received a petition submitted by the Grocery Manufacturers of America (GMA) on behalf of those favoring an allowance for "reasonable variations" due to moisture loss. GMA claimed that the continuation of the existing nonqualified allowances is essential. GMA maintained that no chronic short-weight problems have existed for well over a decade, thereby illustrating the enforcement effectiveness of the present regulations. In the cases where moisture loss can affect weight, GMA contended that the consumer is getting full value based on the nutritional food "solids." Industry representatives stated that moisture loss occurring during distribution and storage is beyond the control of the manufacturer. GMA maintained that the modifications proposed in the State of California petition calling for overfilling and improved food packaging would provide no consumer advantage and could result in higher food costs. Instead, GMA recommended the creation of a National Net Weight Assurance Program to (a) establish a list of foods subject to moisture loss or gain, together with a normal moisture range at time of packaging, (b) foster the determination of net weight compliance of products through periodic inspections

at the time of packaging, and (c) develop procedures for establishing a cooperative inspection program and for the exchange of enforcement data between States and the Federal Government. GMA further encouraged conducting net weight labeling inspections in accordance with statistical sampling procedures described in a draft of the revision of the National Bureau of Standards Handbook 67, dated December 1977. This petition has received widespread support from the food industry.

2. *The Consumer Federation of America Study.* In order to obtain information on the economic benefits and cost of the proposal and to resolve other allegations presented by industry and consumer groups, the Department awarded a study contract to the Consumer Federation of America. The study was completed in October 1978, but failed to reach any conclusions. It did observe that: "Consumers cannot be expected to have different interpretations of labeled net weight depending on the particular food product being sold" and that "Consumers are more hurt by shortweighing than they are benefited by overpack because of the declining marginal utility of the product." [4]

3. *The GAO Study.* In the meantime, the House Committee on Agriculture requested the General Accounting Office (GAO) to evaluate the proposed net weight regulation and consider the feasibility of alternative systems. The GAO report, issued on December 20, 1978, observed that:

"Agriculture has not gathered adequate data to determine whether the current system needs to be changed or whether the proposed system or other possible alternative systems would be more economical and practical than the current system. Various Executive orders and GAO reports stress the importance of collecting and analyzing economic and other data to help choose the least burdensome and most feasible regulatory method of achieving an objective."

The report later concluded:

"We recommend that the Secretary of Agriculture direct the Service (FSQS) to expand and extend its search for information concerning the best way to monitor net weight labeling activities for meat and poultry products. Such a search should include:

—a reevaluation of the need for change;
—a comparison of available viable alternatives, including those discussed in this report;
—a comprehensive economic impact statement for each system considered;
—a thorough and objective analysis of comments from major groups including State and local government regulatory organizations, industry, and consumers affected by such activities; and
—research to resolve the packaged meat and poultry moisture loss controversy."

USDA officials agreed to the GAO recommendation to expand and extend the search for information on the best way to regulate net weight labeling.

4. *The ESCS Study.* In January 1979, the Economics, Statistics and Cooperatives Service (ESCS), an agency of the USDA, was asked to conduct a study on behalf of USDA to evaluate the accumulated evidence and reassess the economic costs and benefits for the purpose of determining the need for, and the economic impact of, the 1977 proposal.

Generally, the ESCS study found that the economic benefits from using a drained weight requirement (i.e., excluding free liquids from the net weight) were substantially less than many consumer groups had contended, but the costs of such a requirement were also substantially less than the producer groups had suggested. More specifically, the study identified benefits accruing from a drained weight approach to determining net weight. The ESCS study concluded in this issue that a drained weight labeling regulation:

—Can guarantee that most consumers receive at least the stated weight in "consumable" product. However, drained weight labeling cannot insure accuracy of the labeled weight or the labeled price per pound in terms of what is actually in a specified package.
—Is less susceptible to abuse than a dry tare inspection.
—Provides incentives for industry to reduce the amount and variability of moisture loss of products.
—Improves the ability of consumers to make value comparisons between meat and poultry products which differ widely in moisture loss.
—Facilitates on-site enforcement by State and local weights and measures officials.

On the other hand, ESCS found that the adoption of a drained weight requirement could have the effect of increasing costs to the regulated industry, State enforcement officials, and to consumers through increased costs per pound.

ESCS observed that the information presented about the 1977 proposal had resulted in considerable misunderstanding by both consumers and producers and that, in fact, there was no economic advantage to consumers from a drained weight system. The study states:

"Consumers cannot expect the reported price per pound of a product to remain unchanged if free liquids are excluded from labeled product weights. The price per pound can be expected to increase—and to increase most for those products with relatively more free liquid. However, the cost to consumers for *usable* product would remain unchanged. Actual costs to producers would not increase because of the change in definition of tare (that is, those parts of a product whose weight is not included in the labeled net weight). The amount of drained weight meat would not be affected by a labeling rule, and processing costs per drained weight pound would be unaffected."

The ESCS study also reported the following possible cost increases resulting from the adoption of the 1977 proposal:

"Mandatory quality control would increase industry costs by $59 million to $116 million. The impact on the smaller firms would be greater than on the larger firms, many of which already have quality control systems."

"Products with the highest moisture loss would likely have larger increases in their labeled price per pound relative to products with a lower moisture loss. Consumer expenditures could shift to products with relatively lower prices following the change in regulation. The full effect of these relative price shifts on expenditures, however, would depend on consumers' preceptions and knowledge about net weight labeling, as there would be no change in the real price per drained weight pound." [5]

"Retailers not located in jurisdictions currently using some form of drained weight inspection would likely have modest additional costs from more frequent rewrapping of in-store packaged product. Retailers would also absorb the cost of opened prepack packages not purchased by inspectors or returned to the processor."

[4] Analysis of Proposed Regulations on Net Weight Labeling submitted by the Consumer Federation of America to the U.S. Department of Agriculture in accordance with Contract 53-3A94-A-01.

[5] The study also observed that consumer misunderstanding could have some long term market effects if consumers believe that the real price per pound of the products with considerable quantities of free liquid actually increased. They might shift purchases to products that have a lower per pound price. ESCS did suggest, however, the problem could be largely corrected by a nationwide education program to explain the reason for the unit price change.

"The cost of sieve and receiving pans to weights and measures officials is estimated at $421,000."

5. *Comments to the ESCS study.* The ESCS study was submitted for public comment during a 60-day period ending on October 30, 1979 (44 FR 51275–51277). In addition, FSQS mailed out approximately 300 copies of the ESCS study to the organizations and individuals who had commented on the 1977 proposal in order to solicit their response on the results of the study. Copies were also distributed to individuals and others who requested the study.

A total of 101 comments were submitted to FSQS. Again, opposition was expressed to the 1977 proposal. Of the 50 industry and trade associations responding, 48 preferred the present net weight policy. However, 15 of the 18 State and local weights and measures regulatory groups expressed support for the 1977 proposal. Only 21 individuals responded, and all but two opposed the proposal. Only one of 51 consumer groups responded. The poor response is attributed to the reported desire of some to await the comment period on a new proposal before drafting a response.

Issues

As the discussion above indicates, the development of a workable, enforceable net weight standard has proven to be a difficult and controversial task. On the basis of the information generated by the various proposals and studies, in addition to the Department's own expertise and information gathered through consultation with other Federal and State agencies, the Department now believes it is appropriate and in the public interest to publish this new proposal. The 1977 proposal is accordingly withdrawn. The following discussion is provided to clarify the Department's position on a number of issues which had to be considered in the development of the present proposal.

1. *Need for a new regulation.* State officials have urged the Department to adopt a new standard despite the lack of any recent history of poor compliance with net weight requirements. The Michigan State Department of Agriculture has indicated that perhaps the past good compliance record "is an indication of the industry's desire to comply with the requirements that cause equality in the marketplace, both for the consumer and in vying with competitors. Through the pre-emption of state regulations by the Federal Wholesome Meat Act [sic], industry has lost the effect of verifiable inspections, which was the basis of equality. There will be an erosion of equality, however, since the existing federal regulations are unenforceable without this proposed regulation." the California State Department of Agriculture has also stated that "challenges to State enforcement are increasing and its is becoming increasingly difficult to obtain successful prosecution of offenders. This deterioration cannot be allowed to continue, and it surely must under the present regulation."

On the other hand, in comments received on the 1977 proposal and on the ESCS study, the Department has been advised by various representatives of the food industry that the present regulations are fully protective of the consumer. They indicate that there has been no showing of short-weighting or of economic adulteration. Therefore, they conclude there would appear to be no benefit derived from further regulation of net weight.

The Department agrees that the current system does create enforcement problems for State and local agencies. As a result of the Supreme Court decision in *Jones v. Rath Packing Company,* holding that the Federal Meat Inspection Act prevents States from issuing net weight regulations in addition to or different from the Federal standard, many State statutes and regulations, which created numerical deviation weight testing standards, became unenforceable.

Under the Federal meat and Poultry Products Inspection Acts (21 U.S.C. 467e and 678), there is concurrent jurisdiciton for enforcement between USDA and its State and local counterparts and is essential to the functioning of the regulatory system. As a practical matter, State and local officials are usually the primary compliance force at the retail level.

However, if Federal rules are difficult to enforce at retail, the system does not function as effectively as it should. Therefore, USDA has a responsibility to provide suitable standards and procedures. Accordingly, the Department proposes the revised regulation.

2. *Type of Tare.* The choice of the proper tare[6] has proven to be one of the most difficult issues faced by the Department in the formulation of this proposal. Under this proposal, net weight would be based upon a definition of tare which includes the packaging materials. With regard to liquids absorbed by the packaging materials, the Department is making alternative proposals on whether or not to include such liquids in the tare. The proposal would, in most cases, exclude free liquids from the tare weight. Thus, such free liquids would usually be included in the labeled net weight. However, for those few products which are packed in substances that are normally discarded before consumer preparation and/or serving (such as water, curing solution, brine and vinegar), a drained weight standard would be applied. Thus, for these few products, the free liquids would be included in the tare weight and not in the labeled net weight.

In selecting this approach, the Department has rejected the general drained weight approach taken in the 1977 proposal. Under that system, free liquid was to be excluded from the product's net weight. However, following further study and evaluation, particularly with regard to findings and conclusions of the ESCS study previously discussed, the Department has determined that such a system is the more expensive system to enforce and the more difficult with which to comply, while providing no additional assurance of correct information to consumers than is available under other systems.

(a) Consumer Concerns

Some consumers have objected to a dry tare system because they believe under such a system they are paying meat and chicken prices for free liquid. However, the ESCS study points out that this consumer perception may not be accurate.

Under a drained weight system, producers would likely understate the amount of net weight on the meat or poultry package to assure compliance at all locations in the distribution chain. Consumers might perceive such understatement as a reduction in the quantity contained in the package and conclude that the price of the product per pound had increased, even though they would be getting the same usable product for the price. The ESCS study stated: "What adjustments, if any, consumers would make in their expenditures for meat and poultry would depend on their perception and understanding of the real price per pound before and after the rule change."

In addition, for products with a wide variability in moisture loss, the determination of how much to understate the weight and how much to revise the price per pound would be less exact. Therefore, the ESCS study noted

[6] "Dry tare" is the weight of the dry packaging material before the product is packaged. The ESCS study also identified three other types of tare. "Wiped dry tare" is the weight of the used packaging material that has been opened and wiped clean so that is approximates the weight of the unused material. "Wet tare" includes used packaging material plus any liquid absorbed by the material. "Drained weight tare" includes the used packaging material plus all absorbed, as well as free, liquid.

that for such products it is unlikely that drained weight labeling would better enable consumers to use net weight statements to make comparisons among different packages of a particular product.

The ESCS study provides the following explanation of the practical effects of using the drained weight system instead of the dry tare system:

"Under dry tare regulations, a package of chicken breasts selling for $1.20 per pound with a labeled weight of 3.0 lb. costs the consumer $3.60. Assuming the package suffers the average moisture loss of 4 percent, the consumer actually receives 2.88 lb. of drained weight chicken. The real price per pound of drained chicken is *$1.25* ($3.60÷ 2.88 lb.).

"With drained weight regulations, the processor will increase the tare enough to allow for a 6 percent moisture loss (2 percent above the average to assure compliance). The labeled net weight would be 2.82 lbs. To compensate, the *labeled* price will be increased from $1.20/lb. to $1.28/lb. The cost of the package will remain $3.60 (2.82/lb. X $1.28/lb.). Assuming the package suffers the average 4-percent moisture loss as above, the drained weight will be 2.88 lb. Just as before, the real price per pound of drained weight chicken is *$1.25* ($3.60÷ 2.88 lb.).

"In summary, drained weight labeling regulations can alter the information a consumer receives, but not the real cost of the product.

"Whether consumers pay chicken prices for water is not clear simply because a dry tare labeling weight is allowed. If $3.60 is the competitive cost for a 3-lb. package of chicken breasts, then the consumer is not paying $1.20/lb. for 0.12 lb. of water and juices. The consumer is simply not being informed that the true price of chicken at the retail level on a drained weight basis is $1.25/lb., not $1.20."

Thus, the Department has determined that a general drained weight system does not provide an important economic benefit to consumers.

(b) Industry Concerns

Industry also advised the Department of its problems with the drained weight system as specified in the 1977 proposal. Under that proposal, industry would have had to substantially increase the amount of overfilling, or understating of weight, on many meat and poultry products to comply with drained weight labeling. Although some industry commenters suggested it might be expensive to shift its processing to adjust to drained weight, there is evidence that industry could comply quickly and without significant costs. For example, shippers of prepackaged poultry calculate different tares for batches of their products sent to different States. For those States that have had a drained weight regulation, such as Michigan, product has been sufficiently underlabeled to insure a high level of compliance. Some State inspectors even claim that shippers of prepackaged products calculate different tares on their products on a State-by-State and even a county-by-county basis. For example, Chicago has used a drained weight system, while the State of Illinois has followed a dry tare procedure.

Thus, manufactures could comply with drained weight regulations. However, moving to drained weight would probably increase costs to retailers due to additional reweighing and rewrapping of packages that routinely would have to be opened during inspection and due to more frequent monitoring of the meat counter by the retailer to find and rewrap packages with excessive drainage.

The additional costs to retailers nationally would be fairly small in view of the fact that a number of jurisdictions are already opening packages for at least some meat and poultry products to determine a wiped dry tare.[6]

(c) Concerns of State and Local Enforcement Agencies

The results of a survey by ESCS during its study indicate that State and local enforcement officials now vary in their preference for a definition of "tare" in a net weight regulation. Most non-Federal enforcement agencies opposed the 1973 proposal because it was believed that free liquid should not be included in net weight. Then in 1977, after the Supreme Court decision in *Jones* v. *Rath Packing Company*, the State of California petitioned FSQS to change its regulations to adopt a more enforceable standard at the State and local level. Officials from 47 other States, Washington, D.C., and American Somoa cosigned the petition. In December 1977, the Department proposed what was in essence a drained weight based standard.

The ESCS survey found that many States oppose adoption of the drained weight system because of the time it takes to complete the inspection. For example, in one test, the drained weight inspection of 10 packages of whole and cut-up chicken required over 2 hours. In contrast, the dry tare inspection of 10 similar packages would probably take only 10 to 20 minutes. This is a significant problem considering size of the staffs and budgets of such agencies.

The number of inspectors in most States is fairly low. Twenty-two States and four local jurisdictions reported to ESCS that they had 14 or fewer inspectors; 11 States had between 15 and 20 inspectors; and eight States reported more than 50. Budgets for State weights and measures inspection are also modest: 20 States estimated that less than $100,000 was spent on the activity; 14 States budgeted between $100,000 and $999,999; and only one State reported more than $1 million. These figures may be under-stated since many local government inspectors and budgets were not included.

The Department also takes special cognizance that most State and local agencies responding to the ESCS survey did not believe their budgets would be increased if drained weight regulations were adopted. Of the 45 agencies responding, 31 reported their State would not appropriate more money for net weight inspection, while only five felt their budgets would be increased, and nine gave no opinion or were unsure. Thus, the Department concluded that adoption of a drained weight system would be likely to result in decreased inspection capabilities at the State and local levels.

An additional cost to State and local weights and measures agencies would be the cost of sieves and receiving pans in order to carry out drained weighed procedures. Each inspector would need a 12" diameter and a 8" diameter #8 stainless steel sieve and two receiving pans. The total cost per inspector would be about $263. Assuming the number of State and local inspectors to be about 1,600, the total cost to the various State programs would be about $420,800.

Under the proposed regulations, these utensils would still be required to test products packed in non-usable media. The Department recognizes this cost, but it appears that a drained weight system is appropriate for such products. The total cost is expected to be somewhat less, as some State agencies already use sieves and pans. Additionally, not every inspector would need a set, as only a very small percentage of meat and poultry food products are packed in non-usable media.

(d) Concerns of the Department

A major USDA concern in considering the drained weight approach is centered around the economic effect of the regulation. As was discussed earlier, a general drained weight system would cause the cost per pound of all meat and poultry food items to increase a few cents. Even though there may be no increase in the real price per drained weight pound, any increase in the

labeled price per pound would be picked up and incorporated in the Consumer Price Index (CPI) (for those meat and poultry items that are priced). Moreover, a general drained weight system might increase the real cost slightly because of increased retailer repackaging.

The Department sees no justification in now proposing to approve a general drained weight regulation which would lessen the number of weight inspections by State and Federal inspection personnel and cause an increase in the Consumer Price Index.

(e) Whether or Not to Include Absorbed Liquid as Part of the Tare Weight

Having decided to propose to include free liquid as part of net weight for products packaged in usable liquid, the Department has considered whether the liquid absorbed by the packaging material should be included as part of the tare weight or as part of the net weight. In deciding to make alternative proposals on this question, the Department observes that either option is considered relatively easy to enforce at retail, and State officials and industry have had experience in operating under both systems.

By excluding liquid absorbed by the packaging materials from net weight, the Department believes there would be less chance of consumer deception, as well as incentive to industry to reduce added liquids during processing. In addition, the consumer cannot judge how much liquid is absorbed into the packaging, while the amount of free liquid is readily apparent. By including the liquid absorbed by the packaging material as part of the net weight, the use of absorbent packaging materials by producers would be encouraged. This appears to be desired by some consumers because it reduces the amount of liquid that may be free in the package. In view of these conflicting consumer interests, public comment is especially welcomed to assist in determining which of these two options should be adopted in a final regulation.

3. *Moisture Loss.* Present regulations allow for "reasonable variations" caused by loss or gain of moisture during good distribution practices or by unavoidable deviations in good manufacturing practices. Like the 1977 proposal, this proposal would eliminate any allowance for moisture loss, but allow specified numerical variations which are based upon unavoidable deviations during manufacture.[7] The lack of specificity of the term "reasonable variations" has hampered some States' net weight enforcement efforts. The ESCS study observed that for most meat and poultry products there is far more moisture loss due to seepage into the package, than due to evaporation. This is attributable to strong industry compliance with good distribution practices.

Industry comments on the ESCS study vary on this issue. Most agree with the study. However, they indicate a problem does exist with some nonhermetically sealed consumer packaged meat and poultry products and with bulk shipments of meat and poultry products where moisture loss can range from 1.6 percent to 3.6 percent.

USDA agrees that some products may exhibit particular problems with moisture loss due to evaporation. However, no allowance is specifically being made for such products in this proposal. The Department will consider proposing, however, at a later date, a weight allowance for a moisture loss for a particular product class upon a sufficient showing of the need for such an allowance. The Department, therefore, requests data on affected products to determine if regulations providing for a moisture loss allowance for a particular product class should be proposed.

Other industry representatives argued in comments following the ESCS study that the Agency is required by the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide in its regulations allowances for reasonable variations caused by the loss or gain of moisture (21 U.S.C. 453(h)(5) and 21 U.S.C. 601(n)(5)). The Department has determined that these provisions are permissive and neither require the allowance of any variations, nor specify the basis for any reasonable variations the Department determines to prescribe. The Department also reiterates that the reasonable variations that are being proposed are based on the variations in processing, and that reasonable variations for moisture loss may be proposed to be allowed for specific product classes dependent upon submissions following this proposal. The proposed allowable variations range from about 1 percent for larger containers to about 11 percent for smaller containers.

4. *Quality Control.* Unlike the 1977 proposal, the current proposal does not impose any specific quality control requirements to assure compliance with the net weight regulations. The Department has addressed the issue of quality control on a more general basis through its voluntary quality control regulations, which were proposed on September 13, 1979 (44 FR 53526–34).

5. *Sampling Procedures.* This proposal would provide sampling procedures for enforcement purposes which are not included in the Department's current regulations, and which differ from those proposed in 1977. The sampling plan reflects FSQS' consultation with the National Bureau of Standards concerning the development of appropriate statistically sound sampling procedures. The current proposal would determine sample sizes to be examined based on lot size, generally proposing sample sizes of 10 containers for a lot size of 250 containers or less, 30 containers for a lot size of 251 through 150,000 containers, and 50 containers for a lot size of more than 150,000 containers. A lot is defined as one type and style of product produced by one official establishment and bearing identical labeling (including the same net weight statement) and available for inspection at one place at one time, except that random weight packages may have differing statements of net weight. The size of the lot may be determined by the official establishment for product on the premises, but shall not exceed the production of one shift. For the lot to be in compliance, the weight of all of the samples must equal or exceed the declared net weight. In addition, each of the individual sample packages must be within the appropriate allowable variation, with one exception. For lots where 50 samples are required, one of the individual sample packages may be outside of the appropriate allowable variation.

It is the policy of the Department and FDA to adopt uniform net weight proposals where possible. In the instance of lot sampling, the proposals differ. FDA is also proposing sample sizes of 10, 30, and 50 depending on the number of packages in the lot, but is proposing a sample size of 30 containers for a lot of 251 to 3,200 containers, and a sample size of 50 containers when lot sizes exceed 3,200 units.

While these sample sizes differ in terms of the lot sizes, the statistical reliability of the two procedures is similar. This difference is due to the differing types of inspection performed by the two agencies. The Department, using a continuous inspection procedure, has ready access to meat and poultry food products during processing and packaging and to related records in order to assure correct labeling. FDA inspectors, on the other hand, do not

[7] The 1977 proposal contained variations providing for larger deviations for heterogenously manufactured product than for homogeneous product. This policy is not continued in the present proposal. The Department has determined that the system created unnecessary enforcement problems.

have such access to product or records and generally must draw samples from a lot or lots stored in warehouses.

6. *Bulk Packages.* As in the 1977 proposal, this proposal would continue to require net weight labels on immediate containers of bulk shipments at the producing establishment and after the product is shipped from that establishment. However, allowable variations for bulk packages are provided in the current proposal. This provision is in response to the comments received on the 1977 proposal which did not provide for such variations.

7. *Out of Compliance Product.* The proposed departmental regulations contain provisions for relabeling or reprocessing lots that fail to meet the net weight labeling requirements.

8. *Other Considerations.* The proposed regulation would eliminate the existing exemptions for placement and declaration of the net weight statement on shingle-packed bacon. The elimination of these exemptions was also proposed in 1977. As we stated in that proposal, the reason for such exemptions is that bacon has historically been labeled in such a manner. However, it appears that the consumers' interest in meaningful labeling would be served better if such packages were to conform to the net weight labeling requirements applicable to the vast majority of meat food products. Therefore, it is proposed that these exemptions be terminated.

Under the proposal, small packages (less than ½ ounce net weight) would be exempt from bearing statements of net weight or measure, provided that their shipping containers bore net weight statements that were in accord with the regulations. Such exemption is permitted under the Acts and is currently in the meat inspection regulations. However, changes have been made in the proposed regulations to clarify this exemption. For consistency, this exemption has also been extended to poultry products. Additionally, it is proposed that if an establishment wishes to place a net weight statement on a small package, such statement would be exempt from the normal type size, dual declaration, and placement requirements. This exemption is based upon the lack of labeling space inherent on such small packages.

The definitions for "random weight packages" and for "standard weight packages" would be clarified. Under the proposal, a "random weight package" would be defined as one of a lot, shipment or delivery which contains varying net weights and no fixed weight pattern. A "standard weight package" would be defined as one of a lot, shipment or delivery which contains a fixed weight pattern or the same preprinted weight statement on the labeling.

An optional provision to allow the tare weight to be printed on the labeling is being proposed for products packaged totally with impervious packaging materials and not packed with a non-usable medium.

Consultations

For several years, the Department and FDA have been attempting to develop jointly regulations on a net weight standard to assure uniformity in enforcement at the Federal, State and local levels. Joint discussions with the National Bureau of Standards were held, both in 1978, and prior to the development of this proposal. There has been a concerted effort to develop consistent regulations to the fullest extent possible within the authorities and enforcement capacity of the two agencies.

Also, in the development of this proposal, the Department has consulted with the Meat and Poultry Inspection Advisory Committee. During those consultations, the Committee recommended that the Department offer the alternative of a drained weight tare in the proposal. While a specific alternative has not been cited, the Department will carefully consider any comments which are received on this matter in determining a final rule. While the Committee's views have been taken into consideration during the development of this proposal, it has been agreed that this proposal will be presented to them for fuller comment.

Options Considered

In the development of this proposal, the Department has considered a number of alternative approaches, each of which is discussed more fully in the Draft Impact Analysis published as an appendix at the end of this proposal. These include, in addition to the current proposal, (1) a continuation of the present system, (2) the 1973 proposal, (3) the 1977 proposal, (4) the Grocery Manufacturers proposal, (5) a proposal currently being drafted by a committee of the Codex Alimentarius, and (6) the "Swedish" method for declaring "Net Weight at Time of Pack." The decision to publish the current proposal was based upon the Department's overall assessment of the compliance, enforcement, and economic factors previously discussed.

In the text of the proposal below, italics have been used to indicate those portions which relate to the alternatives for the inclusion or exclusion of liquid absorbed by the packaging materials as part of the net weight.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

Accordingly, Part 317 of the Federal meat inspection regulations (9 CFR Part 317) would be amended as set forth below:

1. Section 317.2(h) (9 CFR 317.2(h)) would be amended by revising subparagraphs (1) and (2), adding a new sentence to the end of subparagraph (5), revising subparagraph (9)(ii), deleting subparagraph (9)(iv), and revising subparagraphs (11) and (13) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(h) (1) The statement of net quantity of contents shall appear, except as otherwise permitted under this paragraph (h), on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h). A tare weight, as defined in § 317.20(g), may be printed adjacent to the statement of net quantity of contents when the product is packaged totally with impervious packaging material and is not packed with a non-usable medium.

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the containers, exclusive of tare weight as defined in § 317.20(g); and variations from the net weight stated on the label, as described in § 317.19, are found to be reasonable and are allowable.

* * * * *

(5) * * * Subparagraph (9) of this paragraph (h) permits certain exceptions from the provisions of this subparagraph for margarine packages, and subparagraph (12) of this paragraph (h) permits certain exceptions from the provision of this subparagraph for multi-unit packages.

* * * * *

(9) * * *

(ii) Labels for small packages exempt from the requirements for a net weight statement under subparagraph (9)(i) of this paragraph (h) shall also be exempt from any type size, dual declaration, and placement requirements of this paragraph (h).

* * * * *

(iv) [Deleted]

* * * * *

(11) For the purpose of this section, a "random weight package" is a package which is one of a lot, shipment, or delivery of packages of the same product with varying net weights and with no fixed weight pattern.

* * * * *

(13) Shingle-packed sliced bacon cartons containing product weighing other than 8 ounces, 1 pound, or 2 pounds shall have the statement of the net weight shown with the same prominence as the most conspicuous feature.

* * * * *

2. Section 317.19 (9 CFR 317.19) would be redesignated as § 317.23 (9 CFR 317.23).

3. New §§ 317.18–317.22 (9 CFR 317.18–317.22) would be added to Part 317, and the Table of Contents would be amended accordingy, to read as follows:

Sec.
317.18 Quantity of contents labeling.
317.19 Reasonableness of net weight variations.
317.20 Definitions.
317.21 Procedure for determining net weight compliance.
317.22 Handling of failed product.

§ 317.18 Quantity of contents labeling.

Sections 317.18 through 317.22 of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the allowable variations from the declared net weight on the labels of immediate containers of products in accordance with § 317.2(h) of this Part.

§ 317.19 Reasonableness of net weight variations.

The net weight variations from the net weight stated on the label, which are set forth in Table 3 of § 317.21 of this Part, are found to be reasonable when determined in accord with the definitions and procedures prescribed in § 317.20 and 317.21 of this Part for products located in the producing establishment or anywhere else in the course of distribution.

§ 317.20 Definitions.

For the purpose of §§ 317.18 through 317.22 of this Part, the following terms and definitions shall apply:

(a) "Sample." A set of randomly selected packages, packaging material or containers, from a lot of product.

(b) "Lot." One type and style of product produced by one official establishment and bearing identical labeling (including the same net weight statement) and available for inspection at one place at one time; except that random weight packages may have differing statements of net weight. The size of the lot may be determined by the official establishment for product on the premise, but shall not exceed the production of one shift.

(c) "Packaging material and container." The immediate container and any other inedible material used to close, enclose, label, or mark the product. Impervious packaging material is material which does not absorb liquids such as water and oil; otherwise, it is pervious.

(d) "Usable medium." Any packing substance added to the package, including but not limited to broth, stock, agar, and gelatin, that is commonly used in preparing the product for consumption or that is an integral part of the finished product.

(e) "Non-usable medium." Any liquid packing substance added to the package, including but not limited to water, curing solutions, brine and vinegar, commonly discarded before consumer preparation and/or serving.

(f) "Gross weight." The total weight of the unopened package, that is, the container and all its contents.

(g) "Tare weight." The weight of the packaging materials and container, *and any liquids absorbed by the packaging material,* and any non-usable media that was added at the time of packaging.

(h) "Net weight." The gross weight minus the tare weight.

(i) "Standard weight package." A package which is one of a lot, shipment, or delivery of package of the same product with a fixed weight pattern or the same preprinted net weight statement on the labeling of each package.

(j) "Random weight package." A package which is one of a lot, shipment, or delivery of packages of the same product with varying net weights and with no fixed weight pattern.

§ 317.21 Procedure for determining net weight compliance.

The following procedure is for determining net weight compliance:

(a) Select the proper size sample for determining the net weight as follows:

(1) Randomly select 10 packages as a sample from:

(i) Any lot of product containing 250 packages or less for sale at retail, or

(ii) Any lot of product containing 250 packages or less not for sale at retail and each package weighing 30 pounds or less, or

(iii) Any size lot of product in packages not for sale at retail and each package weighing more than 30 pounds.

(2) Randomly select 30 packages as a sample from:

(i) Any lot of product containing more than 250 packages but not more than 150,000 packages for sale at retail, or

(ii) Any lot of product containing more than 250 packages not for sale at retail and each package weighing 30 pounds or less.

(3) Ramdomly select 50 packages as a sample from any lot containing more than 150,000 packages of product for sale at retail.

(b) Determine the gross weight as follows:

Weight each package in the net weight sample while filled and unopened to determine its gross weight.

(c) Determine the tare weight as follows:

(1) For standard weight packages of products, packaged totally with impervious packaging material and packed with usable media, or no packing medium except products packaged in glass containers.

(i) Outside the official establishment: Tare weight printed on the labeling may be used at the option of the compliance personnel. Otherwise, the tare weight shall be the average weight of the packaging material and containers in the tare weight sample, with the total number of packages in the tare weight sample determined by randomly selecting three packages from the net weight sample and then using Table 1 below. The tare weight of each package in the tare weight sample is calculated by emptying the contents of the filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty container and packaging material.

(ii) In the official establishment: The tare weight shall be the average weight of the packaging material and container in the tare weight sample, with the total number of containers and packaging materials in the tare weight sample determined by randomly selecting three containers and packaging materials and then using Table 1 below. The tare weight may be determined by weighing unfilled containers and packaging material. Otherwise, the tare weight shall be determined by emptying the contents of filled containers, rinsing and wiping the packaging material and container clean and dry, and weighing the empty packaging material and container. For packages bearing a pre-printed tare weight statement, the tare weight shall be determined upon receipt of labeling into the official establishment by weighing a randomly selected sample of 30 unfilled packaging materials and containers. The average weight of the sample packaging materials and containers shall be the tare weight.

(2) For standard weight packages of products, packaged totally or partially with pervious packaging material, or totally with impervious packaging material and packed with any non-usable medium, except products packaged in glass containers: The tare weight shall be the average weight of the packaging material and container *and any absorbed liquids,* and the weight of non-usable media in the tare weight sample, with the total number of packages in the tare weight sample determined by randomly selecting three packages and then using Table 1 below. The weight of non-usable media is determined as follows: Place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and the drained liquid, and subtract the weight of the dry screen.

Table 1.—*Tare Weight—Standard Weight Packages*

If the difference in the weight of the container and packaging material between the heaviest and lighest of the initial 3 packages is—	Then the total number of containers and packaging materials to be in the sample for each lot is—
0 to ⅛ oz. (0 to 3.54 gms)	3
3/16 oz. (5.32 gms)	6
¼ oz. (7.09 gms)	9
5/16 oz. (8.86 gms)	[1]12
⅜ oz. or more (10.63 gms) or more	[1]15

[1]Only 10 packages are needed if a sample of 10 packages is required for net weight purposes under § 317.21(a)(1).

(3) For random weight packages of products packaged totally with impervious packaging material and packed with usable media or no packing medium, except products packaged in glass containers:

(i) Outside the official establishment: A tare weight printed on the labeling may be used at the option of the compliance personnel. Otherwise, the tare weight for each package in the net weight sample shall be the weight of the packaging material and container of that individual package. The tare weight of each package is calculated by emptying the contents of the filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty container and packaging material.

(ii) In the official establishment: In circumstances where identical containers and packaging material is to be used for the entire lot, the tare weight may be the average weight of a number of the unfilled packaging materials and containers equal to the number of packages in the net weight sample. Otherwise, the tare weight for each package in the net weight sample shall be the weight of the packaging material and container of that individual package. The tare weight of each package is calculated by emptying the contents of filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty packaging material and container. For packages bearing a pre-printed tare weight statement, the tare weight shall be verified upon receipt of labeling into the official establishment by weighing a randomly selected sample of 30 unfilled packaging materials and containers. The average weight of the sample packaging materials and containers shall be the tare weight.

(4) For random weight packages of products, packaged totally or partially with pervious packaging material, or totally with impervious packaging material and packed with an non-usable medium, except products in glass containers: The tare weight of each package in the net weight sample shall be the weight of the packaging material and container *and any absorbed liquids,* and the weight of non-usable media of that individual package. The weight of non-usable liquid media is determined as follows: place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and drained liquid, and subtract the weigh of the dry screen.

(5) For glass containers packed with usable media or no packing medium:

(i) Outside the official establishment: The tare weight shall be the average weight of the containers in the tare weight sample. The total number of containers in the tare weight sample is initially determined by selecting six containers from a lot whose net weight sample size is 10 containers; selecting 12 containers from a lot whose net weight sample size is 30 containers; and selecting 18 containers from a lot whose net weight sample size is 50 containers. The tare weight of each initial sample container is calculated by emptying the contents of the filled container, rinsing and wiping the container clean and dry, and weighing the empty container. Then the io of the range between the lowest and highest gross weights of the filled initial samples (RG) and the range between the lowest and highest tare weights of the initial sample (RT) is calculated. Based on the RG/RT io, the total number of containers in the tare weight sample shall be in accordance with Table 2 below. The tare weights of the additional sample containers, if any, are then calculated in the same manner used for the initial sample containers.

(ii) In the official establishment: The tare weight shall be the average weight of the containers in the tare weight sample. The total number of containers in the tare weight sample is determined by the procedure detailed in paragraph (c)(5)(i) of this section, except that, in calculating tare weight, identical as-yet unfilled containers from the same lot may be used in lieu of emptying filled sample containers.

(6) For glass containers packed with non-usable media: The tare weight shall be the average weight of the containers and the weight of non-usable media in the tare weight sample. The total number of containers in the tare weight sample is determined by the procedure detailed in paragraph (c)(5)(i) of this section. The weight of non-usable media is determined as follows: Place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and the drained liquid, and subtract the weight of the dry screen.

Table 2.—*Tare Weight—Glass Containers*

If the RG/RT io is—	And the Net Weight Sample Size is—		
	10	30	50
	then, the total number of containers to be in the tare weight sample for each lot is—		
0.2 or less	10	30	50
0.21 to 0.40	10	29	49
0.41 to 0.60	10	28	46
0.61 to 0.80	9	26	44
0.81 to 1.00	8	24	40
1.01 to 1.20	8	23	37
1.21 to 1.40	8	21	34
1.41 to 1.60	7	19	31
1.61 to 1.80	6	17	28
1.81 to 2.00	6	15	25
2.01 to 2.20	6	14	23
2.21 to 2.40	6	13	21
2.41 to 2.60	6	12	19
2.61 or more	6	12	18

(d) Determine the net weight. Subtract the tare weight determined in paragraph (c) from the gross weight of each package in the net weight sample as determined in paragraph (b). The result

is the net weight of each package in the net weight samples.

(e) Determine compliance.

(1) For standard weight packages, average the net weight of all of the packages in the net weight sample. If the average net weight of a sample consisting of:

(i) 10, 30, or 50 packages is less than the labeled weight, the lot fails.

(ii) 10 or 30 packages is at least the labeled net weight, determine the package which has the lowest net weight and calculate the amount by which that package varies from the labeled net weight. Compare that variation with the allowed variation defined for the applicable weight group in Table 3 of this paragraph. If the variation is equal to or less than that in Table 3, the lot passes; if the variation is greater than that in Table 3, the lot fails.

(iii) 50 packages is at least the labeled net weight, determine the two packages which have the lowest net weights, and calculate the amounts by which those packages vary from the labeled net weight. Compare those variations with the allowed variation defined for the applicable weight group in Table 3 of this paragraph. If the variations of both packages are greater than that in Table 3, the lot fails.

(2) For all random weight packages, determine the difference between the total actual net weight of all of the packages in the net weight sample and the total labeled net weight of all of the packages in the net weight sample. For a net weight sample consisting of:

(i) 10, 30, or 50 packages, if the total actual weight is less than the total declared weight, the lot fails.

(ii) 10 or 30 packages, if the total actual weight equals or exceeds the total labeled net weight, determine the package which has the greatest variation below its labeled net weight. Compare that variation with the allowed variation defined in Table 3 of this paragraph for the lowest weight group represented in the sample. If the variation is equal to or less than that in Table 3, the lot passes; if the variation is greater than that in Table 3, the lot fails.

(iii) 50 packages, if the total actual weight equals or exceeds the total labeled net weight, determine the two packages which have the greatest variations below their labeled net weight. Compare those variations with the allowed variation defined in Table 3 of this paragraph for the lowest weight group represented in the sample. If the variations of both packages are greater than that in Table 3, the lot fails.

(3) In the official establishment, for packages bearing a pre-printed tare weight statement, if the average weight of the sample packaging materials and containers is equal to or less than the printed tare weight statement, the lot passes. If the average weight of the sample packaging materials and containers is greater than the printed tare weight, the lot fails.

Table 3.—*Allowable Variations for Immediate Containers*

Avoirdupois units			Metric units	
Labeled weight	Allowed variation		Labeled weight	Allowed variation
Pounds or ounces	Decimal pounds	Fractional ounces	Grams	Grams
0 to [1] 0.026 lb	0.001		0 to 11.6	0.5
0 to 0.41 oz				
0.026[2]+ to 0.04 lb	0.002	1/32	11.6+ to 18	1
0.041+ to 0.64 oz				
0.04+ to 0.08 lb	0.004	1/16	18+ to 36	2
0.64+ to 1.28 oz				
0.08+ to 0.12 lb	0.008	1/8	36+ to 54	4
1.28+ to 1.92 oz				
0.12+ to 0.18 lb	0.012	3/16	54+ to 82	5
1.92+ to 2.88 oz				
0.18+ to 0.26 lb	0.016	1/4	82+ to 118	7
2.88+ to 4.16 oz				
0.26+ to 0.34 lb	0.020	5/16	118+ to 154	9
4.16+ to 5.44 oz				
0.34+ to 0.46 lb	0.024	3/8	154+ to 209	11
5.44+ to 7.36 oz				
0.46+ to 0.58 lb	0.028	7/16	209+ to 263	13
7.36+ to 9.28 oz				
0.58+ to 0.70 lb	0.032	1/2	263+ to 318	15
9.28+ to 11.20 oz				
0.70+ to 0.84 lb	0.036	9/16	318+ to 381	16
11.20+ to 13.44 oz				
0.84+ to 0.94 lb	0.040	5/8	381+ to 426	18
13.44+ to 15.04 oz				
0.94+ to 1.08 lb	0.044	1 1/16	426+ to 490	20
15.04+ to 17.28 oz				
1.08+ to 1.26 lb	0.048	3/4	490+ to 572	22
1.26+ to 1.40 lb	0.052	1 3/16	572+ to 635	24
1.40+ to 1.54 lb	0.056	7/8	635+ to 698	25
1.54+ to 1.70 lb	0.060	1 5/16	698+ to 771	27
1.70+ to 1.88	0.064	1	771+ to 852	29
1.88+ to 2.14	0.070	1 1/8	852+ to 971	32
2.14+ to 2.48	0.078	1 1/4	971+ to 1.125	35
2.48+ to 2.76	0.086	1 3/8	1.125+ to 1.350	40
2.76+ to 3.20	0.094	1 1/2	1.350+ to 1.600	45
3.20+ to 3.90	0.11	1 3/4	1.600+ to 1.800	50
3.90+ to 4.70	0.12	2	1.800+ to 2.100	55
4.70+ to 5.80	0.14	2 1/4	2.100+ to 2.640	65
5.80+ to 6.80	0.15	2 1/2	2.640+ to 3.080	70
6.80+ to 7.90	0.17	2 3/4	3.080+ to 3.800	80
7.90+ to 9.40	0.19	3	3.800+ to 4.400	85
9.40+ to 11.70	0.22	3 1/2	4.400+ to 5.200	100
11.70+ to 14.30	0.25	4	5.200+ to 6.800	115
14.30+ to 17.70	0.28	4 1/2	6.800+ to 8.20	130
17.70+ to 23.20	0.31	5	8.20+ to 10.60	145
23.20+ to 31.60	0.37	6	10.60+ to 14.30	170
31.60+ to 42.40	0.44	7	14.30+ to 19.25	200
42.40+ to 54.40	0.50	8	19.25+ to 24.70	230
54.40+	1%		24.70+	1%

[1] "To" means "to and including."
[2] 0.026+ means "greater than 0.026."

§ 317.22 Handling of failed product.

Any lot of product which fails the requirements of § 317.21 shall be handled by one of the following:

(a) A lot located in an official establishment may be relabeled with a proper net weight statement and be reinspected, in accordance with the requirements of this Part.

(b) A lot located in an official establishment may be reprocessed provided such use does not cause the finished meat food product to be adulterated or misbranded.

(c) Product outside of an official establishment may be reweighed and remarked with proper net weight statement under the supervision of Federal, State or local inspection officials, provided that such reweighing and remarking shall not deface, cover,

or destroy any other marking or labeling requirements of this Subchapter.

§ [Redesignated from § 317.19]

(Secs. 1, 21, 34 Stat. 1260, as amended; 21 U.S.C. 601, 621, as amended; 42 FR 35625, 35626)

PART 381—POULTRY PRODUCTS INSPECTION REGULATION

Further, the poultry products inspection regulations (9 CFR Part 381) would be amended as set forth below.

1. Section 381.121 (9 CFR 381.121) would be amended by revising the first sentence of paragraph (a), deleting the first sentence of paragraph (b), adding a new sentence to the end of paragraph (c)(1), adding a new sentence to the end of paragraph (c)(5), revising paragraphs (c) (6) and (9), and adding a new paragraph (c)(10) to read as follows:

§ 381.121 Quantity of contents.

(a) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in paragraph (c)(5) of this section. * * *

* * * * *

(c)(1) * * * A tare weight, as defined in § 381.121c(g), may be printed adjacent to the statement of net quantity of contents when the product is packaged totally with impervious packaging material and is not packed with a non-usable medium.

* * * * *

(5) * * * Subparagraph (8) of this paragraph (c) permits certain exceptions from the provisions of this subparagraph for multi-unit packages.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of tare weight as defined in § 381.121c; and variations from the net weight stated on the label, as defined in § 381.121b, are found to be reasonable and are allowable. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum" or words of similar import, except as provided in paragraph (b) of this section.

* * * * *

(9) The following exemption from the requirements contained in this section is hereby established:

(i) Individually wrapped and labeled packages of less than ½ ounce net weight which are in a shipping container, need not hear a statement of net quantity of contents as specified in this section when the statement of net quantity of contents on the shipping container meets the requirements of this section.

(ii) Labels for small packages exempt from the requirements for a net weight statement under subparagraph (9)(i) of this paragraph (c) shall also be exempt from any type size, dual declaration, and placement requirements of this section.

(10) For the purpose of this section, a "Random weight package" is a package which is one of a lot, shipment, or delivery of packages of the same product with varying net weights and with no fixed weight pattern.

2. New §§ 381.121a–381.121e (9 CFR 381.121a–381.121e) would be added to Part 381, and the Table of Contents would be amended accordingly, to read as follows:

Sec.

§ 381.121a Quantity of contents labeling.

Sections 381.121a through 381.121e prescribe the procedures to be followed for determining net weight compliance and prescribe the allowable variations from the declared net weight on the labels of immediate containers of products in accordance with § 381.121 of this Subpart.

§ 381.121b Reasonableness of net weight variations.

The net weight variations from the net weight declared on the label statement, which are set forth in Table 3 of § 381.121d of this Subpart, are found to be reasonable when determined in accord with the definitions and procedures prescribed in §§ 381.121c and 381.121d of this Subpart for products located in the producing establishment or anywhere else in the course of distribution.

§ 381.121c Definitions.

For the purpose of sections 381.121a through 381.121e of this Subpart, the following terms and definitions shall apply:

(a) "Sample." A set of randomly selected packages, packaging material or containers, from a lot of product.

(b) "Lot." One type and style of product produced by one official establishment and bearing identical labeling (including the same net weight statement) and available for inspection at one place at one time; except that random weight packages may have differing statements of net weight. The size of the lot may be determined by the official establishment for product on the premises, but shall not exceed the production of one shift.

(c) "Packaging material and container." The immediate container and any other inedible material used to close, enclose, label, or mark the product. Impervious packaging material is material which does not absorb liquids such as water and oil, otherwise, it is pervious.

(d) "Usable medium." Any packing substance added to the package, including but not limited to broth, stock, agar, and gelatin, that is commonly used in preparing the product for consumption or that is an integral part of the finished product.

(e) "Non-usable medium." Any liquid packing substance added to the package, including but not limited to water, curing solutions, brine and vinegar, commonly discarded before consumer preparation and/or serving.

(f) "Gross weight." The total weight of the unopened package, that is, the container and all its contents.

(g) "Tare weight." The weight of the packaging materials and container, *and any liquids absorbed by the packaging material,* and any non-usable media that was added at the time of packaging.

(h) "Net weight." The gross weight minus the tare weight.

(i) "Standard weight package." A package which is one of a lot, shipment, or delivery of packages of the same product with a fixed weight pattern or the same preprinted net weight statement on the labeling of each package.

(j) "Random weight package." A package which is one of a lot, shipment, or delivery of packages of the same product with varying net weights and with no fixed weight pattern.

§ 381.121d Procedure for determining net weight compliance.

The following procedure is for determining net weight compliance:

(a) Select the proper size sample for determining the net weight as follows:

(1) Randomly select 10 packages as a sample from:

(i) Any lot of product containing 250 packages or less for sale at retail, or

(ii) Any lot of product containing 250 packages or less not for sale at retail and each package weighing 30 pounds or less, or

(iii) Any size lot of product in packages not for sale at retail and each package weighing more than 30 pounds.

(2) Randomly select 30 packages as a sample from:

(i) Any lot of product containing more than 250 packages but not more than 150,000 packages for sale at retail, or

(ii) Any lot of product containing more than 250 packages not for sale at retail and each package weighing 30 pounds of less.

(3) Randomly select 50 packages as a sample from any lot containing more than 150,000 packages of product for sale at retail.

(b) Determine the gross weight as follows:

Weigh each package in the net weight sample while filled and unopened to determine its gross weight.

(c) Determine the tare weight as follows:

(1) For standard weight packages of products, packaged totally with impervious packaging material and packed with usable media, or no packing medium except products packaged in glass containers.

(i) Outside the official establishment: Tare weight printed on the labeling may be used at the option of the compliance personnel. Otherwise, the tare weight shall be the average weight of the packaging material and containers in the tare weight sample, with the total number of packages in the tare weight sample determined by randomly selecting three packages from the new weight sample and then using Table 1 below. The tare weight of each package in the tare weight sample is calculated by emptying the contents of the filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty container and packaging material.

(ii) In the official establishment: The tare weight shall be the average weight of the packaging material and container in the tare weight sample, with the total number of containers and packaging materials in the tare weight sample determined by randomly selecting three containers and packaging materials and then using Table 1 below. The tare weight may be determined by weighing unfilled containers and packaging material. Otherwise, the tare weight shall be determined by emptying the contents of filled containers, rinsing and wiping the packaging material and container clean and dry, and weighing the empty packaging material and container. For packages bearing a pre-printed tare weight statement, the tare weight shall be determined upon receipt of labeling into the official establishment by weighing a randomly selected sample of 30 unfilled packaging materials and containers. The average weight of the sample packaging materials and containers shall be selected sample of 30 unfilled packaging materials and containers. The average weight of the sample packaging materials and containers shall be the tare weight.

(2) For standard weight packages of products, packaged totally or partially with pervious packaging material, or totally with impervious packaging material and packed with any non-usable medium, except products packaged in glass containers: The tare weight shall be the average weight of the packaging material and container *and any absorbed liquids*, and the weight of non-usable media in the tare weight sample, with the total number of packages in the tare weight sample determined by randomly selecting three packages and then using Table 1 below. The weight of non-usable media is determined as follows: Place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and the drained liquid, and substract the weight of the dry screen.

Table 1.—*Tare Weight—Standard Weight Packages*

If the difference in the weight of the container and packaging material between the heaviest and lightest of the initial 3 packages is—	Then the total number of containers and packaging materials to be in the sample for each lot is—
0 to 1/16 oz. (0 to 3.54 gms)	3
3/16 oz. (5.32 gms)	6
1/4 oz. (7.09 gms)	9
5/16 oz. (8.86 gms)	[1]12
3/8 oz. or more (10.63 gms) or more	[1]15

[1] Only 10 packages are needed if a sample of 10 packages is required for net weight purposes under § 381.121d(a)(1).

(3) For random weight packages of products packaged totally with impervious packaging material and packed with usable media or no packing medium, except products packaged in glass containers:

(i) Outside the official establishment: A tare weight printed on the labeling may be used at the option of the compliance personnel. Otherwise, the tare weight for each package in the net weight sample shall be the weight of the packaging material and container of that individual package. The tare weight of each package is calculated by emptying the contents of the filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty container and packaging material.

(ii) In the official establishment: In circumstances where identical containers and packaging material is to be used for the entire lot, the tare weight may be the average weight of a number of the unfilled packaging materials and containers equal to the number of packages in the net weight sample. Otherwise, the tare weight for each package in the net weight sample shall be the weight of the packaging material and container of that individual package. The tare weight of each package is calculated by emptying the contents of filled container, rinsing and wiping the packaging material and container clean and dry, and weighing the empty packaging material and container. For packages bearing a pre-printed tare weight statement, the tare weight shall be verified upon receipt of labeling into the official establishment by weighing a radomly selected sample of 30 unfilled packaging materials and containers. The average weight of the sample packaging materials and containers shall be the tare weight.

(4) For random weight packages of products, packaged totally or partially with pervious packaging material, or totally with impervious packaging material and packed with any non-usable medium, except products in glass containers: The tare weight of each package in the net weight sample shall be the weight of the packaging material and container *and any absorbed liquids*, and the weight of non-usable media of that individual package. The weight of non-usable liquid media is determined as follows: Place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and the drained liquid, and substract the weight of the dry screen.

(5) For glass containers packed with usable media or no packing medium:

(i) Outside the official establishment: The tare weight shall be the average weight of the containers in the tare weight sample. The total number of containers in the tare weight sample is initially determined by selecting six containers from a lot whose net weight sample size is 10 containers; selecting 12 containers from a lot whose net weight sample size is 30 containers; and selecting 18 containers from a lot whose

net weight sample size is 50 containers. The tare weight of each initial sample container is calculated by emptying the contents of the filled container, rinsing and wiping the container clean and dry, and weighing the empty container. Then the ratio of the range between the lowest and highest gross weights of the filled initial samples (RG) and the range between the lowest and highest tare weights of the initial sample (RT) is calculated. Based on the RG/RT ratio, the total number of containers in the tare weight sample shall be in accordance with Table 2 below. The tare weights of the additional sample containers, if any, are then calculated in the same manner used for the initial sample containers.

(ii) In the official establishment: The tare weight shall be the average weight of the containers in the tare weight sample. The total number of containers in the tare weight sample is determined by the procedure detailed in paragraph (c)(5)(i) of this section, except that, in calculating tare weight, identical as-yet unfilled containers from the same lot may be used in lieu of emptying filled sample containers.

(6) For glass containers packed with non-usable media: The tare weight shall be the average weight of the containers and the weight of non-usable media in the tare weight sample. The total number of containers in the tare weight sample is determined by the procedure detailed in paragraph (c)(5)(i) of this section. The weight of non-usable media is determined as follows: Place the product on a U.S. Standard Number 8 mesh screen, 8 inches in diameter for product less than 3 pounds, and 12 inches in diameter for product 3 pounds and over, and allow it to drain 2 minutes. Then remove the solid portion of the product from the screen, weigh the screen and the drained liquid, and subtract the weight of the dry screen.

Table 2.—*Tare Weight—Glass Containers*

If the RG/RT ratio is—	And the net weight sample size is—		
	10	30	50
	then the total number of containers to be in the tare weight sample for each lot is—		
0.2 or less	10	30	50
0.21 to 0.40	10	29	49
0.41 to 0.60	10	28	46
0.61 to 0.80	9	26	44
0.81 to 1.00	8	24	40
1.01 to 1.20	8	23	37
1.21 to 1.40	8	21	34
1.41 to 1.60	7	19	31
1.61 to 1.80	6	17	28
1.81 to 2.00	6	15	25
2.01 to 2.20	6	14	23
2.21 to 2.40	6	13	21
2.41 to 2.60	6	12	19
2.61 or more	6	12	18

(d) Determine the net weight. Subtract the tare weight determined in paragraph (c) from the gross weight of each package in the net weight sample as determined in paragraph (b). The result is the net weight of each package in the net weight samples.

(e) Determine compliance.

(1) For standard weight packages, average the net weight of all of the packages in the net weight sample. If the average net weight of a sample consisting of:

(i) 10, 30, or 50 packages is less than the labeled weight, the lot fails.

(ii) 10 or 30 packages is at least the labeled net weight, determine the package which has the lowest net weight and calculate the amount by which that package varies from the labeled net weight. Compare that variation with the allowed variation defined for the applicable weight group in Table 3 of this paragraph. If the variation is equal to or less than that in Table 3, the lot passes; if the variation is greater than that in Table 3, the lot fails.

(iii) 50 packages is at least the labeled net weight, determine the two packages which have the lowest net weights, and calculate the amounts by which those packages vary from the labeled net weight. Compare those variations with the allowed variation defined for the applicable weight group in Table 3 of this paragraph. If the variations of both packages are greater than that in Table 3, the lot fails.

(2) For all random weight packages, determine the difference between the total actual net weight of all of the packages in the net weight sample and the total labeled net weight of all of the packages in the net weight sample. For a net weight sample consisting of:

(i) 10, 30, or 50 packages, if the total actual weight is less than the total declared weight, the lot fails.

(ii) 10 or 30 packages, if the total actual weight equals or exceeds the total labeled net weight, determine the package which has the greatest variation below its labeled net weight. Compare that variation with the allowed variation defined in Table 3 of this paragraph for the lowest weight group represented in the sample. If the variation is equal to or less than that in Table 3, the lot passes; if the variation is greater than that in Table 3, the lot fails.

(iii) 50 packages, if the total actual weight equals or exceeds the total labeled net weight, determine the two packages which have the greatest variations below their labeled net weight. Compare those variations with the allowed variation defined in Table 3 of this paragraph for the lowest weight group represented in the sample. If the variations of both packages are greater than that in Table 3, the lot fails.

(3) In the official establishment, for packages bearing a preprinted tare weight statement, if the average weight of the sample packaging materials and containers is equal to or less than the printed tare weight statement, the lot passes. If the average weight of the sample packaging materials and containers is greater than the printed tare weight, the lot fails.

Table 3.—*Allowable Variations for Immediate Containers*

Avoirdupois units			Metric units	
Labeled weight	Allowed variation		Labeled weight	Allowed variation
Pounds or ounces	Decimal pounds	Fractional ounces	Grams	Grams
0 to[1] 0.026 lb	0.001		0 to 11.6	0.5
0 to 0.41 oz				
0.026+[2] to 0.04 lb	0.002	1/32	11.6+ to 18	1
0.41+ to 0.64 oz				
0.04+ to 0.08 lb	0.004	1/16	18+ to 36	2
0.64+ to 1.28 oz				
0.08+ to 0.12 lb	0.008	1/8	36+ to 54	4
1.28+ to 1.92 oz				
0.12+ to 0.18 lb	0.012	3/16	54+ to 82	5
1.92+ to 2.88 oz				
0.18+ to 0.26 lb	0.016	1/4	82+ to 118	7
2.88+ to 4.16 oz				
0.26+ to 0.34 lb	0.020	5/16	118+ to 154	9
4.16+ to 5.44 oz				
0.34+ to 0.46 lb	0.024	3/8	154+ to 209	11
5.44+ to 7.36 oz				
0.46+ to 0.58 lb	0.028	7/16	209+ to 263	13
7.36+ to 9.28 oz				
0.58+ to 0.70 lb	0.032	1/2	263+ to 318	15
9.28+ to 11.20 oz				
0.70+ to 0.84 lb	0.036	9/16	318+ to 381	16
11.20+ to 13.44 oz				
0.84+ to 0.94 lb	0.040	5/8	381+ to 426	18
13.44+ to 15.04 oz				
0.94+ to 1.08 lb	0.044	[1] 1/16	426 to 490	20
15.04+ to 17.28 oz				

Table 3.—*Allowable Variations for Immediate Containers*—Continued

Avoirdupois units			Metric units	
Labeled weight	Allowed variation		Labeled weight	Allowed variation
Pounds or ounces	Decimal pounds	Fractional ounces	Grams	Grams
1.08+ to 1.26 lb	0.048	3/4	490+ to 572	22
1.26+ to 1.40 lb	0.052	13/16	572+ to 635	24
1.40+ to 1.54 lb	0.056	7/8	635+ to 698	25
1.54+ to 1.70 lb	0.060	15/16	698+ to 771	27
1.70+ to 1.88	0.064	1	771+ to 852	29
1.88+ to 2.15	0.070	1 1/8	852+ to 971	32
2.14+ to 2.48	0.078	1 1/4	971+ to 1.125	35
2.48+ to 2.76	0.086	1 3/8	1.125+ to 1.350	40
2.76+ to 3.20	0.094	1 1/2	1.350+ to 1.600	45
3.20+ to 3.90	0.11	1 3/4	1.600+ to 1.800	50
3.90+ to 4.70	0.12	2	1.800+ to 2.100	55
4.70+ to 5.80	0.14	2 1/4	2.100+ to 2.640	65
5.80+ to 6.80	0.15	2 1/2	2.640+ to 3.080	70
6.80+ to 7.90	0.17	2 3/4	3.080+ to 3.800	80
7.90+ to 9.40	0.19	3	3.800+ to 4.400	85
9.40+ to 11.70	0.22	3 1/2	4.400+ to 5.200	100
11.70+ to 14.30	0.25	4	5.200+ to 6.800	115
14.30+ to 17.70	0.28	4 1/2	6.800+ to 8.20	130
17.70+ to 23.20	0.31	5	8.20+ to 10.60	145
23.20+ to 31.60	0.37	6	10.60+ to 14.30	170
31.60+ to 42.40	0.44	7	14.30+ to 19.25	200
42.40+ to 54.40	0.50	8	19.25+ to 24.70	230
54.40+	1%		24.70+	1%

[1] "To" means "to and including."
[2] 0.026+ means "greater than 0.026."

§ 381.121e Handling of failed product.

Any lot of product which fails the requirements of § 381.121d shall be handled by one of the following:

(a) A lot located in an official establishment may be relabeled with a proper net weight statement and be reinspected, in accordance with the requirements of this Subpart.

(b) A lot located in an official establishment may be reprocessed provided such use does not cause the finished poultry product to be adulterated or misbranded.

(c) Product outside of an official establishment may be reweighed and remarked with a proper net weight statement under the supervision of Federal, State, or local inspection officials, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling requirements of this Subchapter.

(Secs. 4 and 14, 71 Stat. 441, as amended; 21 U.S.C. 453 and 463; 42 FR 35625, 35626)

Done at Washington, D.C., on: August 1, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

Appendix—Draft Impact Analysis

Date: July 15, 1980
Agency: USDA–FSQS
Contact: John McCutcheon
Phone: 202–447–6525
Decision Calendar: FSQS #10845

1. *Title:* Net Weight Labeling.

2. *Nature of Proposed Action:* The Food Safety and Quality Service (FSQS) proposes to amend the net weight labeling regulations for meat and poultry products (9 CFR 317.2(h) and 381.121). The current regulations require that:

The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container exclusive of the wrapper and packing substances. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity or contents shall not be unreasonably large.

The proposed regulation addresses the following specific issues:

(1) Free liquid (liquid which has separated itself from the product but which has not been absorbed by the packing material) would be included in a determination of the net weight of product except for those few products which are packed in substances which are normally discarded before consumer preparation and/or serving. With regard to including the liquid absorbed by the packaging material in the net weight, the proposal offers two alternatives. One alternative would exclude the weight of both packaging materials and liquid absorbed by packaging materials from the product's net weight. The other would exclude only the weight of packaging materials. FSQS is unable to choose between these two alternatives on the basis of the analysis presented in this impact statement. The agency will base its decision on information garnered from public comments on the proposal.

(2) Numerical allowable variations will replace the undefined "reasonable variations" allowed under current regulations for checking declared net weight accuracy. Adoption of numerical allowable variations would enable more effective enforcement of net weight regulations by State and local agencies.

(3) The proposed net weight rules and regulations for meat and poultry products set forth specific procedures for enforcement. Federally inspected plants would continue to have the option of using voluntary quality control programs to supplement inspection by Federal inspectors.

(4) Current exemptions for placement and declaration of the declared net weight on shingle packed bacon packages would be eliminated.

3. *Purpose and Need for Action:* This action will seve several purposes. First, by providing numerical allowable variations, it will insure that the net weight statement is as accurate as can be reasonably expected at the time meat and poultry products are purchased by consumers. Second, it will provide a standard procedure for State and local regulatory agencies to enforce strict net weight standards. Last, it will minimize substantive differences in net weight compliance procedures between the Food and Drug Administration and the Meat and Poultry Inspection Program of the Food Safety and Quality Service.

The need for this proposal is based on three developments, the first of which occurred in 1972 (Table 1). In the course of developing weights and measures regulations over the years, some state and local governments did not provide for any reasonable variation in net weight caused by moisture loss or gain during the course of good distribution practices, as is provided under Federal law. This difference did not become an issue until 1972 when local officials in California ordered "off sale" a federally inspected meat product with a net weight, as determined by the State procedure, below the declared net weight.

The food manufacturer of that product filed suit in the U.S. District Court for the Central District of California. A central issue was a State's authority over a product that met Federal requirements. In that case, *Rath Packing Company* v. *M. H. Becker*, 357 F. Supp. 529 (C. D. Cal. 1973), the District Court, in 1973, held that the Federal Meat Inspection Act preempts California and its political subdivisions from imposing net weight labeling requirements on federally inspected meat products that are in addition to or different from the Federal rules. Furthermore, the misbranding and mislabeling provisions of the Act were held to apply not only at the official establishment packing the product, but at all levels in the distribution chain, including the retail level. But, it was also held that the Federal regulation allowing "reasonable variations" with respect to net weight (9 CFR 317.2(h)(2)) was void due to vagueness.

This decision was appealed to the Ninth Circuit Court of Appeals. In October 1975, this Court affirmed the decision on preemption, but reversed the decision that the "reasonable variations" provision (9 CFR 317.2(h)(2)) was void due to vagueness (530 F.2d 1295 (9th Cir. 1975)).

The preemption issue was appealed by the State of California to the U.S. Supreme Court, which affirmed the Court of Appeals in March, 1977 (*Jones* v. *Rath Packing Company*, 430 U.S. 519 (1977)).

Table 1.—*Sequence of Events in the Regulation of Net Weight*

Year	Month	Event
1972		U.S. District Court action initiated—*Rath v. Becker et. al.*
1973		U.S. District Court rules that the Federal Meat Inspection Act preempts California from imposing net weight labeling requirements different from the Federal requirements and the "reasonable variations" regulation is void due to vagueness.
1973	December.	USDA publishes the first net weight regulation proposal in response to court decision.
1974		USDA participates in a series of public meetings on the proposal.
1974		USDA began official dialogue with FDA, FTC and NBS concerning net weight issues.
1975	October	U.S. Court of Appeals upholds the decision on preemption, but overturns the decision on vagueness of the "reasonable variations" regulation.
1977	March	U.S. Supreme Court supports the concept of "Concurrent Jurisdiction," but affirms the decision on the Federal authority to preempt in *Jones v. Rath Packing.*
1977		States petition for revised Federal regulations on net weight.
1977	December.	Second net weight proposal is published.
1978	February	Public hearings are held on the proposal.
1978	June	Comment period on the proposal closes.
1978	October	Consumer Federation of America study on net weight is completed for FSQS.
1978	December.	GAO Report on net weight is released.
1979	January	FSQS asks ESCS to analyze the 1977 proposal.
1979	August	ESCS report completed and released for comment.
1979	October	Comment period study closes.

The second development occurred in December 1973 when the Department published a proposed regulation in response to the District Court's decision on vagueness of the "reasonable variations" allowed for net weight labeling (38 FR 33308–33313). Procedures were proposed for determining allowable net weight variation at the producing plant and during distribution. With numerical net weight variations, packers would have needed to target the fill-weight above the stated net weight to assure compliance at the processing plant and at retail outlets. Recoverable liquids that drained from the product would have been considered as part of the net weight. For compliance purposes, each federally inspected establishment packing immediate containers bearing net weight statements would have had to implement an FSQS-approved mandatory quality control program in accordance with specific recommendations contained in the proposal. The compliance test required that the average weight of the samples of a lot equal or exceed the declared weight. Appropriate sample allowances would have been permitted for products stamped at retail. In addition, the proposal would have eliminated the net weight labeling provisions (9 CFR 317.2 (h)) that exempt shingle packed bacon from the requirement of placing the net quantity of contents statement in pounds and ounces within the lower 30 percent of the principal display panel. The labeling requirement for bulk shipments was revised by requiring, at a minimum, a quantity count of the container contents.

Public hearings held during 1974 to explain this proposal revealed widespread dissatisfaction on the part of consumers, industry representatives and State and local weights and measures officials. Over 1,600 written comments on the proposal—from 21 consumer groups, 69 industry groups, and over 1,300 individuals, among others—expressed essentially the same dissatisfaction. Consumers generally objected to paying for water, blood and packing media; they wanted labels to state net weight of product contents, excluding these substances. There was also some objection to Federal preemption of State and local rules. Industry expressed three major complaints. First, the controls should be directed only to marked consumer-size packages, not bulk shipments. Second, the allowable variation was too "tight," and third, elimination of allowances for moisture lost through evaporation would require a shift to vacuum packaging.

The third development occurred following the U.S. Supreme Court decision in *Jones* v. *Rath Packing* in 1977 which upheld Federal preemption. California and 47 other States and territories petitioned the Department for a more enforceable net weight regulation. The petition argued that State inspectors could not determine whether the difference between the weight of the net contents and declared label weight on the package is reasonable without a definition of reasonable variation.

In response to the petition, consumer complaints, and comments about the 1973 proposal, FSQS published a new proposed net weight label regulation in the **Federal Register** on December 2, 1977 (Vol. 342, 61279–61284). Under this proposal, the declared net weight would be euqal to or less than the actual weight of the *usable* meat and poultry contents of the package at the time of purchase. Also, new allowable variation standards that could be enforced by State and local agencies would be provided. This meant that the free liquid in a package and substances absorbed by packaging materials would no longer be considered as part of the net contents. The agency proposed a set of specific allowable weight variations in place of the "reasonable variations" rule. For compliance purposes, all federally inspected meat and poultry establishments packing immediate containers bearing net weight statements would have to adopt a mandatory net weight quality control program. The proposal would also eliminate the exemptions for net weight label declaration and placement on shingle packed bacon (9 CFR 317.2 (h)).

The proposal was controversial for several reasons. One, the compliance procedures would require the opening and repackaging of contents and possible loss of product during distribution and before final sale—a far more expensive technique than checking for compliance by the earlier definition. Two, product packagers would either have to develop and adopt estimates of possible shrinkage and liquid loss in net weight between the times of packaging and final sale, or overpack to assure that the declared net weight was met throughout the rest of the distribution system.

Over 3,000 comments were received on this proposal, with slightly over two-thirds of the respondents opposing it. Seventy-one percent of more than 2,700 comments from individuals objected because they believed that the proposal would over-regulate the industry and increase food costs. Twenty-six percent of the individuals and all but one of the 21 consumer groups supported the proposal. All 31 industry groups which responded opposed the proposal because they believed that there were not sufficient variations for bulk packed items and that it was unclear "who is responsible for short weights at retail."

In order to obtain information on the economic benefits and costs of the proposal not previously determined, and to resolve allegations presented by industry and consumer groups, FSQS awarded a contract for a study to the Consumer Federation of America. The study was completed in October 1978, but failed to reach any conclusive results about the economic benefits and costs.

In the meantime, the House Committee on Agriculture requested the General Accounting Office (GAO) to evaluate the proposed net weight regulation and consider the feasibility of alternative systems. The GAO report, issued on December 20, 1978, concluded that: "Agriculture has not gathered adequate data to determine whether the current system needs to be changed or whether the proposed system or other possible alternative systems would be more economical and practical than the current system." The report also recommended that:

The Secretary of Agriculture direct the Service (FSQS) to expand and extend its search for information concerning the best way to monitor net weight labeling activities for meat and poultry products. Such a search should include:

—a reevaluation of the need for change;

—a comparison of available viable alternatives, including those discussed in this report, the Grocery Manufacturers of America proposal, codex system being developed by the United Nations Codex Committee on Methods of Analysis and Sampling and the so-called "Swedish" method of a declaration on the label of net weight accuracy at the time of packaging;

—a comprehensive economic impact statement for each system considered;

—a thorough and objective analysis of comments from major groups including State and local government regulatory organizations, industry, and consumers affected by such activities; and

—research to resolve the packaged meat and poultry moisture loss controversy.

USDA officials agreed to the GAO recommendation to expand and extend the search for information on the best way to regulate net weight labeling. In January 1979, the Economics, Statistics and Cooperatives Service (ESCS) was asked by FSQS to conduct a study to evaluate the accumulated evidence, reassess the economic costs and benefits, and determine the need for and the economic impact of the 1977 proposal.

The ESCS study concluded that "The proposal would achieve the two objectives defined by FSQS: (1) consumers could be assured that the weight of usable meat and poultry is equal to its labeled weight, and (2) States would be able to enforce strict net weight standards at retail."

However, the ESCS study found that the economic benefits would be much smaller than some consumers had anticipated. A more standardized method of presenting net weight information would be the main benefit to come from adoption of a drained weight system. "Consumers would be better able to make per pound price comparisons."

According to evidence submitted to the USDA hearing clerk, there is already a very high level of compliance—95 to 99 percent—in both dry tare and wet tare States.

The study also found that the information presented about the 1977 proposal had resulted in considerable misunderstanding by both consumers and producers. The study states:

Consumers cannot expect the reported price per pound of a product to remain unchanged if free liquids are excluded from labeled product weights. The price per pound can be expected to increase—and to increase most for those products with relatively more free liquid. However, the cost to consumers for *usable* product would remain unchanged. Actual costs to producers would not increase because of the change in definition of tare (that is, those parts of a product whose weight is not included in the labeled net weight). The amount of drained weight meat would not be affected by a labeling rule, and processing costs per drained weight pound would be unaffected.

Although real costs would not change, consumer misunderstanding could have some long term market effects if they believed that the real price per pound of the products with considerable quantities of free liquid actually increased. They might shift purchases to products that have a lower per pound price. But the problem could be largely corrected by a nationwide education program to explain the reason for the unit price change.

The ESCS study found that application of standards for bulk packed products would be helpful to buyers (other processors or retailers) of these products, especially the small volume ones.

The cost for mandatory quality control was estimated to be between $59 and $116 million, primarily for additional personnel. No cost estimate was provided for an education program to prevent consumer misconceptions about the cause of the unit price changes of affected products. Some retailers might also have experienced added costs to cover the expense of rewrapping products opened for compliance testing.

The ESCS study was submitted for public comment during a 60 day period ending on October 30, 1979. In addition, FSQS mailed out approximately 300 copies to the organizations that had commented on the 1977 proposal. Copies were also distributed to individuals and others who requested the study.

In response to the ESCS study, a total of 101 comments were submitted to FSQS. Again, opposition was expressed to the 1977 proposal. Industry and trade associations almost unanimously preferred the present net weight policy to a drained weight system. Individuals also strongly opposed the net weight proposal, but 14 of the 18 State and local weights and measures regulatory groups expressed support for the proposal. Only one of 51 consumer groups responded.

On the basis of these reviews and studies and the need to resolve the major issues, FSQS has decided to propose a new net weight regulation.

4. *Selection of Proposed Option—Objectives:* These proposed amendments by FSQS to the net weight labeling regulations are designed to: (1) insure that the net weight statement is as accurate as can be expected, on the average, at retail; (2) provide regulatory agencies a standard procedure to enforce net weight standards; and (3) make compliance procedures compatible with those of the Food and Drug Administration to the maximum extent possible.

One might expect that the desirability of a particular net weight regulation would be evaluated in terms of its usefulness to the consumer as a generator of information, its ease of enforcement, and the extent to which it can be used by industry. Unfortunately, evidence concerning the utility to consumers provides little basis for choosing between possible net weight regulations. Likewise, it is not possible to predict industry's responses to various regulations.

Some of the options discussed below eliminate or reduce free liquid from calculation of a product's net weight; however, as the ESCS study shows, the consumer will probably pay the same price for the same amount of usable product under any net weight definition. If revised regulations require producers to alter the labeled net weight on a package, they can be expected to alter correspondingly the price per pound so that they receive the same price for the package as under existing regulations. (If producers incur additional costs to comply with new net weight regulations, the consumer may pay more per pound.)

The ability to compare the cost of different products does not fare much better as a basis for distinguishing between options. Although some options appear to promote packaging that would be more revealing, it is not possible to predict the actual packaging that will result from any option, as the producer's decision involves trade-offs between the cost of packaging materials, the price he is willing to charge for his product, and the appearance he wants to give his packaged product. Under different circumstances, this may produce different combinations of packaging, labeling and price.

The development of a satisfactory net weight regulation which couples ease of compliance, ease of enforcement and compatibility with FDA is reflected in Option B. That option, therefore, is proposed. A summary of the Department's analysis on that basis follows.

5. *The Regulatory Options:* A description of each of the seven options and their impacts upon the main purpose of the regulation are presented below. An assessment of the impacts of each option is also presented.

Option A: Continuation of the present system.

Description: Continuation of the present system would maintain all existing net weight and compliance rules as they are presently interpreted. The net weight label statements on packages of meat and poultry products for household use would be considered in compliance at the time the packages are shipped from the producing establishment and at retail when "reasonable variations" for loss or gain are present. Net weight would, in the majority of cases, continue to be determined by the dry tare definition (total package weight minus the dry weight of all the packaging and labeling materials).

In those instances when the contents have been packaged for a period of time and the packaging material has absorbed considerable moisture, the wet tare definition (total weight of package and contents minus the weight of the packaging materials and absorbed moisture) may be used to check compliance with the stated net weight. Any free liquid in the package would be considered part of the net contents. A reasonable but undefined allowance for variation in net weight would be permitted for moisture gained or lost during good distribution practices or from unavoidable deviations during good manufacturing practice.

Drained weight (total package weight minus the weight of the packaging materials and all free and absorbed liquid) would be used for some products packed in nonusable liquid media. These products, such as Vienna Sausage packed in water, would continue to be checked for compliance by the drained weight method.

For compliance purposes, FSQS inspectors and plant personnel operating a voluntary net weight quality control program under FSQS approval and supervision would continue to verify the stated net weight on packages. In their respective jurisdictions, State and local weight officials would be able to determine compliance of federally inspected packages.

In conducting compliance activities, lots are sampled for net weight determinations. For samples of less than 40 packages per lot, the lot is considered to be in compliance if the average net weight of the sample packages is equal to or greater than the declared net weight and none of the samples are unreasonably below the declared net weight. This means that the net weight of some packages may be less than the stated weight on the label. Also, reasonable allowances for moisture loss or gain can be applied to the measurement if net weight is determined at locations other than the producing plants. In those instances where the sample consists of 40 or more packages per lot, one package with a weight that differs considerably from the label net weight can be excluded from consideration in evaluating the individual container, but is not excluded from the sample average.

Impact of Objectives

Ease of Enforcement: Present FSQS regulations do not include standardized procedures that allow State and local officials to determine compliance of federally

inspected meat and poultry products. Also, because the present regulations lack explicit allowances for "reasonable variations," they restrict the actions of State and local officials in determining whether the net weight of federally inspected meat and poultry products is in compliance.

Net weight quality control programs would remain voluntary. Firms would be allowed to adopt net weight quality control programs to ensure compliance with the regulations.

Accuracy: The total net weight of packages sampled must equal or exceed their labeled net weight and, with the exception noted above for samples of 40 or more packages, none of the packages may be unreasonably below the declared net weight. Present regulations do not, however, specify maximum allowable variation.

Compatibility with FDA: This option does not provide explicit allowable variation for net weight labeling, nor do current sampling procedures conform to those in the new FDA proposal.

Economic Impacts

Consumers: All free liquids (except nonusable liquids) and some liquids absorbed by packaging materials are included in a product's net weight. Consumers may have difficulty comparing values of various packages of product because of the variability in free liquid content.

Industry: Retailers will have to continue to check the weights of bulk shipments of wholesale-size packages for accuracy, because present procedures are not adequate for verifying the accuracy of the net weight declarations.

Regulatory Agencies: FSQS's net weight regulatory and compliance costs currently equal approximately $5.75 million a year. Costs for State and local agencies are not known. Future costs will be affected by increases in hourly wage rates and other cost items.

Distribution of Effects

Conditions will not change.

Option B: The Proposed FSQS Regulation.

Description: This proposal is based on the studies, comments, reviews, analyses and efforts by FSQS and FDA to develop more uniform net weight labeling proposals following publication of the 1973 and 1977 proposals. (See Options C and D.)

The proposed regulation provides that the net weight would equal the gross weight of the package minus the weight of packaging materials. Free liquids that drain from the product would be considered part of the net contents except for the few meat and poultry products to which a non-usable medium is added at the time of packaging. Such medium would not be included in the net weight.

The proposal also sets out two alternatives concerning the treatment of liquid which has separated from the product and is absorbed by the packaging material. The first alternative would exclude the weight of both the packaging materials and liquid absorbed by packaging materials from the product's net weight. The other would exclude only the weight of packaging materials. FSQS has not yet determined which alternative is preferable.

Regardless of the alternative chosen, the proposal would replace the present reasonable variations allowance with numerical allowable variations developed by the National Bureau of Standards which appear to be reasonable when determined by prescribed procedures. The proposal would also give State and local officials specific procedures for determining compliance with net weight requirements. This option, as the 1973 and 1977 proposals, would resolve the enforcement problem encountered by State and local weight officials. However, allowances for moisture evaporation losses would not be developed and adopted since this does not appear to be a serious problem affecting the net weight of meat and poultry products at retail. The Agency could consider this, however, if data to the contrary were submitted by interested parties.

Definitions and sampling procedures adopted by FDA and FSQS in their respective proposals have been made uniform to the maximum extent possible.

The exemption currently allowed for the placement and declaration of the net weight statement for shingle packed bacon would be terminated. Also, more reasonable allowances for the net weight labeling of bulk shipments would be adopted.

Impact on Objectives

Ease of Enforcement: The new proposal would remove the enforcement problems encountered under the existing system (Option A). Establishment of explicit allowable variations and adoption of standardized net weight regulations and sampling procedures would facilitate net weight enforcement by State and local agencies.

Net weight quality control programs would remain voluntary, as at present. This will prevent any disruptions at establishments.

Accuracy: Because of the establishment of explicit allowable variations and sampling procedures, the proposal could insure slightly greater accuracy of net weight labeling than currently exists. The net weight of sampled packages must equal or exceed the labeled net weight. Further, for each package sampled, the proposal stipulates maximum negative deviations from the labeled net weight. For samples of 50 or more packages, if the net weight is in compliance, one package can be excluded from consideration in evaluating the maximum negative deviation.

According to the ESCS study on the 1977 proposal, however, there is already a 95 to 99 percent rate of compliance and therefore only limited improvement in the accuracy of net weight labeling can be expected.

Compatibility with FDA: This option is the only one developed in tandem with FDA to assure the maximum possible compatibility with FDA's recent net weight proposal. Sampling procedures under the FDA and USDA proposals differ because USDA samples continuously and FDA does not, but the procedures offer the same statistical validity.

Economic Impacts

Consumers: As discussed above, the proposal will not significantly improve the accuracy of net weight labels for consumer purchases.

However, adoption of the alternative which excludes liquids absorbed by packaging materials may produce a variety of responses from producers. (Possible producer responses are discussed in the next subsection.) If producers opt to continue using current processing methods and absorbent packaging materials under this alternative, they will have to state a lower net weight because the absorbed liquid will no longer be included in the net weight. The producer can be expected to increase the labeled price per pound accordingly. The end result would be a package with a lower stated net weight, a higher price per pound, but no change in either the total price on the package or the quantity of usable product. This same result would be expected if a drained weight system for net weight compliance (Option D) were instituted.

Increases in labeled prices per pound to account for absorbed liquids would not be great. The ESCS study compared the mean drain, as a percent of labeled weight, among products such as chicken breasts, beef roasts, pork chops, bologna, and ham, among others. Only beef livers had a greater percentage of drain than chicken breasts. (Beef livers are generally packaged in non-absorbent materials—as explained later, products packaged in non-absorbent materials will not be affected by this proposal.) The average drain from chicken breasts equalled 3.95 percent of labeled weight. Assuming that the packaging materials absorbed all liquids from chicken breasts, and assuming an average price of $1 per pound, the labeled price would rise only four cents per pound, and the labeled net weight would decline four percent. All non-poultry products other than beef livers had an average drain of less than one percent of labeled weight.

Although neither the total price of the package nor the quantity of usable product would be affected, the consumer might believe the price had been raised, since the stated price per pound would be higher. The amount of increase, however, would probably be too small to affect consumer demand or the choice between products. Further, consumers could be educated to understand that the real price of the product had not increased.

The ability to compare products is affected by the way in which liquid is controlled in the package. Under the alternative which includes absorbed liquids in net weight, producers have an incentive to use absorbent packaging materials because they improve product appearance, but do not reduce the package's net weight. Producers might choose to eliminate the use of absorbent packaging materials under a net weight system which did not consider absorbed liquids as part of the net contents. This would make is more apparent to the consumer that he/she is paying for some liquid.

Industry: The alternative which includes absorbed liquid in the net weight is similar to the way in which net weight is currently determined and should have little or no impact on producers.

The alternative which excludes liquids absorbed by packaging materials from net weight could have various impacts on the packaging and labeling practices of producers, depending on the quantity of free liquid in their products and whether the products' packaging contains absorbent materials. Producers would be unlikely to change their packaging or labeling practices for products packaged in impervious materials. For such products, the only change in net weight regulations would be elimination of allowances for evaporation and creation of a set of allowable variations to replace the existing reasonable variations allowance.

Under the net weight alternative which excludes absorbed liquids, the main impact will fall on producers of products whose packaging contains absorbent material practicularly products with large quantities of free liquid. (This same line of reasoning would hold if a drained weight definition, in Option D, were implemented.) Poultry products comprise the majority of this class.

It is not possible to predict whether producers will opt to continue using absorbent packaging materials and adjust the labeled price per pound, or if they will alter processing methods to reduce the quantity of free liquids in packages. The producer's behavior under the proposed option depends on his desire to maintain the appearance of the package, the cost of absorbent materials, and his feelings about how real or apparent changes in the price of his product will be accepted by the consumer.

Some States have employed net weight regulation systems which exclude absorbed liquid from net weight. We have only sketchy indications of how producers have reacted in those States. We would like to know if producers in those States have altered their processing methods, eliminated absorbent packaging materials, or adjusted prices. If they have altered processing methods, we would like to know the cost of doing so.

The ultimate impact on producers will depend on consumer behavior. This cannot be predicted with precision, because consumer behavior depends on what kind of adjustments producers make in the packaging price; what these adjustments will be is unknown at the present time. In any case, it appears from the available empirical data that any price changes will be so small as to make significant changes in consumer behavior unlikely.

If the net weight excludes liquids absorbed by packaging materials, processors or distributors who continue to use absorbent materials may experience a minor cost increase for product loss or repackaging as a result of net weight testing for compliance. Some of these packages may need to be opened, which will result in some losses.

Regulatory Agencies: Annual FSQS, State and local operating costs for net weight information will remain the same as as present, except for increases from inflation of wage rates and the cost of other items.

Distribution of Effects

This option would tend to have a greater impact on processors and packagers of products that have a high proportion of free liquid. All state and local agencies would be affected by the adoption of the allowable variation process. Wholesale and retail buyers of bulk shipments would receive improve regulatory support in their ability to receive full net weight on those shipments.

Option C: The 1973 USDA Proposal.

Description: This was the first net weight labeling proposal presented following the District Court decision in *Rath Packing* v. *Becker* in California. The purpose was to bring the rules in conformance with the decision of the court.

As a result of the decision regarding vagueness of the rule on "reasonable variations," explicit allowable variations for packages that could be applied by State and local officials were proposed. Products would be assigned to one of six groups depending upon the product's characteristics and the declared net weight of the contents. As long as the average weight of the samples equaled or exceeded the declared net weight and the difference between the declared net weight and the smaller net weight of the contents of the sample item was less than the allowable variation, the lot would be considered in compliance.

The practice of using voluntary net weight quality control programs and Federal inspectors to check for compliance would be replaced by a mandatory quality control program, monitored by Federal inspectors. Any federally inspected establishment producing immediate containers bearing net weight statements would have to obtain approval for and implement a net weight quality control program.

Sampling procedures were proposed for checking the net weight compliance of lots. These procedures do not conform with the procedures and sampling rates devised by FDA—sample sizes vary; tolerances for allowable variations differ; and the 1973 proposal did not permit one package from a large sample to exceed the maximum deviation from labeled net weight.

Exemptions for net weight label placement and declarations on shingle packed bacon packages were proposed to be terminated. Instead of declared net weight for bulk shipments of product, a count of the number of items in the container could be substituted.

Impact on Objectives

Ease of Enforcement: By providing explicit variations and standard procedures for determining net weight compliance, this option would yield the same ease of enforcement as the proposed option.

Instituting mandatory net weight quality control programs would ease the enforcement burden on Federal meat and poultry product inspectors. This burden would be shifted to processors.

Accuracy: This option would require that no packages are less than the allowable variation. Option B permits one deviantly marked package in a large sample; this option requires all packages in a sample to be within the allowable variation before the sample is judged in compliance. However, there is little room for improvement since compliance rates presently exceed 95 percent.

Compatibility with FDA: This option is not compatible with FDA's proposal—sample sizes vary; tolerances for allowable variations differ; and this option does not permit any packages from a large sample to exceed the maximum negative deviation from net weight.

Economic Impacts

Consumers: Because of the already high level of compliance with net weight labeling regulations, consumers could not expect significantly improved labeling accuracy under this proposal. The marginal improvement in accuracy may provide consumers greater assurance that their purchases are properly labeled.

The net weight system is similar to that under the existing regulations. Therefore, producers are unlikely to alter their production or labeling practices, and consumers should see no noticeable impacts as a result of this definition. Product prices for consumers could rise by as much as one-quarter of a cent per pound as a result of increased producer costs from mandatory quality control programs. This increase would be reflected in the Consumer Price Index. (These costs are discussed below.)

Industry: The net weight system contained in this proposal would not cause producers to alter their production or labeling practices. However, the requirement of a mandatory, plant-operated, quality control program to monitor net weight compliance is likely to increase industry costs. The additional annual cost to the 5,680 plants having to adopt a voluntary quality control program is estimated to be between $56 million and $114 million for personnel, according to the ESCS study. The basis for the cost range is whether small plants hire full or part time quality control personnel.

The mandatory quality control program could increase industry employment between 3,500 and 5,700 persons. This would be true only if plants do not already have personnel conducting net weight checks. The number of quality control technicians hired would depend upon whether the smaller plants hire full or part time personnel.

Regulatory Agencies: Implementation of this option would require FSQS to review and approve mandatory quality control net weight compliance programs for approximately 500 plants currently with voluntary programs and another 5,680 without any programs. One time revisions in rules, and instruction of affected officials and plant personnel would be necessary. No increase in FSQS personnel requirements for program development, approval and instruction of personnel is considered necessary. Approximately 157 FSQS inspector years could be displaced by plant operated quality control programs and would be available for use in other FSQS functions. Cost savings from this program, which could be as much as $3.1 million a year, should more than equal the FSQS implementation and monitoring costs.

This proposal would promote more vigorous enforcement by State and local weights and measures officials.

Distribution of Effects

The impacts of this option should be greater for those establishments packaging a

high proportion of consumer-size packages of meat and poultry products characterized by having large amounts of free liquid. All but 500 of 6,180 federally inspected plants would need to develop and implement approved net weight quality control programs. Wholesalers and retailers dealing in bulk shipments of products would be provided either net weight statements or quantity counts of products in such shipments.

Option D: The 1977 FSQS Proposal.

Description: Under this proposal, net weight compliance would be determined by a drained weight system. In addition to the packaging material, all free and absorbed liquids would be excluded from the net contents. Net contents would be only the weight of the usable product. Net content would continue to be the entire contents for those products where the entire contents are to be consumed. In the case of frozen products, net contents would be the total package weight minus the weight of the packaging materials and adhering ice crystals.

Stated allowances for "reasonable variations" would be permitted. Furthermore, the net weight statement would have to be accurate on the average not only at the packaging establishment but at any point in the distribution system, including the point of final sale.

In order to comply, processors would first have to develop estimates of free liquid build-up and possible unavoidable gains or losses resulting from processing and distribution. They would then have to target fill-weight above declared weight or understate net weight accordingly. Estimates of moisture gain or loss require a one-time expense.

Each federally inspected plant packing consumer size packages would have to establish and gain approval of a mandatory, FSQS-supervised, net weight quality control program.

A lot of prepackaged meat or poultry would be in compliance when the average net weight of the samples drawn from the lot equals or exceeds the labeled net weight at any point in the distribution channel and at final sale. In addition, to be in compliance, the actual net weight of each package sampled would have to be within an explicitly defined allowance of labeled net weight.

The exemption for placement and declaration of the net weight statement on single packed bacon would be eliminated. An exemption for small packages (less than one half ounce) from having a net weight label statement would be extended to poultry products.

Impact on Objectives

Ease of Enforcement: As with the two previous options, this proposal would replace the "reasonable variations" provision with explicit allowable variations for individual packages, and provide standardized procedures for enforcement. This would facilitate enforcement by State and local agencies.

Mandatory net weight quality control programs would ease the enforcement burden on Federal meat and poultry product inspectors. This burden would be shifted to processors.

A drained weight system requires more inspector time to check for compliance. (Some States objected to the proposal because of this.)

Accuracy: Like the two previous options, establishment of explicit allowable variations would insure greater accuracy of net weight labeling than currently exists. But the already high compliance rate leaves little room for significant improvement. This proposal with its drained weight provision would assure consumers that the declared net weight on a label is, on the average, the weight of *usable* product in the package. This would improve consumers' ability to compare products.

Compatibility with FDA: This rule would not conform with the new FDA proposal in terms of the net weight definition or allowable variations.

Economic Impacts

Consumers: Consumers would be assured of net weight statements at the time of purchase which would make comparison of product prices on the basis of *usable* product extremely easy. However, as the ESCS study indicated, the perceived benefits are not as great as the real benefits since the real cost of usable product probably would not change. The unit price and the weight may change, but the total cost for the package probably would not change. Consumers probably anticipate, however, that the total price for the product would be reduced by the current unit price times the weight of the liquid. A major educational effort would possibly be essential to promote the concept and prevent widespread misconceptions about the cause of any unit price changes. A transition period between approval and implementation would appear necessary for the educational effort.

This proposal would alter the traditional price relationships between products that do and do not contain large amounts of liquid. The unit price for tray pack chicken, liver and corned beef products, which customarily contain large amounts of free liquid, would increase relative to the prices for other meat and poultry products. (Relative prices would shift less than four percent. See the section on Economic Impacts: Consumers for Option B).

The mandatory quality control program could increase average meat prices by as much as 0.3 cents a pound, or less than 0.3 percent at retail.

Likewise, the costs for processors to estimate free liquid build-up and possible gains or losses during processing and distribution would likely be passed on to consumers in the form of higher prices. Any additional increase in the stated unit price resulting from the shift to drained weight would be reflected in the Consumer Price Index even though there is not any increase in the "real" or *usable* unit price.

Industry: As discussed under Option B, it is unknown what action processors might take in response to a new net weight system. It is clear that a drained weight system for determining net weight compliance would increase processors' costs. These increased costs would come from the one-time expense of estimating moisture gains or losses. The estimates would be used to adjust fill-weights or labeled net weights.

Processors might also consider freezing products as a means to comply with a drained weight definition of net weight. However, freezing costs an estimated five to six cents per pound. For the proposed option, an estimate was that the shift in relative prices per pound would be less than four cents, and would not require a major capital investment like that needed for freezing equipment. A pronounced consumer preference for fresh meat and poultry products over frozen products also reduces the attractiveness of freezing as an adjustment to this option.

A mandatory quality control program would engender the same costs as in Option C, $59 to $116 million, and increases industry employment between 3,500 and 5,700 people.

Processors, wholesalers and retailers would experience minor losses from routine inspections for net weight compliance, which require opening, weighing, and repackaging products.

Wholesale and retail buyers of bulk package shipments would receive more regulatory support for assuring net weight statements on those bulk shipments.

Regulatory Agencies: Again, the impacts of a mandatory quality control program would equal those under Option C. Approximately 157 FSQS inspector years could be made available for use in FSQS functions other than net weight monitoring. Federal cost savings could run as high as $3.1 million per year, and should at least equal all of FSQS's implementation and monitoring costs.

A drained weight system would require State and local agencies to make a one-time expenditure of $420,000 for testing equipment. Some agencies have expressed concern that a drained weight system would take more of their inspectors' time and sap their enforcement capabilities.

Distribution of Effects

All meat and poultry establishments, distributors and retailers, State and local net weight enforcement agencies, and any importers of prepackaged consumer products would be affected by this option.

Option E: Grocery Manufacturer's of America (GMA) Proposal.

Description: In February of 1978, GMA petitioned FDA and FSQS to establish a nationwide program to assure consumers of the accuracy of net weight labels on prepackaged foods. The program, the National Net Weight Assurance Program (NNWAP), would be comprised of government, industry and general public representatives.

The petition further requested retention of the present Federal net weight regulations with several modifications. These are "particularizing" the presently undefined allowances for reasonable variation and adoption of the revised National Bureau of Standards (NBS) Handbook 67, *Checking Prepackaged Commodities* (draft dated December 1977 and modified by memos dated August 1978) for establishing uniform sampling techniques and methods of calculating net weight.

Lastly, the petition requested establishment of a National Net Weight Assurance

Conference. The Conference would oversee the NNWAP, foster net weight compliance through periodic inspection at the time of packaging, and develop procedures for a cooperative inspection program which includes exchange of enforcement data between Federal and State agencies. The Conference would also identify food products subject to moisture gain or loss, estimate their typical moisture content at the time of packaging, and estimate moisture losses through evaporation or moisture gains through absorption while the product is in the food distribution channel prior to purchase by the consumer. These data would be published and used as norms for testing net weight compliance.

Packages of a product would be weighed at retail, or elsewhere, to check the net weight for compliance. If the sample is not in compliance, packages would be collected and sent to designated laboratories to determine the cause of the non-compliance. In the meantime, a hold would be placed on further distribution and sale of the lot or lots sampled. If the tests revealed that the non-compliance is a result of a change in moisture content, and this change were within the established limits of variation, the hold order would be lifted and the lot could be sold.

Determination of tare would vary depending on the product. The petition did not address quality control programs or the disposition of existing exemptions for bacon and bulk shipments.

The enforcement agencies would have concurrent responsibility for determining net weight compliance at the several levels of the food distribution system, in accordance with the draft NBS handbook.

Impact on Objectives

Ease of Enforcement: Maximum allowable variations would be determined on a product-by-product basis. Improved coordination and exchange of data among enforcement agencies could improve the level of net weight compliance.

This option might prove difficult to adopt for checking compliance of highly perishable products—most fresh meat and poultry products fall in this category—because of the potential for large product losses through spoilage. (See below, "Economic Impacts.")

No mention is made of quality control programs, which presumably would remain voluntary.

Accuracy: Within the narrow range available for improving compliance with net weight regulations, more easily enforceable standards should improve the accuracy of net weight labeling.

Compatibility with FDA: This rule would not conform to the FDA proposal.

Economic Impacts

Consumers: The proposal has not been developed to the point where it can be evaluated in great detail. The initial investment for this option could be quite large, resulting in higher product prices. Since it would require 2 to 4 years to implement, consumers would not see any costs or benefits for some time.

Industry: If establishments are responsible for identifying and estimating the moisture losses or gains from their products, the one-time laboratory cost for developing the maximum allowable variations could be significant. Organizational and operating costs of the conference are likely to be insignificant to the individual firms.

The proposal is intended to resolve net weight problems common to dry foods such as flour. The net weight of these products is likely to change considerably because of changes in humidity. Furthermore, the products are not likely to deteriorate into an inedible state while the testing for compliance takes place. Compliance testing could take days for shipping samples to a lab, testing and returning results to the proper authorities.

Packaged meat and poultry products which are generally highly perishable do not usually experience significant changes in weight from loss or gain of moisture. Other meat and poultry products may be canned or packed in impervious type materials that prevent loss or gain of moisture. The type of processing or packaging used on some products might extend the shelf life considerably. But, for the majority of the meat and poultry products, lots subject to compliance testing would spoil, causing large economic losses before test results could be obtained and products released for sale.

Regulatory Agencies: There are no data available on the specific allocation of resources needed for the operation of the GMA proposal. Consequently, it is premature to estimate how many USDA and other Federal resources might be needed. The cost impact might be minor if FSQS and other Federal involvement is limited to conference participation, assisting in coordination of data collection, and review and revision of rules. Operation of labs for enforcement purposes might increase costs considerably.

State and local agencies' responsibilities and procedures for implementing the GMA proposal have not been completely defined. The program could provide cost savings to State and local enforcement agencies once explicit allowances for variation are adopted. They would expedite the compliance testing process, thus increasing efficiency and reducing costs.

Distribution of Effects

No real impacts are likely to occur for 2 to 4 years while implementation plans are being developed.

Option F: Codex System.

Description: The Codex Alimentarius Commission of the United Nations has been in the process of developing procedures for enforcing net weights in prepackaged foods on an international basis. The working committee has proposed that net weight compliance be based on the average net weight of packages at the time of packaging with reasonable tolerances allowed for difficulty in filling containers or maintaining net weight while in distribution.

Sampling for net weight compliance would be modeled on a statistical limits of variance technique developed by Switzerland for application to imported, prepackaged foods. Inspectors would make limited inspections for compliance at retail. If the sampling technique indicates a noncompliance problem, additional inspection of the same product would be made at retail and further back in the marketing chain, including at processing plants. If the problem continues following notification of the producers, a more precise enforcement test would be applied.

This building-block approach would assure a high probability of net weight compliance, but not necessarily as high as the current level found in the United States. It would require application of a relatively sophisticated sampling technique and a well coordinated Federal, State and local enforcement effort. This coordination effort would be essentially the same as the one contained in the GMA proposal.

To date, the Codex Committee, which is made up of representatives from many countries including the United States, has not formally voted to accept recommendations on any of the standards and procedures. At the most recent Committee meeting, it was voted to have the proposal referred back to the working group for further study. The United States is on record as opposing the building block concept because it would require at least two-thirds of all the sample packages drawn from a lot to have a net weight of contents equal to or in excess of the amount stated on the label. This would require processors to either overfill containers or reduce the net weight stated on the label. In either case, the labeled unit price for the contents would have to be increased. As previously discussed, this would not change the price per usable pound of product.

The United States position is to continue generally the present practice of having the average net weight of the samples drawn from a lot equal to or exceeding the labeled net weight. This proposal does not stipulate what proportion of a lot should exceed the weight requirement. But, on average, about half of the items in the sample would have net weights equal to or exceeding that stated on the label.

Impact on Objectives

Ease of Enforcement: This option could reduce the effectiveness of enforcement at retail and other points in the distribution channel beyond the processor. It concentrates on net weight compliance at the time of packaging and is supplemented by limited inspections for compliance at retail. Determination of compliance is based on the average net weight of packages, allowing reasonable tolerances for individual packages, but in this case it does not imply increased accuracy for the consumer.

Weight: Because the system emphasizes compliance at the time of packaging, it could reduce accuracy at retail. On the other hand, the option requires at least two-thirds of all sample packages to have a net weight at least equal to the labeled net weight at the time of packaging. This second requirement would tend to support the already high level of compliance, especially for meat and poultry products, which have little problem with moisture loss through evaporation.

Compatibility with FDA: This option represents a major departure from both the current method of enforcing net weight regulations and the FDA proposal.

Economic Impacts

Consumers: The proposal is not expected to create many changes for consumers. According to the ESCS study, if producers must overpack to comply with the regulations, consumers might see shifts in relative prices, but no change in the price of usable product.

Industry: Producers might have to overpack, or change the labeled price per pound and the stated net weight on their products. This should not result in any significant costs. Lack of any specific information on what standards and procedures might be recommended prevents an assessment of other economic impacts.

Regulatory Agencies: Lack of any approved recommendations on how the standards, procedures, and the Codex proposal might be organized and operated make it premature to estimate the cost impact. Adoption of new rules and a different sampling technique should result in an unknown cost increase for FSQS. Implementation of the building-block concept and use of a more sophisticated statistical verification technique would tend to increase enforcement training and operating costs.

Distribution of Effects

No impacts would occur until the Codex Committee agrees on recommendations and they are adopted by the United States. It is unlikely that this will occur for several years or more.

Option C: Declaration of New Weight at Time of Pack—"Swedish" Method

Description: This option is used in a number of countries including Canada and Sweden. It requires a qualifying phrase on packages that states that the net weight was accurate at the time the food was packaged at an establishment.

Impact on Objectives

Ease of Enforcement: This option would not facilitate State and local net weight enforcement unless the rule allowing for reasonable variation is eliminated.

Accuracy: Since meat and poultry products could be packaged some time before and some distance from the point of purchase by a consumer, the net weight of the contents at the time of final purchase might differ from the declared weight at the time of pack. However, this has not been a significant problem under the present system and would not be expected to become a problem under this option.

Compatibility with FDA: This option adopts none of the sampling procedures or enforcement standards contained in the new FDA proposal.

Economic Impacts

Consumers: There would be no impact on consumers.

Industry: Establishments would incur a one-time cost to have packaging material manufacturers add the appropriate qualifying statement.

Distribution of Effects

The impact should be limited to establishments packing consumer size packages of food.

Summary

This section summarizes the extent to which each of the proposed options meets the objectives outlined in Section 4 above.

Accuracy: Options B, C, D, E, and F make explicit the amount by which individual packages can deviate from the stated net weight when they are checked for net weight compliance. These explicit allowances are an improvement over Option A, the current system, which allows "reasonable variations." Option C, the 1973 proposal, contains the most strict standard for enforcement; it does not permit any deviantly labeled packages in large samples, as do Options B and D. Options E and F, the GMA and Codex proposals, do not contain standardized net weight regulations and sampling procedures, and therefore do not improve the enforceability of the net weight label requirements.

Standardized Enforcement Procedures: The explicit allowances discussed above and the provision of specific sampling procedures on Options B, C, and D, increase the ability of State and local agencies to enforce net weight regulations and should help raise the already high level of compliance. Options E and F do not meet this objective since they do not contain standardized net weight regulations and sampling procedures.

Compatibility with FDA: Option B is the only option compatible with FDA's net weight proposal.

Thus, on the basis of the three objectives we have in proposing new net weight regulations, Option B would be most effective. It is essential, however, to review more closely the impacts of Option B to assure that its benefits are not vitiated by relatively less desirable impacts *vis a vis* the other options.

As we mentioned in Section 4, improved net weight regulations can benefit consumers in two ways; first, they should reflect the cost of a unit of usable product; second, they should help the consumer compare the cost of different products.

The analysis of the seven options indicates that none of the options would greatly increase the benefits of the first kind to the consumer. Over 95 percent of meat and poultry packages are currently in compliance with net weight labeling regulations. Explicit allowances and standardized enforcement procedures can improve upon this slightly. On this basis we can choose Options B, C, or D over A, E, F, or G.

As this analysis has stressed, it is likely that no system of net weight regulation represented by Options B, C, or D would change the *real* price per pound of usable product. Thus, Option B is at least as good as C or D with respect to the value the consumer gets for his/her money.

Option B, the 1977 proposal with its drained weight system, would make it easiest for consumers to compare the price per pound of usable product. The proposed option, Option B, using the alternative which excludes liquids absorbed by packaging materials from net contents, would also facilitate comparison of products. Consumers would be able to observe the amount of free liquid for which they are paying. It is difficult to support any particular net weight system on the basis of the information it provides to the consumer, since for practical purposes, comparisons across products would still be very difficult to make under any definition. However, package-by-package comparisons within products would be made easier. The issue in choosing between the alternatives under Option B is whether this increased ease of comparison within products is worth the chance of confusion from changes in labeled prices. Although education could help eliminate this confusion, it has a cost.

As far as raising producer costs are concerned, Option B should not increase producers' costs under either alternative. No options will decrease processors' costs. Options D could raise processors' costs not only because of the mandatory net weight quality control program, but also because a drained weight system would require processors to change processing methods and/or incur added costs to adopt procedures for correct labeling under this system.

Option D also has the disadvantage of increasing enforcement costs because of a one-time expenditure of $420,000 for test equipment and because of a requirement for more inspectors' time in the enforcement procedure.

Thus, considering both its effectiveness in meeting the stated objectives and the avoidance of undesirable impacts, Option B was selected over the other options because:

—It promotes easy enforcement of net weight regulations by state and local agencies.

—It would generate net weight statement at least comparably accurate to all other options, and would establish numerically allowable variations which are not present in existing regulations.

—It would not force processors to increase expenses to comply.

—It is the only option compatible with FDA's net weight proposal.

—It would not increase the costs for regulatory agencies.

6. *Public Comment:* Interested persons will be invited to submit comments concerning the proposed action. All submitted comments will be available for public inspection. A 90 day comment period will be provided.

Dated: August 1, 1980.

Approval:

Susan Sechler,

Deputy Director, Economics, Policy Analysis and Budget.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 79N-0292]

Food Labeling; Net Weight Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing amendments to the net weight labeling regulations. These amendments would quantitatively define permissible "reasonable variations" from stated net weights for several food categories, including foods subject to moisture loss. This proposal is prompted by petitions and requests and public hearings conducted by FDA and the U.S. Department of Agriculture (USDA) and would provide a basis for more effective enforcement of the net weight labeling regulations.

DATES: Written comments by November 6, 1980. The agency proposes that the final regulation based on this proposal be made effective 90 days after date of publication of the final regulation in the Federal Register.

ADDRESS: Written comments (preferably four copies) to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION:

Legislative History and Judicial Background of Net Weight Regulations

Section 403(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(e)(2)) states that a food shall be deemed to be misbranded if the package does not bear a label containing "an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided,* That under clause (2) of this paragraph reasonable variations shall be permitted, * * *." The existing regulation concerning net weight labeling of human foods (21 CFR 101.105(q)) states: "The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large."

Many foods contain appreciable amounts of water and thus are subject to weight loss due to water evaporation after packaging. The extent of evaporation depends on the inherent characteristics of the food, the packaging materials, and the conditions of food storage, including such factors as humidity, temperature, and duration of storage. Concern for this water loss, coupled with the practically impossible task of packaging to exact weights, prompted Congress to address the issue of net weight labeling of food products at least as early as March 3, 1913, when an amendment to the Pure Food and Drugs Act of 1906 was enacted. The amendment allowed for slight changes in exact quantity of contents due to natural causes. It provided "that reasonable variations shall be permitted, * * * by rules and regulations." Federal regulations adopted in 1914 further addressed the question of net weight labeling and variations due to moisture loss:

> (i) The following tolerances and variances from the quantity of the contents marked on the package shall be allowed:
>
> (1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.
>
> * * * * *
>
> (3) Discrepancies in weight or measure, due exclusively to differences in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.
>
> Discrepancies under classes (1) * * * of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case.

The concept of "reasonable variations" in net weight labeling was thus recognized by statute as early as 1913 and by regulations as early as 1914. These regulations were sustained by the courts in 1932 (*United States* v. *Shreveport Grain and E. Co.*, 287 U.S. 77(1932)).

When it passed the Federal Food, Drug, and Cosmetic Act in 1938, Congress retained much of the earlier language concerning reasonable variations from the declared label weight, measure, or numerical count (21 U.S.C 343(e)).

The Fair Packaging and Labeling Act (FPLA) of 1966 also addressed the concept of an allowance for reasonable variations from the declared net quantities of food. In Congressional consideration of the FPLA, the question of unavoidable variations due to moisture loss or mechanical deviations was specifically raised. During the hearings conducted by the House of Representatives Committee on Interstate and Foreign Commerce before drafting the FPLA, no change from the earlier position of reasonable variations was recommended. The FPLA states that "The net quantity of contents (in terms of weight * * *) shall be separately and accurately stated in a uniform location upon the principal display panel of the label" (15 U.S.C. 1453(a)(2)). It further states: "Nothing contained in this chapter shall be construed to repeal, invalidate or supersede * * * the Federal Food, Drug, and Cosmetic Act" (15 U.S.C. 1460). Congress again had the opportunity to modify or eliminate the allowance for reasonable variations due to moisture loss that is permitted by the Federal Food, Drug, and Cosmetic Act, but chose instead to retain it unchanged.

In the Supreme Court case of *Jones* v. *The Rath Packing Co.*, 430 U.S. 519 (1977), the situation addressed by the Court was that the Federal regulations on net weight lableing allowed for reasonable variations due to moisture loss, while California law made no allowance for loss of weight (moisture) during good distribution practice and required instead a minimum weight at the retail store. The Court held that State regulations, when in conflict with or substantially different from Federal regulations, were preempted by Federal law.

In summary, the intent of Congress to allow "reasonable variations" in the net weight labeling of foods due to unavoidable moisture loss is apparent from the amended version of the Federal Food and Drugs Act of 1906, in the reenactment of the Federal Food, Drug, and Cosmetic Act in 1938, and in the FPLA of 1966. Because Congress passed the newer statutes in substantially the same form as the earlier version, it is presumed to have adopted the prior judicial construction of the language.

Petitions Proposing Modifications in Existing Regulations

The California Department of Food and Agriculture, initially with support from officials of 48 States (the number is now fewer than 48), numerous farm and consumer organizations, and many weights and measures officials, petitioned the FDA, USDA, and Federal Trade Commission to amend the existing Federal regulations (21 CFR 101.105(q), 21 CFR 501.105(q), 9 CFR 317.2(h)(2) and 16 CFR 500.22) concerning net weight labeling of packaged foods. The petitioner and supporters assert that the Federal net weight labeling regulations are unfair to consumers because they do not receive full measure as represented on the package. It is also asserted that these regulations preclude enforcement by State and local officials at the retail level because the phrase "reasonable variations" is undefined and vague. The petitioners propose to require a minimum declared weight, suggesting either overfilling to compensate for moisture loss or improving the food

packaging to impede moisture loss to ensure a minimum weight of food at any point during distribution, that is, at the retail level. The petitioners contend that industry has the capability to evaluate all the variables affecting moisture loss for their products and industry can, therefore, adjust the processing and target weights accordingly to minimize excessive overfilling. On several occasions, supporters of the California petition indicated that the Federal regulations should be amended by defining the phrase "reasonable variations" to facilitate enforcement.

Those who favor retaining an allowance for "reasonable variations" due to moisture loss support the petition submitted subsequently by the Grocery Manufacturers of America, Inc. (GMA) to FDA (Docket No. 78P–0040) and USDA. GMA asserts that the existing Federal regulations are not only reasonable, but essential. GMA maintains that no chronic short-weight problems have existed for approximately a decade, thereby illustrating the enforcement effectiveness of the present regulations. Where moisture loss can affect weight, GMA contends that the consumer is getting full value based on the nutritional food "solids." Industry representatives state that moisture loss occurring during distribution and storage is beyond the manufacturer's control. GMA maintains that the modifications proposed in the California petition—overfilling and improved food packaging—would provide no consumer advantage and would cause higher food costs. Instead, GMA recommends creating a National Net Weight Assurance Program to (1) establish a list of foods subject to moisture gain or loss, together with a normal moisture range at time of packaging; (2) foster the determination of net weight compliance of products through periodic inspections at the time of packaging; and (3) develop procedures for establishing a cooperative inspection program and for exchanging enforcement data between States and the Federal Government. GMA further encourages conducting net weight labeling inspections in accordance with the statistical sampling procedures described in the final draft of the revision of the National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities" dated December 1977. The GMA proposal has received widespread support from the food industry.

Coordination of FDA and USDA Proposals

Following the 1977 Supreme Court decision in the *Rath* case, the merits of a parallel FDA/USDA net weight proposal were considered. In the **Federal Register** of October 14, 1977 (42 FR 55227), a notice was published announcing public hearings to be held jointly by FDA and USDA regarding possible modifications of the current regulations on net weight labeling of products. Legislative-type public hearings were held in San Francisco, CA, on December 8, 1977, and in Atlanta, GA, on December 15, 1977. Interested persons were invited to present their views orally or in writing. Representatives from numerous State and local governments, weights and measures associations, consumer groups, and various industries responded by providing information and views. These submissions from various sources were thoroughly reviewed, and the germane information obtained from the comments and testimony has been incorporated throughout this preamble. Transcripts of the hearings and all written comments and communications concerning the net weight regulations have been placed on public display in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

At the same time, to fill the void left in State compliance programs by the Supreme Court decision, USDA published its net weight labeling proposal in December 1977. During the past several months there have been continued efforts between FDA and USDA to coordinate the net weight proposals. Concerted efforts were made to develop respective documents that were identical, when possible, or at least were mutually compatible. Because of basic differences in the characteristics of the food products regulated by the respective agencies, however, some differences in the proposals remain.

Net Weight Labeling Issues

The issues regarding the net weight labeling regulations can be grouped into two categories: (1) consumer protection from short-weight practices and (2) enforcement of the regulations.

Analysis of Consumer Claims of Short-Weight Practices

Examination of State and nationwide surveys on actual versus declared net weight from 1959 through mid-1977 indicates that no chronic short-weight problem for food commodities has existed for approximately a decade. On the average, consumers receive more than the labeled weight of foods.

In 1959, FDA conducted a nationwide check on the net weights of 36 different packaged foods and determined that 6 percent were short-weight in excess of 1 percent. In 1971, FDA again initiated a survey to establish the level of compliance with the Fair Packaging and Labeling Act and contracted with 11 States to conduct such a study. The findings revealed that approximately 7 percent of the products were apparently 1 percent or more short-weight. The reliability of these results was questioned because of the small data base considered. A followup nationwide net weight survey of dry packaged foods was conducted in 1973, using a larger data base. Only 0.7 percent of the dry-packaged food sampled were found to be short-weight by more than 1 percent. Various retail sampling programs were conducted from 1973 through 1975 to obtain a statistical profile of several product characteristics, including net weights. Overall the average net weight to declared label weight ratio exceeded 1.00 for all products considered. The ratios ranged from 1.02 to 1.08, with the average value of 1.04, signifying that packages, on the average, were overfilled by 4 percent.

The California Department of Food and Agriculture reported that its inspections during 1976 showed that over 97 percent of all food products were full-weight at the time of local inspections, and that milled products were 96 percent accurate. In checking over 40,000 lots of packaged commodities every year, Pennsylvania officials reported that 95 percent of all standard-packed commodities met or exceeded the net weight requirement under the lot averaging concept. Of the remaining 5 percent, 10 percent (that is, 0.5 percent of all products inspected) were short-weight by more than 1 percent of the labeled weight. Of the packages checked by Virginia officials during the year ending June 30, 1977, 7 percent were ordered off-sale because they did not contain the full stated weight. The Maryland Department of Agriculture reported that its compliance level was 89 percent. Although the Virginia and Maryland figures indicate slightly lower levels of compliance with their respective net weight regulations, no further breakdown was provided that might reveal the extent to which packaged foods were short-weight or the prevailing conditions of the packaged foods. Consequently, it is difficult to interpret further the significance of the Virginia and Maryland surveys.

The evidence gathered at both State and national levels fails to substantiate the claim that consumers have been subjected to sustained or intentional short-weighting. On the contrary, the most recent nationwide survey reveals

that consumers routinely receive a 4 percent overfill for the average of all packaged foods purchased.

Two factors, technological developments and government enforcement practices, are primarily responsible for the observed high levels of compliance with the net weight regulations.

Most large industries use sophisticated automatic filling machinery capable of packaging large volumes of foods quickly and within fairly narrow tolerances of the desired target weights. High-speed check-weighing equipment is also available to serve as a safeguard against overfilling and underfilling packages outside of the preselected weight range. When a sufficiently large volume of packages is considered, actual package weights normally cluster closely about the target weight. This fact viewed statistically further aids industry in selecting target values that result in the high compliance rates observed.

It should be noted that bulk-packed foods, whether packaged for wholesale or consumer distribution, are also subject to the net weight labeling regulations.

The FDA and State and local agencies have long worked together to enforce the accuracy of quantity of contents declarations that appear on packaged food labels. FDA has generally focused its efforts of enforcement of the Federal Food, Drug, and Cosmetic Act (the act) and FPLA on plants where foods are packaged. FDA has taken the position that packaged foods entering interstate commerce must contain quantities of food equal to or greater than the weights declared on the labels. State and local agencies traditionally enforce quantity of contents requirements in food establishments where food is offered for retail sale. Enforcement of the net weight regulations is more comprehensive at the State and local levels because of the continual policing of retail establishments by State and local agencies. It is the combined ongoing surveillance by Federal, State, and local agencies that encourages businesses to comply with the regulations.

Enforcement of the Regulations

The *Jones* v. *The Rath Packing Co.* Supreme Court decision brought into focus a very real problem for State and local officials who attempt to enforce net weight labeling regulations at the retail level. The inspector must address the question of whether or not moisture loss may be the basis for the weight shortages detected and, if so, whether the extent of mositure loss is "reasonable." Even though FDA has available some information that could provide guidance concerning selected foods under limited conditions, the inspector must resort to making judgments as to what is "reasonable." Because the regulations have not quantitatively defined "reasonable variations," a difficult burden is placed on inspectors who further recognize that their judgments may very well be challenged and overturned in court.

The actual means of inspecting packages for compliance also presents a problem for inspectors. One accurate method that has been applied to flour involves performing laboratory analysis of the retail product for water content and calculating the hypothetical weight of the product at a designated moisture content. This approach is, however, very cumbersome, time consuming, and costly. Most State and local enforcement officials prefer the convenience and uniformity of accurate scales that they can use in the retail stores to determine product weights without having to rely on laboratory analyses for theoretical weights.

Adopting amendments to the Federal net weight labeling regulations that minimize inspectors' subjective and speculative judgment clearly would be the approach preferred by State and local enforcement officials.

Economic Aspects of California Proposal

If a minimum weight standard at the retail level were established as requested by the California petitioners, industry asserts that it would have to implement modifications in the food-packaging operations that would be inflationary because the associated costs of these modifications would ultimately be passed on to consumers in the form of higher food costs. Industry maintains that these increased costs may negate the consumer benefits to be derived from the assurance of a minimum weight.

To ensure a minimum weight in the packaged foods, industry could, as the California petitioners request, increase target weights, thereby overfilling most packages. Options that do not provide additional weight are available as well. Food producers could alter food-packaging materials to prevent or retard moisture loss, or they could incorporate more sophisticated machinery to deliver more exact weights with reduced deviations.

Overfilling Packages

Based on a University of California study on 689 lots of food, target weights must be adjusted to 109 percent of the declared label weight (that is, a 9 percent overfill) to reduce the probability of underweight packages to 0.1 percent. Considering the $93.8 billion spent in 1976 on foods subject to moisture loss, assuming a 4 percent overfill to allow for moisture loss, and further assuming that a 4 percent overfill translates into a 4 percent cost increase, GMA estimated that consumers would have to bear the burden of $4 billion in addeds cost. If the overfill were to stimulate only a 2 percent cost increase, the added cost to consumers would be about $2 billion.

The Millers' National Federation estimates that the level of overpack required to accommodate the position advocated by the California petitioners lies in the 5 to 6 percent range. Congressman Don Edwards from the 10th District of California indicated that an error level of 5 percent on each packaged food would result in an extra charge to consumers totaling $1 billion annually.

The economic consequences of overfilling food packages have been addressed during the deliberations with USDA. The costs associated with industry operations and passed on to consumers were considered, as was the consumer perception of the costs as a consequence of the proposed regulation.

Some argue that overfilling a food package while increasing the package cost to compensate does not increase industry's costs, nor would consumers' "real" costs on a per-weight basis increase. In effect, consumers gain additional food for the additional expense.

Nevertheless, increasing the package price while providing an increased quantity of food and leaving the declared label weight on the package unchanged may result in the consumer perception of an apparent increase in the cost of their food. This may generate some confusion in the marketplace. While overfilling would eliminate underweight packages, this practice, in turn, would impede the consumers' ability to make value comparisons among different brands of a given food item. Although identical products packaged by different firms would, in all likelihood, contain the required minimum content of food, the amount of overfill may vary markedly. Thus, a consumer would be unable to make a value comparison based solely on examination of labels.

The claim made that overfilling of packages would be inflationary has been carefully evaluated. FDA and USDA concur that the projected inflation resulting from overfilling as described by industry has been overstated. Nonetheless, a slight but real

additional cost could result from the overfilling approach for some products requiring machinery modifications (see below).

Equipment Modifications

Buying new equipment that can provide greater assurance of compliance with the regulations is another option available to industry. More sophisticated filling machinery that delivers food with increased accuracy, or check-weighing equipment, which automatically weights each package after filling to ensure a minimum content, is available. In either case the expense of purchasing new equipment would be passed to the consumer. The consumer does not necessarily receive additional product, but rather pays for the added assurance that the product is probably not short-weight.

Modification of Packaging Materials

Packaging foods in hermetically sealed containers may be an effective approach in reducing moisture loss for many foods, but several large-volume commodities develop less desirable characteristics when not allowed to "breathe." Flour and rice deteriorate more quickly when stored in air-tight containers. Certain cheeses must be packaged to minimize moisture loss while allowing continued aerobic curing. Moisture must be allowed to escape from baked goods such as bread, pies, and glazed doughnuts to prevent these foods from becoming soggy.

Paper or cardboard packaging now constitutes about 5 to 10 percent of a dry product's retail cost. Depending on the product, GMA stated that introducing a moisture barrier would increase packaging costs by 80 to 90 percent. The Millers' National Federation noted that the packaging for a 5-pound bag of flour costs 2.75 cents. By including a moisture barrier, each package would cost 4.85 cents. However, the lack of porosity in these moisture-proof bags and the resultant air entrapment reduces the packing-line efficiency now available with high-speed machinery. Were a can to be used to package flour, the Millers' National Federation said the package cost would escalate to between 36 and 50 cents a can. GMA reported comparable figures for packaged flour. The American Frozen Food Institute estimated that adding moistureproof barriers would stimulate a 3 to 4 percent cost increase per package, and the Dried Fruit Association of California said there are no economical dried fruit packaging materials that can prevent moisture loss or gain.

The proposed widespread use of moisture barriers presents additional problems of national concern. A heavier reliance on moisture barriers would result in the expanded use of nonrenewable fossil-derived energy sources, and since the moisture barriers are generally not biodegradable, the disposal of spent packages would create an additional environmental burden.

Each of the options discussed above introduces additional cost that must be borne by the consumer. However, certain industries have pointed out that the consequences of increased food costs may be selectively detrimental to firms such as those dealing with seafood and other frozen foods. Because seafood products are more expensive than many other foods, further price increases may drive consumers to seek less expensive alternatives. Similarly they contend that consumers may switch away from frozen foods to other packages not susceptible to moisture loss, for example, canned goods, rather than absorb a price increase.

Uniform Net Weight Standards

Current Federal net weight labeling standards, which allow for "reasonable variations," are less stringent than some State net weight regulations. Since the Supreme Court decision in *Jones* v. *Rath* affirmed the preemptive status of the Federal regulations, packaged foods entering into interstate commerce that are subject to inspection must be examined in accordance with Federal regulations.

Were the Federal regulations amended to require a minimum declared weight as suggested in the California proposal, intrastate businesses could have an economic advantage over interstate firms. Those industries engaged in interstate commerce must pack for more diverse conditions and, consequently, would have to either overpack (assuming extreme conditions of moisture loss) or custom pack (for different geographic regions). Industries serving less diverse climates would have more controlled environmental conditions to contend with and would be able to project moisture losses more accurately, thereby incurring less expense.

Regardless of whether current or amended Federal net weight regulations prevail, those manufactured and packagers involved in intrastate distribution of packaged foods are not subject to Federal regulations, but they must comply with the State regulations. Where the State net weight regulations are more stringent than the Federal regulations, intrastate businesses may be at an economic disadvantage. However, this potential inequity must be resolved by the individual States because no authority exists for FDA intervention in intrastate activities of this type.

Compliance with net weight labeling regulations by most manufacturers and packagers, regardless of ultimate location of the market, can be better achieved by amending the Federal regulations. This conclusion is discussed below.

Proposal

None of the alternatives advocated by the California petition would provide any consumer benefit without introducing disadvantages such as inflation or reduction in the consumers' ability to make value comparisons. The proposal submitted by GMA to establish a National Net Weight Assurance Program and to further develop a cooperative inspection program is not without merit but the mechanism GMA proposes is a cumbersome way of achieving what FDA believes can be accomplished very simply.

Therefore, FDA concludes that the deficiencies in the net weight labeling regulations, as delineated in the foregoing discussion, can be resolved by amending the regulations: (1) to adopt standardized methods and uniform procedures for assessing compliance of packaged foods with the net weight labeling regulations, and (2) to identify those foods subject to moisture loss, classifying them by food category and quantitatively specifying the maximum acceptable levels of moisture loss for each of the food categories.

Procedures

Because State and local inspection procedures can vary appreciably from one location to another during the evaluation of packaged foods for adherence to 21 CFR 101.105(q), there is a need to standardize techniques and methods of sampling and measuring to be employed during the sample examinations. Consequently, FDA, in collaboration with USDA and after technical consultation with the National Bureau of Standards (NBS), proposes to adopt with some modifications the sampling methodology identified as Sampling Category B in the final draft of the revision of National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities," dated December 1977 and modified by memorandum in August 1978. This working draft will soon be superseded by new NBS Handbook 133, "Checking the Net Contents of Packaged Goods," which is not yet published. Numerous comments were received from weights and measures officials and industry

representatives alike in support of the use of NBS Handbook 67.

Identifying the types of tare weights and explicitly defining what is meant by the terms are fundamental aspects of this net weight labeling proposal.

The tare weight has been defined for nonfrozen food products as the weight of the package materials, including adhesives, labels, ties, etc., and the weight of any adhering or absorbed juices, fats, or solids that would normally not be consumed. Any large portions of food adhering to the package materials during the tare weight assessment are to be removed from the package in a manner consistent with usual consumer practices.

The tare weight for frozen food products includes both the weight of the container and any adhering ice crystals.

Certain frozen foods, such as shrimp, are coated by the addition of water or other externally applied solutions just after freezing in order to form a glaze. During frozen storage, this added glaze serves to protect the product from storage-related deterioration. The tare weight for these frozen food products includes the weight of the container and any water or solution added as a glaze. It should be emphasized that the glaze added to these products is not intended for consumption; it serves a specific technological effect in the food.

As previously described in the November 7, 1975 **Federal Register** proposal pertaining to drained weight (40 FR 52172), "* * * it has been the policy of the FDA to regard the packing medium as properly part of the declared net weight, if the packing medium is generally consumed as part of the food. Where solid foods are packed in a salt brine or other medium which is considered inedible and almost always discarded before serving, declaration of drained weight of the food, instead of the net weight, has been recommended * * *" (Also see the December 9, 1977 **Federal Register**, 42 FR 62282, pertaining to drained and filled weight.)

FDA has adopted a tare weight sampling plan for standard-weight nonglass and nonaerosol containers, that is, those individual food packages whose net weights exist in one or more designated sizes, such as 6 oz, 18 oz, 2 lb, etc. The total number of tares for any lot sample size (10, 30, or 50 units) is determined by considering the range of three randomly selected package tares. The broader the tare weight range, which indicates increased tare weight variability, the greater the number of tare weight determinations that would be required. Should a given lot appear to be violative, FDA will determine tare weights for at least 6, 12, or 18 tares from samples numbering 10, 30, or 50 units, respectively.

FDA also proposes to adopt the approach for tare determinations for glass and aerosol packages presented in the draft of the revision of NBS Handbook 67, dated December 1977 and modified by memorandum in August 1978. This revised draft will soon be replaced by new NBS Handbook 133.

Because FDA inspections are usually performed in the plant or warehouse, FDA supports a production lot definition and therefore proposes to define a lot as a collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade.

As stated earlier, the proposed regulation provides for sample sizes of 10, 30, or 50 units, depending on the number of packages in the lot. As a practical matter, however, the FDA sampling practices will rarely result in a sample size of less than 50 because FDA ordinarily will weigh at production or storage sites where larger lot sizes are available. The proposal provides for small lot samplings in those instances where retail lots will be weighed, a relatively rare procedure for FDA but more common for State and local regulatory officials.

The sample size of 10 has been incorporated into the proposed regulation for lots containing 250 or fewer units as described in the National Bureau of Standards revised draft of Handbook 67. FDA is proposing to add the sample size of 50 for lots containing above 3,200 units to provide a sufficiently high sampling density for FDA compliance purposes.

For individual units within a sample, this proposal prescribes maximum allowable short weight variations (MAV) for specified ranges of labeled net weights. The MAV's range from 1 percent for labeled weights exceeding 54.40 pounds to 10 percent for some of the lower weight food packages. FDA has incorporated the proposed MAV's from the NBS revised draft of Handbook 67.

Two criteria must be met when assessing samples for compliance with respect to the net weight labeling regulations: unit net weight requirement and the sample average net weight requirement. The unit net weight requirement specifies that, when considering samples of 10 or 30 units, each unit must meet or exceed the labeled net weight less the combination of the MAV and, where appropriate, the specified moisture allowance (to be discussed shortly). When considering a sample of 50 units, no more than one unit may fail to meet or fail to exceed the labeled net weight less the combination of the MAV and, when appropriate, the specified moisture loss. The sample average net weight requirement establishes that the average net weight of the sample must meet or exceed the labeled net weight, allowing only for moisture loss when appropriate.

Because random weight food packages such as cheeses are often weighed and labeled individually in retail stores and because random-weight packages are stored and handled under more carefully controlled conditions, such packages are less likely to suffer weight deviations from either mechanical filling operations or moisture loss to the same extent as standard-weight packages containing the same product. Consequently, random-weight packages, that is, those individual food packages whose weights are not designated and may be highly variable, should be permitted less weight variation than the standard-weight counterparts. The modifications detailed below reflect these alterations.

Like standard weight packages, random-weight packages must satisfy two criteria, a sample average net weight requirement and a unit net weight requirement, for compliance with the net weight labeling regulations. In addition, tare weights must be determined individually for each random-weight package.

The sample average net weight requirement for random-weight packages establishes that the lot represented by the sample fails if the average net weight of the sample is less than the average of the declared net weights of the individual units in the sample after allowing for designated moisture losses that are specific for random-weight packages. The acceptable designated moisture losses for random-weight packages are established by considering specific moisture loss studies under comparable packaging, handling, and storage conditions. If the sample average net weight is equal to or greater than the average of the declared net weights of the units constituting the sample, that lot represented by the sample is in compliance with the net weight labeling regulations, provided that the following conditions are met. When considering samples of 10 or 30 units, each unit must meet or exceed the labeled net weight less the combination of the MAV as determined by the smallest-weight package contained in the sample and, when appropriate, a designated percentage of the moisture loss explicitly identified by FDA regulations

for those random-weight foods. To remain in compliance with the net weight labeling regulations when considering samples with 50 units, no more than one unit may fall outside the range as described above.

Categories of Foods Subject to Moisture Loss

This document proposes to provide maximum permitted levels of moisture loss for various food categories. In the process of establishing maximum permitted levels of moisture loss for these food classes, FDA considered studies on moisture content and moisture loss available in the literature, and pertinent written information provided to FDA during and shortly after the public hearings on net weight labeling. Consideration was also given to the moisture loss characteristics imparted by the specific packaging materials employed and the effects of average anticipated storage time for each food. FDA proposes to establish moisture loss allowances for certain foods on the basis of similarity with those foods for which data are available. While a variety of sources for moisture loss data were consulted, it should be emphasized that the moisture loss allowances actually proposed are based only on FDA studies.

Standard-weight packaged foods subject to moisture loss have been placed into one of three food categories identified by maximum allowable moisture loss: one category of not more than 1 percent, a second category of not more than 3 percent, and a third category of not more than 4 percent. Foods permitted up to 1 percent moisture loss include frozen fruits and frozen vegetables packaged in cartons. Soft-ripened cheese packaged in loose wrappers are permitted up to 3 percent moisture loss, and flour packaged in kraft paper bags in permitted up to 4 percent moisture loss. Random-weight packaged soft-ripened cheeses are permitted a maximum of 1 percent moisture loss. No moisture loss allowance is proposed for foods other than those foods identified above or those that may be identified by well-defined studies (see below) as legitimately exhibiting moisture loss when properly packaged, handled, and stored.

As noted previously, proposed moisture allowances were designated for certain foods by analogy to similar foods (similar under comparable conditions of processing, packaging, and storage) for which moisture loss data exist. Thus, for example, all frozen fruits and vegetables packaged in cartons would be allowed a 1 percent moisture loss, although data are available only for frozen vegetables.

The Food and Drug Administration has available a limited amount of moisture loss data that were developed under well-defined conditions (Ref. 1). The agency acknowledges that deficiences may exist and that refinements, revisions, and additions of foods to the proposed moisture loss categories may be in order. Additional moisture loss categories may be proposed if justified by submitted data. Other standard-weight and random-weight packaged foods susceptible to moisture loss but not identified in this document may be eligible for moisture loss allowances. Moisture loss studies of appropriate quantity and quality must be submitted to FDA for review before additional moisture loss allowances will be proposed. While other packaged foods such as dried fruits and macaroni and noodle products have been reported to lost moisture during storage, a reasonable judgment regarding an acceptable level of moisture loss could not be made for one of the following reasons: adequate data quantifying moisture loss were not provided to FDA, conditions for data acquisition were improper or ill-defined, or reported ranges of observed moisture loss were too broad to support a recommendation for a proposed level of moisture loss. Providing a sufficiently narrow range of moisture loss for a food under well-defined conditions enables a critical evaluation of the data to be made. This, in turn, enables a tolerance to be proposed that is intended to protect consumer interests while not creating undue hardships for manufacturers and packagers.

Neither consumer nor industry representatives identified unreasonably large deviations due to moisture gain as a problem. In addition, overfilling during packaging is self-limiting from an economic standpoint. Consequently, establishing maximum permitted deviations above the declared weight was not considered further.

During the comment period or thereafter, interested persons having pertinent data on moisture loss characteristics are encouraged to provide the information to FDA. Data describing moisture loss (or gain) under well-defined conditions (temperature, humidity, duration of storage, packaging materials, etc.), as well as a comparison with the most commonly encountered conditions in the retail stores, are specifically solicited. These submissions should be addressed to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

References

A copy of each of the following reference documents has been placed on file with the Hearing Clerk, Food and Drug Administration.

1. Internal FDA Memorandum entitled "Data for Proposed Net Weight Tolerances," February 13, 1979.

2. Internal FDA Memorandum entitled "Net Weight Sampling Plans," October 23, 1978.

3. Internal FDA Memorandum entitled "Net Weight Labeling—Proposed Regulation—Shrinkage Allowance for Random Weight Units of Soft-Ripened Cheese," August 21, 1979.

4. Draft of revised National Bureau of Standards Handbook 67, "Checking Prepackaged Commodities," December 1977 and memoranda updating the draft, August 1978.

The potential environmental effects of this action have been carefully considered, and the FDA has concluded that the action will not significantly affect the quality of the human environment. This action is one of a type for which the agency has determined that the preparation of an environmental impact statement is not required, except in rare and unusual circumstances (21 CFR 25.1(f)(12)). Accordingly, the preparation of an environmental impact analysis report for this action is not required pursuant to 21 CFR 25.1(g).

The agency proposes that the final regulation based on this proposal be made effective 90 days after the date the final regulation is published in the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701, 52 Stat. 1041 as amended, 1046–1048 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(n), 343, and 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 101, as follows:

1. In § 101.105 by revising paragraph (q), to read as follows:

§ 101.105 Declaration of net quantity of contents when exempt.

* * * * *

(q) The declaration of net quantity of contents shall express an accurate statement of the quantity of contents in the package. The quantity of contents shall not be less than the statement of the quantity of contents on the package, except as permitted by § 101.106.

* * * * *

2. By adding new § 101.106 to Subpart F, to read as follows:

§ 101.106 Net weight: compliance determinations and reasonable variations from the labeled quantity.

(a) Compliance with the net weight requirements of § 101.105(q) shall be determined in accordance with the provisions of this paragraph.

(1) *Net weight requirements for standard-weight food packages.* The sample fails if it does not meet both the unit and the average net weight requirements of this paragraph.

(i) *Unit net weight requirement.* (*a*) When considering a sample consisting of 50 units, no more than one unit may weigh less than either the weight obtained by subtracting from the labeled net weight the applicable maximum allowable variation in paragraph (b) (Table 4) of this section, or, when a moisture allowance is permitted, the weight obtained by subtracting from the labeled net weight the combined total of the applicable allowable variation in paragraph (b) of this section and the allowance for moisture loss in paragraph (c) (2), (3), or (4) of this section, as appropriate.

(*b*) When considering a sample consisting of 10 or 30 units, no unit shall weigh less than the appropriate weight obtained in accordance with paragraph (a)(1)(i)(*a*) of this section.

(ii) *Sample average net weight requirement.* The sample average net weight (the average net weight of the units in the sample), analyzed according to the sampling plan in paragraph (a)(3) of this section, is equal to or greater than the labeled net weight. Except for foods listed in paragraph (c) (2), (3), and (4) of this section the average net weight of the units in the sample is equal to or greater than the labeled weight minus the allowance for moisture loss for that food as specified in paragraph (c) (2), (3), or (4) of this section, as appropriate.

(2) *Net weight requirements for random-weight food packages.* The sample fails if it does not meet both the unit and the average net weight requirements of this paragraph.

(i) *Unit net weight requirement.* (*a*) When considering a sample consisting of 50 units, no more than 1 unit may weigh less than either the weight obtained by subtracting from the labeled net weight the maximum allowable variation from paragraph (b) (Table 4) of this section as determined by the smallest weight package contained in the sample, or, when a moisture allowance is permitted, the weight obtained by subtracting from the labeled net weight the combined total of the applicable allowable variation in paragraph (b) (Table 4) of this section as determined by the smallest weight package contained in the sample and the allowance for moisture loss in paragraph (d) of this section.

(*b*) When considering a sample consisting of 10 or 30 units, no unit shall weigh less than the appropriate weight obtained in accordance with paragraph (a)(2)(i)(*a*) of this section.

(ii) *Sample average net weight requirement.* The sample average net weight (the average net weight of the units in the sample), analyzed according to the sampling plan in paragraph (a)(3) of this section, is equal to or greater than the average of the labeled net weights. Except for foods listed in paragraph (d) of this section, the average net weight of the units in the sample is equal to or greater than the labeled weight minus the allowance for moisture loss for that food as specified in paragraph (d) of this section.

(3) *Sampling plan.* (i) A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade constitutes a lot.

(ii) (*a*) The tare weight for nonfrozen food products shall be the weight of the package materials, including adhesives, labels, ties, etc., and the weight of any adhering or absorbed juices, fats, or solids that would normally not be consumed. Any large portions of food adhering to the package materials during the tare weight assessment are to be removed from the package in a manner consistent with usual consumer practices.

(*b*) The tare weight for frozen products shall be the weight of the container and any ice crystals adhering to the surface of the package materials.

(iii) The sample for determining the quantity of contents shall consist of 10, 30, or 50 units (primary containers of food) chosen at random from the lot. The number of units to be chosen depends on lot size and shall be determined in accordance with Table 1 of this paragraph.

Table 1.—*Sample Sizes for Determination of Compliance With Net Weight Declaration*

Lot size (primary containers)	Sample size (number of units or primary containers of food)
250 or less	10
251 to 3,200	30
3,201 or above	50

(iv) (*a*) The total number of tare weights for any standard weight lot sample described in this section is determined by considering the range of three randomly selected package tares in accordance with Table 2 of this paragraph.

Table 2.—*Number of Tare Weight Determinations Required for Assessment of Compliance With Net Weight Declaration*

Range of three tares (ounces or grams)	Minimum number of tares required
⅛ oz (3.54 g) or less	3
More than ⅛ oz (3.54 g) to and including 3/16 oz (5.32 g)	6
More than 3/16 oz (5.32 g) to and including ¼ oz (7.09 g)	9
More than ¼ oz (7.095 g) to and including 5/16 oz (8.86 g)	[1] 12
More than 5/16 oz (8.86 g)	[1] 15

[1] If only 10 units are to be sampled because the lot size was 250 units or less, all 10 tares shall be measured.

(*b*) If the lot appears to be violative, at least 6, 12, or 18 tare-weight determinations shall be required for samples numbering 10, 30, or 50 units, respectively.

(*c*) For glass or aerosol containers, the total number of tare weights to be obtained for lot samples of 10, 30, or 50 units shall be based on an initial tare sample of 6, 12, or 18 randomly chosen units, respectively; the numbers of tares shall be increased where necessary to reach the total number, as determined by the ratio of the range between the lowest and highest unit net weights (RC) and the range between the lowest and highest tare weights (RT). Based on the RC/RT ratio the total number of empty aerosol or glass containers to be used in determining the tare weight shall be in accordance with the sampling schedule in Table 3 of this paragraph.

Table 3.—*Total Number of Empty Aerosol or Glass Containers To Be Used In Determining the Tare Weight*

RC/RT ratio	Total number of empty aerosol or glass containers		
	Sample size: 10	Sample size: 30	Sample size: 50
0.2 or less	10	30	50
0.21 to 0.40	10	29	49
0.41 to 0.60	10	28	46
0.61 to 0.80	9	26	44
0.81 to 1.00	8	24	40
1.01 to 1.20	8	23	37
1.21 to 1.40	8	21	34
1.41 to 1.60	7	19	31
1.61 to 1.80	6	17	28
1.81 to 2.00	6	15	25
2.01 to 2.20	6	14	23
2.21 to 2.40	6	13	21
2.41 to 2.60	6	12	19
2.61 to 2.80	6	12	18

(*d*) Tare weights for each random weight package must be determined individually.

(b) *Maximum allowable variation applicable to units.* The maximum allowable variation below the labeled

net weight appears in Table 4 of this paragraph.

Table 4.—*Maximum Allowable Variation Below the Net Weight* [1]

Labeled net weight, pounds or ounces	Maximum allowable variation of the net weight	
	Decimal lb.	Fractional oz.
0.026 lb or less	0.001	.....
0.41 oz or less		
More than 0.026 lb to and including 0.04 lb	0.002	1/32
More than 0.41 oz to and including 0.64 oz		
More than 0.04 lb to and including 0.08 lb	0.004	1/16
More than 0.64 oz to and including 1.28 oz		
More than 0.08 lb to and including 0.12 lb	0.008	1/8
More than 1.28 oz to and including 1.92 oz		
More than 0.12 lb to and including 0.18 lb	0.012	3/16
More than 1.92 oz to and including 2.88 oz		
More than 0.18 lb to and including 0.26 lb	0.016	1/4
More than 2.88 oz to and including 4.16 oz		
More than 0.26 lb to and including 0.34 lb	0.020	5/16
More than 4.16 oz to and including 5.44 oz		
More than 0.34 lb to and including 0.46 lb	0.024	3/8
More than 5.44 oz to and including 7.36 oz		
More than 0.46 lb to and including 0.58 lb	0.028	7/16
More than 7.36 oz to and including 9.28 oz		
More than 0.58 lb to and including 0.70 lb	0.032	1/2
More than 9.28 oz to and including 11.20 oz		
More than 0.70 lb to and including 0.84 lb	0.036	9/16
More than 11.20 oz to and including 13.44 oz		
More than 0.84 lb fo and including 0.94 lb	0.40	5/8
More than 13.44 oz to and including 15.04 oz		
More than 0.94 lb to and including 1.08 lb	0.044	[2] 11/16
More than 15.04 oz to and including 17.28 oz		
More than 1.08 lb to and including 1.26 lb	0.048	3/4
More than 1.26 lb to and including 1.40 lb	0.052	[2] 13/16
More than 1.40 lb to and including 1.54 lb	0.056	7/8
More than 1.54 lb to and including 1.70 lb	0.060	[2] 15/16
More than 1.70 lb to and including 1.88 lb	0.064	1
More than 1.88 lb to and including 2.14 lb	0.070	1 1/8
More than 2.14 lb to and including 2.48 lb	0.078	1 1/4
More than 2.48 lb to and including 2.76 lb	0.086	1 3/8
More than 2.76 lb to and including 3.20 lb	0.094	1 1/2
More than 3.20 lb to and including 3.90 lb	0.11	1 3/4
More than 3.90 lb to and including 4.70 lb	0.12	2
More than 4.70 lb to and including 5.80 lb	0.14	2 1/4
More than 5.80 lb to and including 6.80 lb	0.15	2 1/2
More than 6.80 lb to and including 7.90 lb	0.17	2 3/4
More than 7.90 lb to and including 9.40 lb	0.19	3
More than 9.40 lb to and including 11.70 lb	0.22	3 1/2
More than 11.70 lb to and including 14.30 lb	0.25	4
More than 14.30 lb to and including 17.70 lb	0.28	4 1/2
More than 17.70 lb to and including 23.20 lb	0.31	5
More than 23.20 lb to and including 31.60 lb	0.37	6
More than 31.60 lb to and including 42.40 lb	0.44	7
More than 42.40 lb to and including 54.40 lb	0.50	8
More than 54.40 lb		[2] 1

[1] For conversion into metric units the following conversion factors are provided:
1 lb equals 0.4536 kilogram.
1 ounce equals 28.35 grams.
[2] Percent.

(c) *Maximum allowances for moisture loss for standard-weight food packages.* Maximum allowances for moisture loss, expressed as a percentage of the labeled net weight, for specified foods with packaging materials identified are as follows:

(1) No allowance for moisture loss is permitted if:

(i) The food is not subject to moisture loss, or

(ii) The food is packaged in a hermetically sealed container, or

(iii) The average net weight of all of the Units of the sample, at the time of initial shipment in interstate commerce, is less than the declared weight.

(2) One percent for the following foods: Frozen fruits and frozen vegetables packaged in cartons.

(3) Three percent for the following foods: Cheeses, natural, soft-ripened (e.g., camembert and leiderkranz) packaged in loose wrappers.

(4) Four percent for the following foods: Flours packaged in kraft paper bags.

(d) *Maximum allowances for moisture loss for random-weight food packages.* Maximum allowances for moisture loss, expressed as a percentage of the labeled net weight, for specified foods are as follows: One percent for the Following foods: Cheeses, natural, soft-ripened, (e.g., Camembert and liederkranz).

Interested persons may, on or before November 6, 1980 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 16, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–23686 Filed 8–4–80; 8:45 am]

BILLING CODE 4110–03–M

federal register

Friday
August 8, 1980

Part III

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 on construction projects 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 Division, 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 Determination Decision.

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.

Mississippi:	
MS80–1079	June 27, 1980.
MS80–1084	July 25, 1980.
Missouri: MO79–4094	Nov. 9, 1979.
Montana: MT80–5120; MT80–5121; MT80–5122.	June 27, 1980.
New Mexico: NM80–4057	July 18, 1980.
Pennsylvania:	
PA79–3005	Mar. 16, 1979.
PA80–3025	Apr. 11, 1980.
PA80–3032	May 31, 1980.
PA80–3043	July 7, 1980.
Wisconsin: WI80–2037	May 23,1980.

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.

Iowa:	
IA78–4102(IA80–4043); IA78–4103(IA80–4044); IA78–4104(IA80–4045); IA78–4105(IA80–4046); IA78–4109(IA80–4050).	Nov. 24, 1978.
IA78–4111(IA80–4052)	Nov. 11, 1978.
Kansas: KS79–4090(KS80–4069)	Oct. 5, 1979.
Ohio:	
OH77–2057 (OH80–2051); OH77–2058 (OH80–2060).	Apr. 15, 1977.
OH77–2086 (OH80–2071)	May 20, 1977.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 1st day of August 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

DECISION NO. MS80-1079 - MOD. #2
(45 FR 43594 - June 27, 1980)
Bolivar, Forrest, Jones, Hancock, Harrison, Jackson, Pearl River, Issaquena, Sharkey, Sunflower, Washington, Le Flore, Lowndes, Yalobusha, and Warren Counties, Mississippi.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Omit all Power Equipment Operator and Truck Driver classifications and wage rates for Warren County.					
ADD:					
Warren County					
POWER EQUIPMENT OPERATORS:					
GROUP I	$10.53	.50	.30		.05
GROUP II	9.73	.50	.30		.05
GROUP III	9.48	.50	.30		.05
GROUP IV	8.88	.50	.30		.05
GROUP V	7.23	.50	.30		.05

GROUP I: Engineer, operating under air pressure.

GROUP II: Mechanic

GROUP III: Asphalt plant, backhoe, blacksmith, boom tractor, bulldozer, central mixing plant, cherry picker, clamshell, crane, derrick, derrick car, derrick boat, dragline, dredge, elevating grader, excavator (power belt), fork lift (5 tons & over), hoists (2 drums in active use), locomotive engineer, marine engineer (chief), master pilot, mixermobile, motor patrol and similar equipment, paver (21 c. f. or larger), pile driver, recharger, scoop (skimmer), scraper, shovel, trenching machine (over 18" bucket line width), turnapull (DW-10 and similar pull type scrapers), Traxcavator and similar endloaders, welder, welding machines and pumps (operating 2 to 6 machines), well driller, well point pumps.

GROUP IV: Asphalt spreader (bituminous distributor), asphalt spreader (bituminous mixer), backfilling machine, conveyor, drill (earth), finishing machine, fireman,, forklift (over 2 tons and less than 5 tons), heating plant, hoist (one drum), marine engineer's assistant, mixer payloader and similar endloaders, pilot, power generating plant, pump (concrete), roller, scoopmobile, tractor (with power take-off), trenching machines (18" or smaller bucket line width), tugboat, winch truck and tractor, small rubber tire with backhoe attachment.

GROUP V: Air compressor, batch scale, deckhand, forklift (2 tons & under), form grader, locomotive hostler, motorboat (in or outboard), oiler, pump, roughneck, scowman, tractor (with attachments), welding machine.

DECISION NO. MS80-1079 (Cont'd)

ADD: (continued)
Warren County

POWER EQUIPMENT OPERATORS (cont'd)

Booms, including jib:
50¢ per hour above regular rate - 100 feet to and including 200 feet.

75¢ per hour above regular rate - 201 feet to and including 300 feet.

$1.00 per hour above regular rate - 301 feet and above.

Operators servicing other crafts shall draw rate of pay not less than journeyman rate of craft being serviced.

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)).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Warren County:					
Glaziers	$9.60				
Laborers	3.10				.02
Plumbers; Pipefitters	12.24	.55	.67	c	
Sprinkler fitters	12.80	.85	1.20		.08
Hancock, Harrison, Jackson, and Pearl River Counties:					
Electricians:					
Electricians	12.60	5%	3%+2%		1/8%
Cable Splicers	12.85	5%	3%+2%		1/8%
Line Construction:					
Linemen	12.60	5%	3%+2%		1/8%
Cable Splicers	12.85	5%	3%+2%		1/8%
Plumbers and Steamfitters	11.43	.56	.75	.05	
Sprinkler Fitters	12.80	.85	1.20		.08

DECISION NO. MS80-1084 - MOD. #1
(45 FR 49815 - July 25, 1980)
Hinds County, Mississippi

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT:					
Carpenters:					
Soft Floor Layers	$ 9.20	.45	.35		.10
CHANGE:					
Carpenters:					
Carpenters	9.65	.45	.35		.10
Power saw operator (1 hp. or over	9.90	.45	.35		.10
Fiber glass insulation application	9.80	.45	.35		.10
Millwrights	10.25	.45	.35		.10
Piledrivermen	10.00	.45	.35		.10
Glaziers	9.60				.02
Sprinkler Fitters	12.80	.85	1.20		.08

DECISION #MO79-4094 - Mod. #3
(44 FR 65310 - November 9, 1979)
Franklin, Jefferson, Lincoln, St. Charles, Warren Counties & City & County of St. Louis, Missouri

Omit:					
Glaziers (St. Louis County): Glaziers(installing of art glass; repairing, cleaning, cementing & waterproofing in connection with the restoration of stained and leaded glass windows)					
Inside	$8.17	50% of premium	1.00	a+b	
Outside	8.86	50% of premium	1.00	a+b	
Add:					
Glaziers (St. Louis County): Glaziers(installing of art glass; repairing, cleaning, cementing & waterproofing in connection with the restoration of stained and leaded glass windows)	8.86	50% of premium	1.00	a+b	

STATEWIDE, MONTANA

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS					
Group 1	$ 9.80	.70	.60	.20	.05
PAINTERS					
Area 1					
Brush or roller, pot tender, preparatory work, paper or vinyl hanger	11.44	.51	.35		.03
Wet sandblasting, brush or roller apllication of cold tar epoxies and acid resistant materials	13.44	.51	.35		.03
Spray application of cold tar, epoxies and acid resistant materials	16.27	.51	.35		.03
Structural steel: Brush or roller	12.94	.51	.35		.03
Perfa-taping	11.94	.51	.35		.03
POWER EQUIPMENT OPERATORS					
Hot plant oiler, 100 ton per hour	11.68	.87	.75	.50	.07
Hydralift & similar type	12.09	.87	.75	.50	.07
Rubber tired front end loader, over 3cy. to and including 5cy.	12.31	.87	.75	.50	.07
Washing and screening plant oiler	11.68	.87	.75	.50	.07
Chip or gravel spreader, self propelled	11.91	.87	.75	.50	.07
Grade setter	11.65	.87	.75	.50	.07
ADD:					
POWER EQUIPMENT OPERATORS					
Hoist Operator, Single drum	11.96	.87	.75	.50	.07
Mechanic shop (Dec. 1 to April 1)	11.89	.87	.75	.50	.07
Omit:					
Line Construction: Phrase stating: "on jobs over 69 K.V. and all work on high-way lifhting and traffic control systems" - is not applicable to Line Construction.					

DECISION #MT80-5121 Mod. #3
45 FR 43608-June 27, 1980

STATEWIDE, MONTANA

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$13.87	1.375	1.10		.05
BRICKLAYERS					
Area 4	12.15	.70	.50		
Area 5	14.15		.55		
Area 7	12.75	.75	.75		
CARPENTERS					
Area 8					
Carpenters	11.28	.85	1.00		.06
Millwrights	12.28	.85	1.00		.06
Piledrivermen, Sawmen	11.43	.85	1.00		.06
LABORERS					
Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure, and Yellowstone Cos.					
Group 1	9.60	.70	.60		.05
Group 2	9.82	.70	.60		.05
Group 3	9.85	.70	.60		.05
Carter, Custer, Dawson, Fallon, Powder River, Prairie, and Wibaux Counties.					
Group 1	9.45	.70	.60		.05
Group 2	9.67	.70	.60		.05
Group 3	9.70	.70	.60		.05
MARBLE MASONS					
Area 5	12.15	.70	.50		
PAINTERS					
Area 4					
Brush, roller, paper or vinyl hanger, preparatory work, pot tender	11.44	.51	.35		.03
Wet sandblasting, brush or roller application of cold tar epoxies and acid resistant materials	13.44	.51	.35		.03

DECISION #MT80-5121 Mod.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Spray application of cold tar epoxies and acid resistant materials	16.27	.51	.35		.03
Structural steel: brush or roller	12.94	.51	.35		.03
Perfa-taping	11.94	.51	.35		.03
ADD:					
LINE CONSTRUCTION					
Statewide, except for Flathead, Lake, and Lincoln Counties.					
Lineman, Pole Sprayer	12.90	.45	3%+.50		½%
Cable Splicer	13.80	.45	3%+.50		½%
Line Equipment Operator and Powderman	11.40	.45	3%+.50		½%
Groundman	9.23	.45	3%+.50		½%
Flathead, Lake, and Lincoln Counties.					
Lineman	12.32	.45	3%+.50		½%
Cable Splicer	13.71	.45	3%+.50		½%
Pole Sprayer	10.95	.45	3%+.50		½%
Line Equipment Operator	10.50	.45	3%+.50		½%
Powderman, Jackhammerman, and Compressorman	9.11	.45	3%+.50		½%
Groundman	8.54	.45	3%+.50		½%
Tree Trimmer	11.35	.45	3%+.50		½%
OMIT:					
Lewis & Clark County from Area 5 in the Roofer's classification.					

DECISION #MT80-5122 - Mod. #3
(45 FR 43624-June 27, 1980)
Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow, and Valley Counties:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$13.87	$1.375	$1.10		.05
Bricklayers:					
Area 5	12.75	.75	.75		
Carpenters:					
Area 8:					
Millwrights	11.69	.85	1.00		.04
Piledrivermen	10.94	.85	1.00		.04
Marble Masons:					
Area 3	12.75	.75	.75		
Painters:					
Areas 2 and 3:					
Brush or roller, pot tender, paper or vinly hanger, and preparatory work	11.44	.51	.35		.03
Wet sandblasting, brush or rller application of cold tar epoxies and acid resistant materials	13.44	.51	.35		.03
Spray application of cold tar epoxies and acid resistnat materials	16.27	.51	.35		.03
Perfa-taping	11.94	.51	.35		.03

DECISION NO. NM80-4057 - MOD. #1
(45 FR 48426 - July 18, 1980
Statewide, New Mexico

OMIT:
UNDER DESCRIPTION OF WORK: BUT DOES NOT INCLUDE HEAVY CONSTRUCTION ON THE NAVAJO INDIAN RESERVATION.

BUILDING & HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS-STONEMASONS					
Zone I-A	$11.31	.77	.50		.10
Zone I-B	12.56	.77	.50		.10
Zone I-C	13.56	.77	.50		.10
Zone II	11.41	.77	.50		.10
Zone III	12.41	.77	.50		.10
Zone IV	11.51	.77	.40		.10
Zone V	12.51	.77	.40		.10
Zone VI	10.81	.77	.40		.10
Zone VII	11.61	.77	.40		.10
Zone VIII	12.24	.77	.30		.10
Zone IX	10.99	.77	.30		.10

BRICKLAYERS' ZONE DEFINITIONS

ZONE I - Union, Harding, Santa Fe, Valencia, Torrence, Taos, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo and Los Alamos Counties
From basing point of Albuquerque Main Post Office:
Zone I-A - 0 to 25 road miles
Zone I-B - 25 to 50 road miles
Zone I-C - Over 50 road miles
ZONE II - Curry and Roosevelt Counties
ZONE III - DeBaca, Guadalupe and Quay Counties
ZONE IV - Chaves County
ZONE V - Lincoln County
ZONE VI - Lee and Eddy Counties
ZONE VII - Otero Counties
ZONE VIII - Luna and Grant Counties, communities of Silver City, Bayard, Central, Hurley and new town site of Tyrone; Hidalgo and Sierra Counties
ZONE IX - Dona Ana County

DECISION NO. NM80-4057 - MOD. #1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
OMIT: (Cont'd)					
LATHERS:					
Zone I	$11.64	.77			.06
Zone II	12.56	.77			.01
Zone III	8.98	.77			.01

LATHERS ZONE DEFINITIONS

ZONE I - Catron, Grant, Bernalillo, Roosevelt, Union, Sandoval, San Juan, Socorro, Torrance and Valencia Counties
ZONE II - Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe and Taos Counties
ZONE III - Dona Ana and Otero Counties

ADD:					
BUILDING & HEAVY CONSTRUCTION					
BRICKLAYERS-STONEMASONS:					
Zone I-A	12.11	.77	.40		.10
Zone I-B	13.61	.77	.40		.10
Zone I-C	14.36	.77	.40		.10
Zone II	12.20	.77	.50		.10
Zone III	13.45	.77	.50		.10
Zone IV	12.31	.77	.40		.10
Zone V	13.56	.77	.40		.10
Zone VI-A	11.41	.77	.40		.10
Zone VI-B	12.66	.77	.40		.10
Zone VII	12.01	.77	.40		.10
Zone VIII	12.89	.77	.40		.10
Zone IX	11.39	.77	.30		.10

DECISION NO. NM80-4057 - MOD. #1

BRICKLAYERS' ZONE DEFINITIONS

ADD:
ZONE I - Union, Harding, Santa Fe, Valencia, Torrance, Taos, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo, and Los Alamos Counties
From basing point of Albuquerque Main Post Office:
Zone I-A - 0 to 25 road miles
Zone I-B - 25 to 50 road miles
Zone I-C - Over 50 road miles
ZONE II - Curry and Roosevelt Counties
ZONE III - DeBaca, Guadalupe, and Quay Counties
ZONE IV - Chaves County
ZONE V - Lincoln County
ZONE VI-A - Lee and Eddy Counties (except at mine and refinery sites outside municipal limits)
ZONE VI-B - Lee and Eddy Counties (employees at mine and refinery sites outside municipal limits)
ZONE VII - Otero County
ZONE VIII - Luna and Grant Counties, Communities of Silver City, Bayard, Central, Hurley, and new town site of Tyrone; Hidalgo and Sierra Counties
ZONE IX - Dona Ana County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
LATHERS:					
Zone I	$11.40	1.10	1.30		.20
Zone II	12.90	1.10	1.30		.20
Zone III	13.65	1.10	1.30		.20

LATHERS BASING POINT & AREA DEFINITIONS

Alamogordo, Albuquerque, Antesia, Bayard, Belen, Carlbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rosa, Silver City, Socorro, Taos, Tucumcari.

ZONE I - Jobs within 15 miles of base points
ZONE II - Jobs 15 to 35 miles
ZINE III - Jobs 35 miles and more

DECISION NO. NM80-4057 - MOD. #1

CHANGE: BUILDING & HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CARPENTERS:					
Dwelling houses & apartments not to exceed two stories in height:					
Zone I-A	$ 8.15	1.10	1.30	(.65)	.20
Zone I-B	9.65	1.10	1.30	(.65)	.20
Zone I-C	10.40	1.10	1.30	(.65)	.20
CEMENT MASON:					
Area I	10.07	.77	.70		.20
Area II:					
Zone 1	10.07	.77	.70		.20
Zone 2	11.32	.77	.70		.20
Zone 3	11.57	.77	.70		.20
Cement Masons (Residential	8.67	.77	.70		.20
Cement Masons (Heavy)	10.07	.77	.70		.20
CEMENT MASONS:					
Composition & Machine Oprs.					
Area I	10.32	.77	.70		.20
Area II:					
Zone 1	10.32	.77	.70		.20
Zone 2	11.57	.77	.70		.20
Zone 3	11.82	.77	.70		.20
ELEVATOR CONSTRUCTORS: Bernalillo, Catron, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union and Valencia Cos.:					
Elevator Constructors	12.98	.895	.69	4%+b+c	.035
Elevator Constructors' Helpers	70+JR	.895	.69	4%+b+c	.035

DECISION NO. NM80-4057 (Cont'd)

CHANGE: (Cont'd) COMMERCIAL LINE WORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
ZONE I					
Linemen - technicians	$13.45	.60	3%+.70		½%
Cable splicers	14.80	.60	3%+.70		½%
Equipment Operator (includes helicopter op.)	12.78	.60	3%+.70		½%
Equipment Mechanic (includes helicopter mechanic)	11.70	.60	3%+.70		½%
Powderman	11.70	.60	3%+.70		½%
Groundman & Jackhammer Oprs.	9.55	.60	3%+.70		½%
ZONE II					
Linemen - technicians	14.53	.60	3%+.70		½%
Cable splicers	15.88	.60	3%+.70		½%
Equipment Operator (includes helicopter op.)	13.86	.60	3%+.70		½%
Equipment Mechanic (includes helicopter mechanic)	12.78	.60	3%+.70		½%
Powderman	12.78	.60	3%+.70		½%
Groundman & Jackhammer Oprs.	10.63	.60	3%+.70		½%
ZONE III					
Linemen - technicians	15.33	.60	3%+.70		½%
Cable splicers	16.68	.60	3%+.70		½%
Equipment Operator (includes helicopter op.)	14.66	.60	3%+.70		½%
Equipment Mechanic (includes helicopter mechanic)	13.58	.60	3%+.70		½%
Powderman	13.58	.60	3%+.70		½%
Groundman & Jackhammer Oprs.	11.43	.60	3%+.70		½%
ZONE IV					
Linemen - technicians	16.81	.60	3%+.70		½%
Cable splicers	18.16	.60	3%+.70		½%
Equipment Operator (includes helicopter op.)	16.14	.60	3%+.70		½%
Equipment Mechanic (includes helicopter mechanic)	15.06	.60	3%+.70		½%
Powderman	15.06	.60	3%+.70		½%
Groundman & Jackhammer Oprs.	12.91	.60	3%+.70		½%

DECISION NO. NM80-4057 (Cont'd)

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe

ZONE II - Extending up to 20 miles beyond zone 1

ZONE III - Extending up to 30 miles beyond zone 1

ZONE IV - Anything beyond 30 miles from zone 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE: (cont'd)					
CABLE SPLICERS:					
Zone I					
1-A	$14.80	.60	3%+.70		3/4%
1-B	15.88	.60	3%+.70		3/4%
1-C	16.68	.60	3%+.70		3/4%
1-D	18.16	.60	3%+.70		3/4%
Zone II	16.68	.60	3%+.70		3/4%
ELECTRICIANS:					
Zone I					
1-A	13.45	.60	3%+.70		3/4%
1-B	14.53	.60	3%+.70		3/4%
1-C	15.33	.60	3%+.70		3/4%
1-D	16.81	.60	3%+.70		3/4%
Zone II	15.33	.60	3%+.70		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
DECISION NO. PA79-3005 - MOD. #7 (44 FR 16320 - March 16, 1979 Lycoming County, Pennsylvania					
CHANGE: Carpenters	$11.86	.60	.70		.05
DECISION #PA80-3025-Mod. #4 (45 FR 25015 - April 11, 1980) Adams and York Counties, Pennsylvania					
Change: Carpenters (Adams County)	11.86	.60	.70		.05
DECISION #PA80-3032-Mod. #3 (45 FR 36767 - May 31, 1980) Columbia, Montour, and Snyder Counties, Pennsylvania					
Change: Carpenters	11.86	.60	.70		.05
DECISION #PA80-3043-Mod. #2 (45 FR 45849 - July 7, 1980) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania					
Change: Carpenters	11.86	.60	.70		.05

DECISION NO. WI80-2037 - MOD. #3
(45 FR 35150 - May 23, 1980)
Columbia, Dane, Iowa, and Sauk Counties, Wisconsin

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Building					
General laborer, building wreckers	$10.32	.55	.50		.03
Vibrator, Air tamper, Mortar Mixer, Sand Blast mixer, Hod Carrier	10.47	.55	.50		.03
Pneumatic Tool Operator, Air Hammer, Jack Hammer, Air Spade Operators	10.57	.55	.50		.03

SUPERSEDEAS DECISION

STATE: Iowa
COUNTY: Clinton
DECISION NO.: IA80-4043
DATE: Date of Publication
Supersedes Decision No.: IA78-4102, dated November 24, 1978 in 43 FR 55164
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
ASBESTOS WORKERS	13.18	.55	1.00		.10
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	11.25		.75		
CARPENTERS:					
Carpenters	11.00	.60	.90		.04
Piledrivermen	11.50	.60	.90		.04
Millwrights	15.00	.65	1.30		.25
CEMENT MASONS	12.02	.70	.60		
ELECTRICIANS:					
Electricians	13.29	.70	7.5%		.03
Cable splicers	14.29	.70	7.5%		.03
GLAZIERS	12.86	.75	1.00		.02
IRONWORKERS	13.87	.75	.375		.07
LABORERS:					
GROUP 1 - Common laborers	10.83	.40	.60		.05
GROUP 2 - Operator on air or power tools; mortar mixer man; any work 35 ft. high or over; cement dumper, puddlers or vibrator man and men working with concrete pump hose; ditch work 8 ft. below ground level; any man working with creosote materials	11.08	.40	.60		.05
GROUP 3 - Cutting torch burner; caisson & coffer-dam workers	11.13	.40	.60		.05
MARBLE SETTERS	11.50	.50	1.30		
PAINTERS:					
Brush	12.37	.60	1.25		.22
Spray; Structural steel	12.87	.60	1.25		.22
PLASTERERS	11.25		.75		
PLUMBERS & STEAMFITTERS	13.70	.61	1.09		.15
ROOFERS	12.65		.80		
SHEET METAL WORKERS	12.92	.75	1.25		.14
SOFT FLOOR LAYERS	11.00	.60	.90		.04
SPRINKLER FITTERS	14.10	.85	1.20		.08
TERRAZZO WORKERS	11.50	.50	1.30		
TILE SETTERS	11.50	.50	1.30		

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					
POWER EQUIPMENT OPERATORS:					
GROUP 1	13.80	1.00	.80		.08
GROUP 2	12.40	1.00	.80		.08
GROUP 3	11.35	1.00	.80		.08

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - All hoists or steel erecting equipment: Crane, Shovel, Clamshell, Dragline, Backhoe, Derricks, Tower Crane, Cable Way, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Operator; Dipper Dredge Craneman, Dual Purpose Truck (boom or winch); Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 operators required); Pile Driver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Haiss Loader, Asphalt Pug Mill, Fireman & Drier, Concrete Pump, Concrete Spreader (servicing 1 paver); Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LeTourneaupull & similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement & Gravel Batch Plants (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer Self-Propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-Propelled Sheep Foot Roller or Compactor (used in conjunction with a Grading Spread), Asphalt Spreader Screed Operator, Apsco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. cap. or working at heights above 28 ft.), Concrete Conveyors.

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP 2 - Asphalt Booster, Fireman & Pump Operator at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machine, Form Grader With Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor without Power attachments, Dope Pot (agitating motor), Dope Chop Machine, Distributor (back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work; Self-Propelled Roller or Compactor (other than provided for above), Pump Operator (more than 1 well point pump), Portable Crusher Operator, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller-Kenyon Cement Pump or similar machines; Air Compressor (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machine (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plants (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-Propelled Curing Machine

GROUP 3 - Oiler, Mechanic's Helper, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine.

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: Iowa COUNTY: Des Moines
DECISION NO. IA80-4044 DATE: Date of Publication
Supersedes Decision No. IA78-4103, dated November 24, 1978 in 43 FR 55165
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.18	.55	1.00		.10
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	13.00		.20		
CARPENTERS:					
Carpenters	12.85	1.00	1.00		.04
Millwrights & Piledrivers	13.55	1.00	1.00		.04
CEMENT MASONS	11.15				
ELECTRICIANS	14.40	.60	.50		3/4%
GLAZIERS	12.86	.75	1.00		.02
IRONWORKERS	13.80	.55	1.05		.06
LABORERS:					
Group 1 - common laborers, signal men, wrecking deck hand	8.77	.30			
Group 2 - plaster tender, mortar mixer, mason tender, stone & marble setter tender, drill operator, jackhammer men, air tamper, air spade (electric or pneumatic), spraying equipment & all mechanically operated tools, excavation work over 6 ft. deep below ground level or basement level	8.93	.30			
Group 3 - tile layers (sewers)	9.03	.30			
Group 4 - gunniting & sandblasting	9.14	.30			
Group 5 - tunnel & sewer mucker & miner over 6 ft. deep, Caisson worker & drill operator in tunnel & caisson, powderman	9.24	.30			

DECISION NO. IA80-4044

BUILDING, WATER TREATMENT & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Group 1 - cable splicers, linemen, welder, technicians, all rigs setting assembled "H" fixtures and steel transmission structures	11.96	.45	7%	a	1/2%
Group 2 - groundmen, truck driver (without winch), experienced (not less than 6 months)	7.77	.45	7%	a	1/2%
Group 3 - groundmen, truck driver (with winch)	7.89	.45	7%	a	1/2%
Group 4 - blaster, special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures)	9.57	.45	7%	a	1/2%
Group 5 - groundmen (1st 6 months)	6.58	.45	7%	a	1/2%
PAINTERS:					
Group 1 - brush	11.75		.50		
Group 2 - rollers	11.85		.50		
Group 3 - sign	12.25		.50		
Group 4 - structural steel over 25 ft. from the ground or floor, bridges, water towers & stage work	12.45		.50		
Group 5 - spray gun & sandblasting	12.75		.50		
PLASTERERS	10.78				
PLUMBERS & PIPEFITTERS	14.20	.65	1.55		.05
ROOFERS	11.13				
SHELT METAL WORKERS	12.92	.75	1.25		.14

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS	12.85	1.00	1.00		.04
SPRINKLER FITTERS	14.10	.85	1.20		.08
TRUCK DRIVERS:					
Group 1 - warehousemen, helpers, teamsters, mechanic helpers, greasers, single axle flat beds & dump trucks, pulling air compressors & welding machines, batch trucks 2-34E batches or less, chip spreader	8.02	13.50 p/w			
Group 2 - cheater axle, tandems, 6 wheel trucks, semi-trailers, carryall, winch, mixers, batch over 2-34E	8.23	13.50 p/w			
Group 3 - track trucks, Euclid type truck, oil distributors, front & rear, all types of dumpsters, pavement breakers	8.33	13.50. p/w			
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

FOOTNOTE:

a - seven paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving 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)).

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group 1	13.80	1.00	.80		.08
Group 2	12.40	1.00	.80		.08
Group 3	11.35	1.00	.80		.08

Power Equipment Operators Classification Definitions:

GROUP 1 - All hoists or steel erecting equipment; Crane, Shovel, Clamshell, Dragline, Backhoe, Derrick, Tower Crane, Cable Way, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Operator, Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 operators required), Pile Driver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Hatss Loader, Asphalt Pug Mill, Fireman and Drier, Concrete Pump, Concrete Spreader (servicing 1 paver), Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LeTourneaupull and similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement and Gravel Batch Plants (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer Self-propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-propelled Sheepsfoot Roller or Compactor (used in conjunction with a Grading Spread), Asphalt Spreader Screen Operator, Apsco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. capacity or working at heights above 28 ft.), Concrete Conveyors

GROUP 2 - Asphalt Booster, Fireman and Pump Operator at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machine, Form Grader with Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor without Power attachment, Dope Pot (agitating Motor), Dope Chop Machine, Distributor (Back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work, Self-propelled Roller or Compactor (other than provided for above), Pump Operator (more than 1 well point pump), Portable Crusher Operator, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller Kenyon Cement Pump or similar machines; Air Compressor (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machine (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plants (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-propelled curing machine

GROUP 3 - Oiler, Mechanic's Helper, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine

SUPERSEDEAS DECISION

STATE: IOWA
DECISION NO: IA80-4045

COUNTY: Dubuque
DATE: Date of Publication

Supersedes Decision No. IA78-4104, dated November 24, 1978 in 43 FR 55166

DESCRIPTION OF WORK: Building construction (Does not include single family homes and apartments up to and including 4 stories)

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.18	.55	1.00		.10
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	10.84	.45	.50		.02
CARPENTERS:					
Carpenters	12.10		.60		
Piledrivermen	12.50		.60		
Millwrights	12.60		.60		
CEMENT MASONS	11.63				
ELECTRICIANS	12.25	.75	3%+.50		.09
ELEVATOR CONSTRUCTORS	12.065	1.045	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.045	.82	a	.035
GLAZIERS	12.86	.75	1.00		.02
IRONWORKERS:					
Southeast portion	13.87	.75	.375		.07
Remainder of County	13.50	.58	.75		.06
LABORERS:					
GROUP 1 - Common Laborers	9.88	.40	.30		.05
GROUP 2 - All air operated tools; Bricklayers' helpers & tenders; Caisson workers; Carpenters' helpers; handling & cleaning of all steel floor pans & wall forms; Mortar mixers; Plasterers' helpers & tenders; Tile setters (4"-6"-8")	9.98	.40	.30		.05
GROUP 3 - Tile setters (10" and up)	10.13	.40	.30		.05
LATHERS	10.00				
MARBLE SETTERS	10.59	.45	.25		
PAINTERS:					
Brush or roller epoxy; paper hanging; Tapers	10.50	.80	.50		
High work and steel; spraying	11.10	.80	.50		
PLASTERERS	11.40				
PLUMBERS & STEAMFITTERS	13.42	.85	.80		.08

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
ROOFERS	$ 9.55		.20		
SHEET METAL WORKERS	12.92	.75	1.25		.14
SPRINKLER FITTERS	14.10	.85	1.20		.08
TERRAZZO WORKERS	10.59	.45	.25		
TILE SETTERS	10.59	.45	.25		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
a - Employer contributed 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Seven Paid Holidays.

PAID HOLIDAYS
New Years' Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day; Day After Thanksgiving

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$12.32	.90	.90		.10
GROUP 2	12.085	.90	.90		.10
GROUP 3	10.78	.90	.90		.10
GROUP 4	10.015	.90	.90		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes, including those being used as backhoe, dragline, clamshell, etc.; Tower cranes; Truck cranes and cherry pickers 12½ ton & over rated capacity; Derricks; Piledrivers and extractors; Caisson rigs; Side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; Welders; Mechanics; Locomotive; Dredge (levermen)

GROUP 2 - 1 and 2 drum hoist; Air and electric tuggers (on power plants or setting steel or grating); Economobiles; Plant mixers; Farm type tractors (with loaders, backhoes, attachments, etc.); Scrapers (tournapull, etc.); Endloaders; Dredge (engineer); Side boom and winch truck other than Group No. 1; Motor patrol; Bulldozers; Push Cat; Truck Cranes and cherry pickers (under 12½ ton); Concrete Mixers (1 yard and over); Ditching machines (8" and over); Fork lifts (on steel erection and machinery moving or hoisting above one complete story); Concrete pump; Dewatering pump; Temporary hoist cage operated; Second man on locomotive; Vibrating concrete spreader (Gomaco, C-450 or equal)

GROUP 3 - Tractor (under 35 HP) with or without attachments; Endloaders (under 35 HP) with or without attachments; Air compressors (one or a combination of 250 cfm or more); Pumps 3" or over; Welding machines 600 amps or combination thereof; Conveyors; Firemen (Boiler); Generator (75 KW & over); Fork lifts (other than above Group No. 2); Gunnite machine; Self-propelled rollers; Stump chippers; Self-propelled tampers; Air and electric tuggers (other than above); Ditching machine under 8"

GROUP 4 - Oilers; Mechanical heaters; Truck crane drivers; Permanent elevators

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: Iowa COUNTY: Johnson
DECISION NO.: IA80-4046 DATE: Date of Publication
Supersedes Decision No.: IA78-4105, dated November 24, 1978 in 43 FR 55168
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
ASBESTOS WORKERS	$13.18	.55	1.00		.10
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	13.81		.55		.02
CARPENTERS:					
Carpenters; Soft floor layers	11.26	.55	.55		.08
Piledrivermen	11.61	.55	.55		.08
Millwrights	14.00	.65	1.30		.08
CEMENT MASONS	11.84	.45			
ELECTRICIANS	14.07	.65	3%+1.00	a	3/4%
ELEVATOR CONSTRUCTORS	12.065	1.045	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.045	.82		.035
GLAZIERS	12.86	.75	1.00		.02
IRONWORKERS	13.50	.58	.75		.06
LABORERS:					
GROUP 1 - Common laborers	10.45	.40	.80		.05
GROUP 2 - Mason mortar mixers	10.80	.40	.80		.05
GROUP 3 - All jack & chipping hammers; All water & sewer tile layers; Chain saw; Cutting torches; Power buggies; Rock drills; Tampers; Vibrators; Well point work	10.80	.40	.80		.05
LATHERS	12.57				
LINE CONSTRUCTION:					
GROUP 1 - Cable splicers; Linemen; Welder; Technicians; All rigs setting assembled "H" fixtures and steel transmission structures	11.96	.45	7%	b	1/2%
GROUP 2 - Groundman; Truck driver (without winch); Experienced (not less than 6 mos.)	7.77	.45	7%	b	1/2%
GROUP 3 - Groundman; Truck driver (with winch)	7.89	.45	7%	b	1/2%

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
LINE CONSTRUCTION (CONT'D)					
GROUP 4 - Blaster; Special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures)	$ 9.57	.45	7%	b	1/2%
GROUP 5 - Groundman-1st 6 mos.	6.58	.45	7%	b	1/2%
PAINTERS:					
Brush & rollers	10.50				.03
Paperhangers	10.75				.03
Sandblasting; Spray painting	11.15				.03
PLASTERERS	13.77				
PLUMBERS & STEAMFITTERS	13.25	.60	.70		.13
ROOFERS	10.30				
SHEET METAL WORKERS	13.65		.88		.06
SPRINKLER FITTERS	14.10	.85	1.20		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					
TILE SETTER	12.98		.55		

FOOTNOTES

a - Employer contributed 8% of the basic hourly rate for over 5 years' service and 6% of the basic hourly rate for 6 months to 5 years' of service as Vacation Pay Credit. Seven Paid Holidays A thru G

b - Seven Paid Holidays A thru G

PAID HOLIDAYS

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$12.32	.90	.90		.10
GROUP 2	12.085	.90	.90		.10
GROUP 3	10.78	.90	.90		.10
GROUP 4	10.015	.90	.90		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes, including those being used as backhoe, dragline, clamshell, etc.; tower cranes; truck cranes and cherry pickers 12½ ton & over rated capacity; derricks; piledrivers and extractors; caisson rigs; side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen)

GROUP 2 - 1 and 2 drum hoists; air and electric tuggers (on power plants or setting and grating); economobiles; plant mixers; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge (engineer); side boom and winch truck other than Group No. 1; motor patrol; bulldozers; push cat; truck cranes and cherry pickers (under 12½ tons); concrete mixers (1 yard and over); ditching machine (8" and over); fork lifts (on steel erection and machinery moving or hoisting above one complete story); concrete pump; dewatering pumps; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (Gomaco, C-450 or equal)

GROUP 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; air compressors (one or a combination of 250 cfm or more); pumps 3" or over; welding machine 600 amps or combination thereof; conveyors; firemen (boiler); generator (75 KW & over); fork lifts (other than above Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air and electric tuggers (other than above); ditching machine under 8"

GROUP 4 - Oilers; mechanical heaters; truck crane drivers; permanent elevators

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: Iowa COUNTY: Scott
DECISION NO : IA80-4050 DATE: Date of Publication
Supersedes Decision No.: IA78-4109, dated November 24,1978 in 43 FR 55174
DESCRIPTION OF WORK: Building Construction (does not include 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	$13.18	.55	1.00		.10
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	11.90	.65	1.30		.04
CARPENTERS	12.01	.60	.90		.06
CEMENT MASONS	12.02	.70	.60		
ELECTRICIANS	13.29	.70	7.5%		.03
Cable Splicer	14.29	.70	7.5%		.03
ELEVATOR CONSTRUCTORS	11.57	.495	.32	a	.02
GLAZIERS	12.86	.75	1.00		.02
IRONWORKERS	13.87	.75	.375		.07
LABORERS:					
GROUP 1	11.27	.50	1.00		.035
GROUP 2	11.52	.50	1.00		.035
GROUP 3	11.77	.50	1.00		.035
MARBLE SETTERS	11.50	.50	1.30		
MILLWRIGHTS	15.00	.65	1.30		.25
PAINTERS:					
Brush, roller	12.37	.60	1.00		.22
Spray, Struc. steel	12.87	.60	1.25		.22
PILEDRIVERMEN	12.11	.65	1.00		.06
PLASTERERS	10.90				
PLUMBERS & STEAMFITTERS	13.70	.61	1.09		.15
POWER EQUIPMENT OPERATORS					
GROUP 1	13.80	1.00	.80		.08
GROUP 2	12.40	1.00	.80		.08
GROUP 3	11.35	1.00	.80		.08
ROOFERS	12.65		.80		
SHEET METAL WORKERS	12.92	.75	1.25		.14
SOFT FLOOR LAYERS	12.01	.60	.90		.06
SPRINKLER FITTERS	14.10	.85	1.20		.08
TERRAZZO WORKERS	11.50	.50	1.30		
TILE SETTERS	11.50	.50	1.30		

WELDERS: receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a-Employer contributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also, 7 paid holidays - New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Day after Thanksgiving.

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Carpenter tenders, common laborers, mason tenders
GROUP 2 - Concrete saw, pipesetters, plumber laborer, power tools (barco-vibrator-mortar mixers-dynamite handlers-burner on dismantling work to be junked), prime movers, sand points
GROUP 3 - Caissons after 6' depth, dynamite men, tunnel miners

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - All hoists or steel erecting equipment: Crane, Shovel, Clamshell, Dragline, Backhoe, Derricks, Tower Crane, Cable Way, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Operator; Dipper Dredge Craneman, Dual Purpose Truck (boom or winch); Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 operators required); Pile Driver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Haiss Loader, Asphalt Pug Mill, Fireman & Drier, Concrete Pump, Concrete Spreader (servicing 1 paver); Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LeTourneaupull & similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement & Gravel Batch Plants (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer Self-Propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-Propelled Sheep Foot Roller or Compactor (used in conjunction with a Grading Spread), Asphalt Spreader Screed Operator, Apsco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. cap. or working at Heights above 28 ft.), Concrete Conveyors.

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D):

GROUP 2 - Asphalt Booster, Fireman & Pump Operator at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machine, Form Grader With Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor without Power attachments, Dope Pot (agitating motor), Dope Chop Machine, Distributor (back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work; Self-Propelled Roller or Compactor (other than provided for above), Pump Operator (more than 1 well point pump), Portable Crusher Operator, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller-Kenyon Cement Pump or similar machines; Air Compressor (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machine (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plants (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-Propelled Curing Machine

GROUP 3 - Oiler, Mechanic's Helper, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine.

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: Iowa COUNTY: Webster
DECISION NO.: IA80-4052 DATE: Date of Publication
Supersedes Decision No. IA78-4111 dated November 11, 1978 in 45 FR 55177
DESCRIPTION OF WORK: Building construction(does not include single family homes and apartments up to and including 4 stories).

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$13.75	1.04	1.125		.10
Boilermakers	13.87	1.375	1.10		.05
Bricklayers & Stonemasons	12.70		.40		.02
Carpenters:					
Carpenters & piledrivermen	11.46				
Millwrights	11.71				
Electricians	12.75	.45	3%+.50		3/4%
Elevator constructors	12.33	1.045	.69	a	.03
Elevator constructors' helper	70%Jr	1.045	.69	a	.03
Ironworkers	12.27	.87	1.12		.05
Laborers:					
Group 1 - common laborers	8.225	.30	.135		.05
Group 2 - mortar, plaster and grout mixers; jackhammer; paving breaker; rock drill; vibrator operator; motor buggy operator while pouring concrete	8.375	.30	.135		.05
Group 3 - plasterers' tender	8.425	.30	.135		.05
Group 4 - concrete saw man	8.475	.30	.135		.05
Group 5 - sandblaster	8.575	.30	.135		.05
Group 6 - digging of or work within a shaft entering into natural underground cavities or caverns and work within the said shaft or cavern	8.725	.30	.135		.05
Lathers	10.24				
Line Construction:					
Group 1 - cable splicers; linemen; welder; technicians; all rigs setting assembled "H" fixtures and steel transmission structures	11.96	.45	7%	b	5%
Group 2 - groundmen; truck driver(without winch); experienced(not less than 6 months)	7.77	.45	7%	b	5%

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Line Construction: (con't)					
Group 3 - groundmen; truck driver (with winch)	7.89	.45	7%	b	½%
Group 4 - blaster; special equipment operator (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures)	9.57	.45	7%	b	½%
Group 5 - groundmen-1st 6 months	6.58	.45	7%	b	½%
Painters:					
Group 1 - brush, drywall finishers; rollers	12.57		.80		.05
Group 2 - paperhangers	12.82		.80		.05
Group 3 - spray	13.07		.80		.05
Group 4 - stack, tower work over 100ft.	13.67		.80		.05
Plumbers & Pipefitters	14.30	.60	1.00		.15
Roofers	7.75				
Sheet metal workers	12.12	1.00	.99		.14
Sprinkler fitters	14.10	.85	1.20		.08
Welders - receive rate prescribed for craft to which welding is incidental.					
Footnotes:					
a - employer contributes 8% of basic hourly rate for over 5 years service and 6% for 6 months to 5 years service as vacation pay credit, also seven paid holidays					
b - seven paid holidays					
Power Equipment Operators:					
Group 1	12.32	.90	.90		.10
Group 2	12.08$	.90	.90		.10
Group 3	10.78	.90	.90		.10
Group 4	10.01$	.90	.90		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes including those being used as backhoe, dragline, clamshell, etc.; tower cranes; truck cranes and cherry pickers 12½ ton & over rated capacity; derricks; piledrivers and extractors; caisson rigs ;side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen)

GROUP 2 - 1 and 2 drum hoists; air and electric tuggers (on power plants or setting steel or grating); Economobiles; plant mixer; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge (engineer); side boom and winch truck other than Group No. 1; Motor patrol; bulldozers; push cat; truck cranes and cherry pickers (under 12½ ton); concrete mixers (1 yard and over); ditching machine (8" and over); fork lifts (on steel erection and machinery moving or hoisting above one complete story); concrete pump; dewatering pump; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (gomaco, C-450 or equal)

GROUP 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; air compressors (one or a combination of 250 CFM or more); pumps 3" or over; welding machines 600 amps or combination thereof; conveyors; firemen (boiler); generator (75 KW and over); fork lifts (other than above Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air and electric tuggers (other than above); Ditching machine under 8"

GROUP 4 - Oilers, mechanical heaters; truck crane drivers; permanent elevators

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: KANSAS COUNTIES: RILEY & GEARY
DECISION NO: KS80-4069 DATE:
Supersedes Decision No. KS79-4090 dated October 5, 1979, 44 FR 57628
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden-type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$10.00				
Carpenters	6.88				
Electricians	7.16				
Laborers:					
common	4.72				
form setter	4.50				
mason tender	4.50				
Painters	7.63				
Plumbers	13.51	.92	.60		.05
Roofers	6.00				
Sheet metal workers	5.00				
Truck drivers	4.50				
Power Equipment Operators:					
air compressor	4.00				
backhoe	6.00				
bulldozer	6.00				
concrete saw	4.30				
grader	6.00				
loader	5.50				
scraper	6.00				
shovel	5.38				
tractor	6.00				
trenching machine	4.50				

SUPERSEDEAS DECISION

STATE: Ohio COUNTIES: Champaign, Logan & Union
DECISION NO.: OH80-2051 DATE: Date of Publication
Supersedes Decision No.: OH77-2057 dated April 15, 1977 in 42 FR 20045
DESCRIPTION OF WORK: Residential Construction consisting of 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.
AIR CONDITIONING MECHANICS	$ 6.65				
BRICKLAYERS	8.50				
CARPENTERS	6.66				
CEMENT MASONS	6.00				
DRYWALL FINISHERS	6.00				
DRYWALL HANGERS	6.00				
ELECTRICIANS	6.35				
LABORERS:					
Common	4.92				
Mason Tenders	5.48				
PAINTERS	6.00				
PLUMBERS	7.00				
ROOFERS	6.00				
SHEET METAL WORKERS	6.38				
SOFT FLOOR LAYERS	6.80				
TILE SETTERS	6.80				
TRUCK DRIVERS	5.52				
POWER EQUIPMENT OPERATORS:					
Backhoes	7.50				
Bulldozers	7.50				
Front End Loaders	7.50				

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: OHIO
COUNTY: CLINTON
DECISION NO.: OH80-2060
DATE: Date of Publication
Supersedes Decision No. OH77-2058, dated April 15, 1977 in 42 FR 20045
DESCRIPTION OF WORK: Residential Construction Consisting of 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.
AIR CONDITIONING MECHANICS	$ 7.55				
BRICKLAYERS	7.00				
CARPENTERS	6.00				
CEMENT MASONS	6.00				
DRYWALL FINISHERS	6.00				
DRYWALL HANGERS	6.00				
ELECTRICIANS	7.00				
LABORERS	4.57				
PAINTERS	6.00				
PLUMBERS	6.95				
ROOFERS	6.00				
SHEET METAL WORKERS	6.18				
SOFT FLOOR LAYERS	5.97				
TILE SETTERS	6.25				
TRUCK DRIVERS	5.53				
POWER EQUIPMENT OPERATORS:					
Backhoes	7.50				
Bulldozers	7.50				
Front End Loaders	7.00				

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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SUPERSEDEAS DECISION

STATE: Ohio
COUNTIES: Belmont, Monroe, & Noble
DECISION NO.: OH80-2071
DATE: Date of Publication
Supersedes Decision No.: OH77-2086, dated May 20, 1977 in 42 FR 26095
DESCRIPTION OF WORK: Residential Construction consisting of 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.
BRICKLAYERS	$ 8.45				
CARPENTERS	6.77				
CEMENT MASONS	7.00				
DRYWALL FINISHERS	7.50				
DRYWALL HANGERS	6.46				
ELECTRICIANS	6.74				
LABORERS	5.13				
PAINTERS	6.05				
PLUMBERS	7.06				
ROOFERS	6.55				
SHEET METAL WORKERS	6.37				
SOFT FLOOR LAYERS	5.82				
TRUCK DRIVERS	6.35				
POWER EQUIPMENT OPERATORS:					
Backhoes	6.77				
Bulldozers	7.39				
Front End Loaders	6.00				

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)).

federal register

Friday
August 8, 1980

Part IV

Consumer Product Safety Commission

Exportation of Noncomplying Products; Notification Requirements and Procedures

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1019

Exportation of Noncomplying Products; Notification Requirements and Procedures

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule to implement legislation concerning the exportation of products that fail to comply with an applicable CPSC regulation. Under the legislation and regulation, exporters must notify the Commission at least 30 days before the scheduled exportation and must provide related information. The Commission must then notify the foreign government that is scheduled to receive the products so that that government would be able to make an informed choice about the entry of products.

EFFECTIVE DATE: The notification regulation becomes effective on September 8, 1980.

FOR FURTHER INFORMATION CONTACT: Marc Yaffee, Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207: telephone (301) 492–6629.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1978, the Consumer Product Safety Act Authorization Act of 1978 (Pub. L. 95–631) became law. This legislation (referred to below as the export amendments) amends the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051, 2067), the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261, 1273), and the Flammable Fabrics Act (FFA, 15 U.S.C. 1191, 1202) by imposing notification requirements on all people and firms intending to export from the United States any product that fails to comply with an applicable regulation issued under one of these acts. The person or firm must notify the Commission at least 30 days before the scheduled exportation, and the Commission must then notify the government of the country that is to receive the products. The Congressional intent of the export amendments was to assure that foreign countries would be able to make informed choices about whether to permit the entry into their territories of products that are prohibited from commerce in this country (House Report No. 95–1164, 95th Cong., 2d Sess. at 7).

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The Commission's authority over exports is not limited to these notification provisions. The Commission has authority to prohibit exportation in a number of situations that are discussed in section I below.

Proposed Notification Regulation

On May 11, 1979, the Commission proposed for public comment a regulation to implement the statutory export notification requirements (44 FR 27685). It clarified and expanded these requirements, and prescribed notification procedures.

Like the export amendment legislation, the proposed regulation applied to the following products (referred to below as noncomplying products):

1. Any consumer product that does not comply with an applicable consumer product safety standard issued under the CPSA, or that has been declared to be a banned hazardous product under the CPSA;
2. Any product that is a misbranded hazardous substance because it fails to comply with an applicable labeling requirement under the FHSA, or that has been declared to be a banned hazardous substance under the provisions of the FHSA; and
3. Any fabric or related material, or any item of wearing apparel or interior furnishing made of fabric or related material, that fails to comply with any flammability standard issued under the FFA.

The proposed regulation made three exceptions. Exporters of the following products were not required to notify the CPSC about:

1. Any sample that is conspicuously and legibly labeled in English with the statement: "Sample only. Not for resale.";
2. Any product that is noncomplying solely because it lacks English labeling, as long as it is labeled with the required information in the language of the country of destination; and
3. Any product that is a misbranded hazardous substance solely because of its failure to comply with a child-resistant packaging standard under the Poison Prevention Packaging Act of 1970.

The export amendments require that the exporter's notice contain the anticipated date of shipment, the country and port of destination, and the quantity of goods to be shipped. Under the statutory authorization to the CPSC to require additional information by regulation, the proposed regulation added:

(a) Name, address and telephone number of the exporter;

(b) Name and address of the consignee ("consignee" was defined as "the person, partnership, corporation, or entity in a foreign country to whom noncomplying goods are sent");

(c) Description of the goods, including brand or trade names and model number or other identifying numbers;

(d) Identification of the applicable statutory and regulatory provisions, and a description of the manner in which the goods fail to comply;

(e) Location of the goods (if other than at the exporter's address);

(f) Port of lading; and

(g) Any correspondence from the country of destination indicating whether the goods may enter its customs territory.

The proposed regulation also contained notification procedures for exporters. Notifications were required to be sent, at least 30 days prior to intended shipment, to the CPSC's Associate Executive Director for Compliance and Enforcement. This official could reduce the 30-day requirement for good cause. In an effort to reduce the paperwork burden of notification, the proposal permitted a single notification for a series of shipments of different kinds of goods to one country for a year. In addition, the proposal required that any changes in information already provided must be reported to the Commission within two working days. The Commission would, once it received a notification, transmit the information as quickly as possible to the government of the country of destination. The proposal also required the CPSC to seek an acknowledgment of the notification from that country.

Finally, the proposed regulation addressed the possible confidentiality of any information contained in a notification. The Commission's existing Freedom of Information Act regulations were cited as applying to this situation (16 CFR Part 1015).

Comments on Proposal

The Commission received 22 comments on the May 1979 proposed notification regulation. The commenters included foreign governments; national trade associations (representing retail merchants and the producers of outdoor power equipment, toys, carpets and rugs); a merchandising company; a bicycle manufacturer; a legal foundation; and an environmental protection organization. Eleven of the comments, all from foreign governments, expressed general support for the notification procedures. As one government wrote, "This Embassy certainly appreciates the concern shown to alert importing countries to the

possible hazards presented by the entry of noncomplying consumer products." The specific issues raised by the comments, and the Commission's responses, are discussed below:

A. *Applicability.* Two commenters, trade associations for toy and power equipment manufacturers, expressed their view that the proposed applicability of the notification regulation (§ 1019.1(b)) went beyond the Congressional intent. Both have argued that the notification requirements apply only to products that have been distributed in domestic commerce, and not to those that have been held for export.

The commenters argued that sections 18(a) and 18(b) of the CPSA (15 U.S.C. 2067(a) and 2067(b)) are independent of each other. According to this interpretation, section 18(a) provides a blanket exception from the CPSA for products that are held for export, and section 18(b) imposes notification requirements on products that are subject to the CPSA.

The Commission has two responses:

1. According to the suggested interpretation, the only products subject to notification requirements—those that have been distributed in domestic commerce—are products that are prohibited from exportation. If notification prior to exportation applies only to products that cannot legally be exported, the requirements are without any meaning or effect. Congress could surely not have intended to create such an anomalous situation because it violates the basic axiom of statutory construction that no part of a statute will be construed so as to render it inoperative or superfluous. See *United States* v. *Menasche*, 75 S. Ct. 513, 520 (1955) and Sutherland, *Statutory Construction*, § 46.06 (1973). The comments of the power equipment trade association support the Commission's position by stating: "The 1978 amendments to section 18 of the CPSA leave little doubt that the Commission now has the power . . . to halt the export of products which fail to comply with a standard or which are subject to a ban *and* which have been introduced into U.S. commerce."

2. There is no hint in the legislative history of the export amendments that Congress intended to apply different notification requirements under any of the CPSC's statutes. The wording of the amendments to the CPSA, FHSA, and FFA is virtually identical. Therefore, it is useful to consider the FHSA's statutory language. Specifically, the new provision, section 14(d) of the FHSA (15 U.S.C. 1273(d)), requires notification prior to the exportation of all banned and misbranded hazardous substances. Although section 5(b) of the FHSA (15 U.S.C. 1264(b)) provides an exception from penalties for certain products intended for export, this provision clearly does not undermine the broad applicability of section 14(d).

The Commission continues to believe that the export notification requirements apply to all noncomplying products under the CPSA, FHSA, and FFA, whether or not they have ever been introduced into domestic commerce.

B. *Exemptions.* The same two commenters that argued for a narrower applicability also suggested the addition of two broad exemptions. They supported an exemption for noncomplying products that meet all requirements of the country of destination. They also supported an exemption for noncomplying products that meet International Standards Organization (ISO) standards.

These suggestions are not without logic. If an exported product complies with an applicable non-CPSC standard, the foreign country might not be interested in the information required by the notification regulation. However, there is no legal support for the suggested changes in the text of the export amendments or in their legislative history. Further, it would be burdensome for the Commission to determine in each case whether the export products do comply with the foreign country or ISO standards. In any case, the foreign countries receiving export notifications under this legislation and regulation are free to ignore them. Presumably, products that comply with the importing country's requirements will be permitted to be imported into that country. The commenters have submitted no data to support a finding that the mere need to notify would result in economic injury.

The rest of the comments on exemptions concern the three contained in the proposed regulation:

1. *Samples* (§ 1019.1(d)). The proposed regulation sought comment specifically on an exemption for samples, including its scope. The Commission justified its proposal by citing the reduced burden on companies seeking to solicit business abroad, and the fact that samples would not be expected to be used by residents of foreign countries. To assure that this would be the case, the proposal required labels stating "Sample only. Not for resale."

Five commenters addressed themselves to the samples issue. An environmental protection organization opposed the exemption because it would unnecessarily limit the ability of a foreign government to undertake a thorough assessment of a noncomplying product. The other four commenters supported the exemption. Of these, a legal foundation stated that no labels are necessary for samples that obviously cannot be used by consumers. A trade association expressed the opinion that no labeling at all should be required for samples, as long as the exemption will not become a way for U.S. firms to avoid the notification requirement systematically. Two foreign governments, both major trading partners with the U.S., supported the exemption.

The Commission still believes that an exemption for samples is appropriate and that labeling is necessary to discourage any abuse. Properly-labeled samples are not likely either to hamper a foreign country from protecting its residents or to restrict international trade unnecessarily. With one minor change, the proposed exemption has been incorporated into the regulation below.

The proposed exemption defined a sample shipment as "the minimum [quantity of goods] consistent with prevalent trade practices with respect to the specific product" (§ 1019.1(d)). The trade association objected to the inclusion of the word "minimum" as "needlessly litigious" and suggested that any dispute over the application of this exemption would come in the context of shipments made. In such litigation, according to the association, the Commission would be required to establish that the violation of the notification obligation took place with respect to the shipment.

The Commission agrees with the trade association and has revised the exemption language to state that the quantity of exempted samples must be "consistent with prevalent trade practices with respect to the specific product."

2. *English labeling* (§ 1019.1(c)). The proposed regulation exempted from notification products that are noncomplying only because their warning labels are not in English. To be eligible for this exemption, all labeling required for U.S. distribution must be in the language of the country of destination. Under this approach, foreign residents will receive the same protection for cautionary labeling as U.S. residents receive.

Two commenters addressed this provision. One, the Government of Canada, pointed out that its law requires bilingual labeling for a product to be eligible for importation. In this situation, the Commission believes that both English and French labeling would be necessary for a product to be exempt.

The other commenter, a trade association, discussed the possible confusion presented by an example in the preamble. The example concerned small carpets and rugs, and pointed out that a label in Spanish would provide an exemption if the products were being shipped to Mexico, but not if they were being shipped to an English-speaking country such as Australia. The Commission agrees that the example is needlessly confusing, primarily because a carpet or rug is not a noncomplying product if it is properly labeled in English. Therefore, the shipment to Mexico or Australia would be permitted without notification as long as the proper English labeling were present. Although Spanish labeling might be preferable for Mexico-bound carpeting, the export amendments only cover noncomplying products. The Commission, of course, encourages foreign language labeling as being within the spirit of the export amendments.

The proposed exemption concerning warning labels has been retained in the final regulation below, without any change.

3. *Child-resistant packaging* (proposed § 1019.1(b)(2)). The proposal contained an exemption from the notification requirements for any product which is a "misbranded hazardous substance" solely because it fails to comply with an applicable requirement for child-resistant packaging issued under the Poison Prevention Packaging Act of 1970 (PPPA, 15 U.S.C. 1471, *et seq.*).

The Embassy of Australia agreed with the proposed exemption for products which fail to comply with requirements for child-resistant packaging issued under the PPPA. The Embassy of Canada requested a more complete explanation of the reason for the proposed exemption. The Natural Resources Defense Council objected to it because the literal terms of the export amendments require notification for all products which are "misbranded hazardous substances."

The PPPA authorizes the Commission to issue regulations requiring child-resistant packaging for two types of products. One category consists of household products which are "hazardous substances" as that term is defined in section 2(f) of the FHSA (15 U.S.C. 1261(f)). An example of such a product is liquid furniture polish containing ten percent or more mineral seal oil (See 16 CFR 1700.14(a)(2)). A second category of products for which child-resistant packaging may be required consists of "foods," "drugs," and "cosmetics," as those terms are defined in sections 201 (f), (g), and (i) of the Federal Food, Drug and Cosmetic Act (FFDCA, 21 U.S.C. 321 (f), (g), an (i)). For example, aspirin intended for oral administration is required to be in child-resistant packaging (See 16 CFR 1700.14(a)(1)).

The PPPA does not contain specific penalties or other provisions addressing failure to comply with an applicable PPPA regulation. Instead, the Commission enforces PPPA requirements through the FHSA and the FFDCA. Section 2(p) of the FHSA (15 U.S.C. 1261(p)) defines the term "misbranded hazardous substance" to include any product which is a "hazardous substance" and which fails to comply with an applicable requirement or child-resistant packaging issued under the PPPA. Similarly, sections 403(n), 502(p), and 602(f) of the FFDCA (21 U.S.C. 343(n), 352(p) and 362(f)) define as a "misbranded food," "misbranded drug," or "misbranded cosmetic" any product which is a "food," "drug," or "cosmetic" and which fails to comply with an applicable requirement for child-resistant packaging issued under the PPPA.

As stated earlier, Congress amended the CPSA, the FHSA, and the FFA in 1978 to require notification of the Commission before the exportation of any product which fails to comply with an applicable ban, standard, or regulation issued under those Acts. However, as noted in the preamble to the May 1979 proposal (44 FR 27686), when the Congress enacted the export amendments, it did not similarly amend the FFDCA to require notification prior to the proposed export of products which failed to comply with all applicable requirements issued under provisions of that Act. Consequently, notification is not required prior to the proposed exportation of products which are misbranded foods, drugs, or cosmetics because they fail to comply with applicable requirements for child-resistant packaging issued under the PPPA.

Despite the comment from the Natural Resources Defense Council on this issue, the Commission continues to believe that Congress did not intend to require pre-exportation notification for some products failing to comply with PPPA regulations and not for other products which fail to comply with other PPPA regulations.

The Commission also believes that it would present practical problems for products in child-resistant packaging to be distributed for use by persons outside the United States. Almost all child-resistant containers distributed in this country are labeled in the English language with instructions for opening, such as "Push down while turning." Unless residents of a foreign country could read and understand these directions for opening, the child-resistant packaging would be an unreasonable hindrance to their use of the product.

Therefore, after consideration of all of the comments addressed to the PPPA exemption issue, the Commission has retained this exemption in the regulation issued below. As an editorial change, however, the exemption now appears at § 1019.1(e) as a specific exemption, rather than as a qualifying phrase in § 1019.1(b)(2).

C. *Definitions.* The proposed regulation defined the term "exporter" as the "person, partnership, corporation or entity that initiates the export of noncomplying goods" (proposed § 1019.2). As examples, this definition added that "[t]he exporter could be the manufacturer of the goods or a broker."

A commenter acknowledged the example of a broker, but stated that the Commission has a proclivity to view export transactions as involving only manufacturers of goods. This comment suggested that retailers and distributors could also be exporters, and that the regulation should clarify their obligations.

The Commission agrees that various types of firms could be exporters. The purpose of the definition of "exporter" was to impose the notification obligations on all exporters without regard for any other roles they might have. Since the examples have proved confusing to at least one member of the public, the Commission has removed them from the definition of exporter in the final regulation issued below.

D. *Procedure.* The proposed regulation permitted export notifications to be filed once a year for all goods shipped to the same country by the same exporter during that year (§ 1019.4(b)). Three commenters addressed this provision. One opposed this approach because different products may be under the jurisdiction of different agencies within the same foreign government. However, the Commission finds that this is generally not the case. In recent contracts with more than 50 foreign governments, the Commission found that in only one instance were different products subject to this regulation handled by different agencies of the same government (and in that particular case, the foreign government's diplomatic mission in this country has been designated as the Commission's only point of contact).

Another commenter agreed with the single notification per year provision,

but suggested that it be extended so that a single notification would suffice for an extended course of business. While the Commission believes that it should make every reasonable effort to reduce the paperwork burden of notification, such an extension would run counter to the spirit and intent of the export amendments. The basic purpose is to share our experience and technology with the importing country and technologies can change, as well as policies and the people who administer them. In these circumstances, notifications should be made annually, at least.

The third commenter supported the concept of a single annual notification, but suggested that it not be permitted unless all items of information are known at the time of the notification. Since most exporters will not know the total amount of merchandise to be shipped during an entire year, as one example, this suggested restriction would defeat the intent of this provision. Any disadvantage that a single notification might involve would be offset by its providing information to foreign governments sooner than 30 days before exportation, in most cases. Based on the Commission's reaction to all three comments, it has incorporated the proposed single-notification provision into the final regulation without change.

E. *Content of notifications.* Thirteen comments, the largest number for any portion of the proposal, addressed the content of the information that exporters must provide to the Commission. Some of these comments urged that proposed categories of information, those not required by the export amendments, be dropped from the final regulation. Other comments suggested that new categories of information be added.

1. *Name of consignee.* Five commenters urged that identification of the name of the consignee (proposed § 1019.4(d)(2)) be deleted because it is extremely confidential and would be of great benefit to an exporter's competitors. As an alternative, two of these commenters suggested that the Commission revise the provisions on confidentiality of information (proposed § 1019.8) to state that the Commission will not as a general rule disclose the name of any consignee to outside parties. This commenter cited as a model for this approach regulations issued by the Customs Service.

The statutory export notification requirements have been in effect since November 1978, and the Commission has now had more than a year's experience with them. While the volume of notifications has not been large, the Commission has nevertheless been able to assess the need for the additional information that it sought in the proposed rule. For example, a notification last year involved some children's lamps that failed to comply with the Commission's regulations on lead in paint and were scheduled for exportation to Canada. The exporter notified the CPSC, and the CPSC notified the Canadian government. Based on its determination that the lamps should not enter its country, Canada contacted both the U.S. exporter and Canadian importer (the consignee), and successfully prevented the scheduled shipment from taking place. Had the exporter already shipped or had the exporter not been relatively close to Canada in New York, the contact with the consignee might have been the only way to prevent entry of the goods into Canada. In many cases, knowledge of the U.S. exporter, the quantity and nature of the products, the date of shipment, and the scheduled port of arrival will not be sufficient for locating the products and barring their entry. The Commission believes that the name of the consignee is important information, and the provision requiring it (along with the consignee's address) has been retained in the regulation issued below.

The Commission recognizes that many exporters would regard the identity of their consignees as a trade secret. Under current judicial interpretations of the Freedom of Information Act (FOIA, 5 U.S.C. 552(b)), the Commission agrees that these identities would be exempt from disclosure to the public on this basis. Therefore, the Commission will protect the confidentiality of any trade secret information, including the identity of consignees, by disclosing it only to the foreign government scheduled to receive the noncomplying products. Customs officials of these governments already have access to this information when goods enter their countries, since bills of lading contain the name of the consignee. The foreign governments will be strictly instructed that trade secret information must not be disclosed to private parties.

The Commission's FOIA regulations (16 CFR 1015) will continue to apply to requests from the public for disclosures of information, and they are referenced in § 1019.8 of the regulation below. The wording of § 1019.8 has been modified, however, to clarify that exporters must request confidentiality of any submitted information at the time of its submission or must indicate that a request will be made within 10 working days of the submission. This is consistent with the FOIA regulations.

2. *Correspondence from country of destination* (proposed § 1019.4(d)(7)). Two commenters strongly objected to the proposed requirement that notifications include correspondence from the government of the country of destination indicating whether the noncomplying goods may be imported into that country. As one commenter stated, such information "cannot be of any use to the Commission."

The Commission agrees with these comments and has now concluded that the regulation issued below need not require the exporter to include copies of correspondence from the government of the country of intended destination. This information is not necessary for the Commission to carry out the notification procedures. Instead, the Commission has added a new § 1019.4(e) to the final regulation which allows the exporter to include copies of that correspondence if the exporter elects to do so. When the exporter includes copies of such correspondence, the Commission will include them with its transmittal of information concerning the proposed exportation to the foreign government. Section 1019.7 has also been revised to reflect this change.

3. *Additional information from exporter.* A number of commenters suggested that various provisions be added to the content of notification provisions (proposed § 1019.4(d)). One trade association believes that, since a description of how a product is noncomplying must be provided to the foreign government, an exporter should have the option of submitting any further information it deems relevant. As an example of such additional information, this association mentioned a discussion of why the product's noncompliance should not influence the foreign government's decision on permitting or denying entry.

The Commission has tried to keep to a minimum the amount of information that exporters will be required to submit. However, as noted above, the Commission has added a new § 1019.4(e) to the final regulation. It provides that the exporter may include in the export notification any other safety-related information that the exporter believes to be relevant to the goods which are the subject of the notification and useful to the Commission or to the government of the country of intended destination. Section 1019.7, as revised, states that the Commission will send the additional information to the foreign government in its transmittal of the notification. In addition, the Commission notes that exporters have every right to

communicate directly with foreign governments.

The Commission's notification to the foreign government will focus on the CPSC requirement with which the product fails to comply. The Commission's notification will enclose a copy of the exporter's notification, but may state that the Commission disagrees with or takes no position on its content, including the relevance or accuracy of any optional information provided by the exporter. Section 1019.7 has been revised to clarify that this will be the Commission's approach.

Another commenter recommended that the Commission describe such positive aspects of American products as price, reliability and advanced design and engineering. The mission of the Consumer Product Safety Commission is safety. Except to the extent that price, reliability, design, and engineering are weighed in regulatory decisions, the Commission is not in a position to describe such information. It is also irrelevant to the purpose to export notification. Therefore, the Commission will not describe the suggested information and will not forward it to foreign governments, even if exporters supply it voluntarily.

One foreign government noted that the proposed regulation did not require information as to the value of the goods being shipped, and asked that inclusion of this information might be considered so that they would have more of a basis on which to make an assessment of economic impact. The Commission presumes that the impact to which the government refers is that which would be felt on its own economy, and not that of the United States. It is suggested, therefore that foreign governments seek this information from their own importers, whose names are provided in the export notification.

Another foreign government urged the addition of a requirement that U.S. exporters submit to the Commission written proof (copies of letters, contracts, telexes, etc.) indicating that they have informed the foreign buyers during purchase negotiations that the goods do not comply with applicable U.S. Safety Standards. The foreign government feels that this is part of a commercial company's primary responsibility to its customers, and would expedite processing at a subsequent stage of the export-import process.

A public interest environmental protection group expressed its related desire to have the exporter include in the notification a statement certifying the foreign importer has been informed that the goods must not be re-exported to the United States. The commenter believes that this requirement would help to assure that return shipments to the United States of banned products would not occur.

The Commission agrees that exporters would be well advised to make the disclosures suggested by these two comments as a matter of good business practice. However, the Commission has decided not to change the regulation as requested by these comments, because such changes would require exporters to take actions other than submitting information to the Commission. The suggested changes would extend beyond the scope of the export notification provisions.

4. *Other.* Aside from the specific comments discussed above, a number of commenters expressed the general view that more information was being sought than is necessary. The Commission agrees with some of these comments and has decided not to require the precise location of the goods to be shipped, if other than at the address of the exporter (proposed § 1019.4(d)(5)), or the port of lading (proposed § 1019.4(d)(6)).

Additionally, the Commission finds that the wording of proposed § 1019.4(d)(4), which requires a "comprehensive description" of the goods to be exported, gives the impression that a lengthy response is required. The Commission only wants an accurate description of the noncomplying nature of the goods to be exported, and it can be brief. The Commission has revised this provision accordingly in the regulation issued below.

One commenter has asked "what happens if the importing country, affronted by CPSC's transmittal of notification, refuses to respond to the exporter, or to the Commission?" First, the large percentage of countries responding to the Commission's request to learn the branches of their governments that should receive notification of the export of noncomplying goods indicates a high degree of interest in the notification process. In any case, the export notification procedures do not require a response to the Commission's notification of the government of the country of intended destination before the noncomplying goods may be shipped. Timely notification by the exporter and the Commission is all that the regulation requires. However, the Commission expects that exporters will protect themselves from the possibility that a country will unexpectedly deny entry to products when a notification has been made but no acknowledgment from the country has been received. The exporter can do this by checking directly with the foreign country or having the consignee do so, before shipping.

Finally, one commenter sought a better definition of the phrase "each type of goods," which is found in the opening paragraph of proposed § 1019.4(d). That commenter suggested that the wording should be changed to "class of goods." The Commission has incorporated this suggestion in § 1019.4(d) issued below.

F. *Change to notification* (proposed § 1019.6). The proposal provided that if any information required to be furnished in the notification changes before the noncomplying goods leave the United States, the exporter must notify the Commission of the change within two working days and state the reasons for the change (proposed § 1019.6(a)). It also provided that if any of the information required in the notification changes after the goods leave the United States, the exporter must notify the Commission within two working days and state the reasons for the change (proposed § 1019.6(b)).

These provisions elicited several comments. Two commenters expressed the view that the two-day period to report changes is insufficient. One of these recommended that the period be extended to ten days. A third commenter noted that the proposal would require the exporter to report changes of information regardless of whether the exporter can control or even know the reasons why the changes occurred. This commenter stated that a freight carrier might change the port of destination for any number of reasons which could be unknown to the exporter.

Addressing the latter point first, the Commission acknowledges that the entire process of placing goods into the hands of a foreign importer is not under the control of the U.S. exporter. The Commission has, therefore, revised § 1019.6 to state that the exporter must notify the Commission of any change in the information required to be furnished only when the exporter causes the change, or learns of such a change, before the goods reach the country of destination. The Commission has also combined proposed §§ 1019.6 (a) and (b) into a single section in the regulation issued below.

With respect to the two-day reporting period, the Commission points out that it will transmit all notifications of changed information to the country of intended destination. As with the original notifications, these should be transmitted on a priority basis if they are to be useful. Since the Commission

has revised the provision to require information only of those changes brought about by the exporter or known to the exporter, exporters should have no difficulty in complying with the two-day deadline.

G. *Commission notification to foreign governments.* As proposed, the regulation required the Commission to inform foreign government of the basis on which the products are noncomplying (proposed § 1019.7). A trade association expressed its view that this prejudges the product being exported. The Commission disagrees because the exporter, by notifying the Commission of an intended exportation of noncomplying goods, has already made a determination that the goods in question do not comply with an applicable requirement issued by the Commission. In any event, the export amendments affirmatively require the Commission to advise the country of destination of the intended exportation of goods which fail to comply with applicable standards and regulations.

The proposed regulation also required the Commission's Associate Executive Director for Compliance and Enforcement to seek acknowledgment from the foreign government of receipt of the notification of intended exportation of noncomplying goods. Commenting on this provision, the Natural Resources Defense Council requested the Commission to require that the foreign country acknowledge receipt of the notification before shipment of the goods will be allowed. However, noting that Congress rejected the notion that approval of export transactions by the government of the country of destination should be a prerequisite for the exportation of noncomplying goods, a trade association urged the Commission to delete the proposed provision on acknowledgment. A foreign government commented on the proposed provision, and expressed agreement with it.

The Commission believes that seeking acknowledgment of receipt of notification is fundamentally different than requiring the consent of the country of destination as a condition for approval of the proposed exportation. While consent is beyond the intent of the export amendments, acknowledgment is an important aspect of notification. The Commission is seeking the voluntary acknowledgment of foreign countries so that it can evaluate the effectiveness of the notification requirements. The House Committee on Government Operations considered export notification in depth, and stressed the importance of foreign countries actually receiving the notifications (H.R. Rep. No. 95–1686, Oct. 4, 1978). Section 1019.7 of the regulation issued below provides that the Commission will seek acknowledgment of notification from the government of the country of intended destination. It does not contain a requirement that the notification be actually acknowledged, as a prerequisite to exportation of the goods involved.

The Natural Resources Defense Council also suggested that the regulation should require the Commission to send all notifications by telex or cable. While Congress has insisted on prompt notification of foreign governments, the Commission does not believe that it is necessary to describe the specific means to be used. However, § 1019.7 has been revised to require that the Commission inform the government of the country of destination on "a priority basis," which may include the use of telex or cable, when justified by circumstances.

Proposed § 1019.7 also contained language to the effect that the Commission would transmit to international organizations, in addition to the government of the country of intended destination and the U.S. State Department, information about proposed exportation of noncomplying products. One commenter objected to the inclusion of international organizations in the Commission's notification effort on the basis that such a procedure would involve foreign countries other than the country of destination of the noncomplying articles, and that would be in excess of this agency's statutory authority.

Certain international organizations have in recent years expanded their programs in the area of product safety. The Commission is participating in this important area of international cooperation and continues to believe that international organizations should be notified, where appropriate. In many cases, this notification may be an effective means of identifying and communicating with the public health and safety official in the importing country. The Commission believes that the sharing of safety information with the international community is well within its export notification and overall statutory authority, and the reference to international organizations in the proposal has therefore been retained in the regulation below.

H. *Other issues.* 1. In the preamble to the proposed regulation, the Commission observed that the export amendments do not impose any notification requirement for products which have been determined to present a "substantial product hazard" under section 15 of the CPSA (15 U.S.C. 2064). The Commission added, however, that as a matter of policy it intends to require notification of intent to export such products in any order it approves under section 15, and to seek this notification in any voluntary corrective action plan concerning distribution of products presenting a substantial product hazard which it accepts instead under section 15. Any notification to the Commission under such orders would of course be transmitted to the government of the country of intended destination.

Several commenters objected to this statement of policy for section 15 matters. Three stated that the Commission is attempting to go beyond the Congressional intent of the export amendments. One of these added that any such policy must be included in the text of the regulation.

The export amendments require notification to the Commission before the exportation of products which fail to comply with an applicable ban, standard, or regulation issued under the CPSA. They do not require such notification in the case of a product which is determined to present a substantial product hazard under section 15 of the Act. Nevertheless, the Commission finds that the provisions of section 15 of the CPSA contain adequate authority for the Commission to require notification prior to the exportation of any such product.

Section 15(d) of the CPSA authorizes the Commission to order corrective action to be taken with respect to any product which has been determined to present a "substantial product hazard." Section 15(d) further provides that the order for corrective action issued under that section may also require the party subject to the order "to submit a plan, satisfactory to the Commission" for carrying out the corrective action required by the order. Additionally, section 15(d) provides that an order issued under the authority of that section may prevent the sale or distribution in commerce, including export of the product which gave rise to the order.

The Commission does not agree that its procedural approach has been faulty or that the section 15 policy should be contained in the regulation below. The Commission's policy concerning exportation of products affected by section 15 of the CPSA is outside the scope of the export amendments and of the regulation issued below. However, because it involves the same notification issue as the regulation, it was included

in the preamble to the proposal for information purposes.

Another commenter stated that products which give rise to substantial product hazard cases are different from those which fail to comply with an applicable ban, standard or regulation. According to this commenter, the former are the result of a "one-time situation involving specific lots of products," while the latter involve "long-term relationships that need not be renegotiated for every shipment or even each year." In response to this comment, the Commission observes that products which present a substantial product hazard may in some cases present a more serious risk of injury than products which fail to comply with requirements of an applicable ban or standard.

2. The proposal contained provisions allowing exporters to request reduction of the 30-day period for advance notification of intent to export noncomplying products. It required that the application for a reduction in the 30-day advance notification period must contain all of the information required to be furnished by § 1019.4 (proposed § 1019.5(c)(5)). Although no comments were addressed to this provision, the Commission has now decided that exporters should not be required to furnish all information concerning the proposed exportation in order to apply for a reduction in the 30-day period for advance notification. Therefore, the Commission has removed this requirement from the regulation issued below.

3. Comments from National Retail Merchants Association and Associated Merchandising Corporation urged the Commission to reconsider its previously stated policy that products which fail to comply with FFA standards or regulations may not be exported if they have at any time been distributed in domestic commerce. This policy statement appears at 16 CFR 1602.2 (see also section I below). Because these comments are not addressed to any provision of the proposed regulation, but instead request reconsideration of a previously-published statement of Commission policy, the Commission has not responded to them in this document.

4. The Commission received no comments on the proposed 30-day effective date, and has therefore made this the effective date for the final regulation. Since the export amendments were enacted in November 1978, the export notification requirements have been in effect under the various statutes. This will continue until the implementing regulation below becomes effective.

I. *Prohibition on exportation of certain noncomplying products.* Before exporting a noncomplying product, a person or firm must notify the Commission, according to the requirements and procedures in the regulation below. However, certain noncomplying products are prohibited from exportation and compliance with the notification requirements does not exempt them from the prohibition. In general, these products are:

(1) any that are covered by the Commission's FFA Policy on Exportation of Noncomplying Goods:

(2) any that are covered by the Commission's policy on exportation of TRIS products;

(3) any that are covered by the enforcement policy that the Commission's Directorate for Compliance and Enforcement applies to the exportation of products in violation of the FHSA and CPSA; and

(4) any that the Commission has determined present an unreasonable risk of injury to persons residing within the United States and fail to comply with a standard, ban, or regulation issued under the CPSA, FHSA, or FFA.

These four categories of products are, for the most part, fully described in existing documents. This **Federal Register** document will cite and briefly describe those documents, along with some discussion of related issues (the numbering corresponds to the above list):

(1) The Commission issued an FFA export policy in 1975 and amended it in 1976. This policy, set forth at 16 CFR 1602.2, provides generally that noncomplying products cannot be exported if the manufacturer does not intend to export them at the time of original manufacture.

(2) In April 1977, the Commission acted under the FHSA to prevent the sale of TRIS-treated children's wearing apparel and other TRIS products, including retail and component products. This action created an unprecedented situation involving the possible exportation of TRIS products. In June 1978, the Commission issued a special statement of policy to clarify its belief that TRIS products which are "banned hazardous substances" under the FHSA cannot be exported if they have ever been sold or offered for sale in domestic commerce. This policy is set forth at 43 FR 25711 (June 14, 1978).

(3) In a July 19, 1978 memorandum, the Commission's Associate Executive Director for Compliance and Enforcement describes the enforcement policy that applies to the export of products in violation of FHSA or CPSA regulations, bans or standards. In general, such products are prohibited from export if they have ever been sold or offered for sale in domestic commerce. Copies of this policy are available from the Commission's Directorate for Compliance and Enforcement and the Office of the Secretary.

(4) The legislative amendments concerning export notification also contain provisions to prohibit the export of certain products. These provisions are virtually identical for the CPSA, FHSA and FFA. They prohibit the exportation of products that do not comply with a regulation, standard or ban under one of these acts whenever the Commission determines that such exportation "presents an unreasonable risk of injury to persons residing within the United States" (in the CPSA, "to consumers within the United States").

To implement these provisions, the Commission will evaluate all scheduled exportations that its staff believes could present an unreasonable risk to United States residents. As examples, hazardous products might be reimported into the United States or might have a negative impact on worldwide health or safety (such as chlorofluorocarbons destroying atmospheric ozone). The Commission's determination will be based on the information available to it at the time. After products are exported, it would be too late for the Commission to act effectively. In addition, the unreasonable risk finding will be based on relevant factors such as the nature and degree of the risk to consumers, the economic effects on business people, and the attitude of the foreign country scheduled to receive the products. If the Commission, by majority vote, determines that the exportation of noncomplying products would present an unreasonable risk of injury to United States residents, it will initiate any enforcement action that is necessary to prevent the exportation. Any affected parties will be able to contest this determination in the context of that enforcement proceeding.

Therefore, under sections 5, 6, and 7 of the Consumer Product Safety Act Authorization Act of 1978 (Pub. L. 95–631), sections 18 and 19 of the Consumer Product Safety Act, as amended (15 U.S.C. 2067, 2068), sections 4 and 14 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1263, 1273), and sections 7 and 15 of the Flammable Fabrics Act, as amended (15 U.S.C. 1196, 1202), the Commission amends Title 16, Chapter II, of the Code of Federal Regulations by adding to subchapter A a new Part 1019, as follows:

PART 1019—PROCEDURES FOR EXPORT OF NONCOMPLYING PRODUCTS

Sec.

Authority. Secs. 5, 6, 7, Pub. L. 95–631; 15 U.S.C. 1196, 1202, 1263, 1273, 2067 and 2068.

§ 1019.1 Purpose, applicability, and exemptions.

(a) *Purpose.* The regulations in this Part 1019 establish the procedures exporters must use to notify the Consumer Product Safety Commission of their intent to export from the United States products which are banned or fail to comply with an applicable safety standard, regulation or statute. These regulations also set forth the procedures the Commission uses in transmitting the notification of export of noncomplying products to the government of the country to which those products will be sent. The Consumer Product Safety Act Authorization Act of 1978 (Pub. L. 95–631), which became effective November 10, 1978, established these notification requirements and authorizes the Commission to issue regulations to implement them.

(b) *Applicability.* These regulations apply to any person or firm which exports from the United States any item which is:

(1) A consumer product that does not conform to an applicable consumer product safety rule issued under sections 7 and 9 of the Consumer Product Safety Act (15 U.S.C 2056, 2058), or which has been declared to be a banned hazardous product under provisions of sections 8 and 9 of that Act (15 U.S.C. 2057, 2058); or

(2) A misbranded hazardous substance or a banned hazardous substance within the meaning of sections 2(p) and 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261); or

(3) A fabric or related material or an item of wearing apparel or interior furnishing made of fabric or related material which fails to conform with an applicable flammability standard or regulation issued under section 4 of the Flammable Fabrics Act (15 U.S.C. 1191, 1193).

(c) *Exemption for Certain Items with Noncomplying Labeling.* The exporter of an item that fails to comply with a standard or regulation only because it is labeled in a language other than English need not notify the Commission prior to export if the product is labeled with the required information in the language of the country to which the product will be sent.

(d) *Exemption for Samples.* The exporter of an item that fails to comply with a standard or regulation, but which is intended for use only as a sample and not for resale, need not notify the Commission prior to export, if the item is conspicuously and legibly labeled in English with the statement: "Sample only. Not for resale." (The Commission encourages exporters to provide this label, in addition, in the language of the importing country, but does not require the foreign language labeling.) To qualify as a sample shipment under this exemption, the quantity of goods involved must be consistent with prevalent trade practices with respect to the specific product.

(e) *Exemption for items not in child-resistant packaging.* The exporter of an item which is a "misbranded hazardous substance" within the meaning of section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) only because it fails to comply with an applicable requirement for child-resistant packaging under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*) need not notify the Commission prior to export.

§ 1019.2 Definitions.

As used in this Part 1019:

(a) "consignee" means the person, partnership, corporation or entity in a foreign country to whom noncomplying goods are sent;

(b) "export" means to send goods outside the United States or United States possessions for purposes of trade, except the term does not apply to sending goods to United States installations located outside the United States or its possessions;

(c) "exporter" means the person, partnership, corporation or entity that initiates the export of noncomplying goods;

(d) "noncomplying goods" means any item described in § 1019.1(b), except for items excluded from the requirements of these regulations by §§ 1019.1 (c), (d), and (e).

§ 1019.3 General requirements for notifying the Commission.

Not less than 30 days before exporting any noncomplying goods described in § 1019.1(b), the exporter must file a statement with the Consumer Product Safety Commission, as described in §§ 1019.4 and 1019.5 of this Part. The exporter need not notify the Commission about the export of items described in §§ 1019.1 (c), (d), and (e). As described in § 1019.5, the exporter may request the Commission to allow the statement to be filed between 10 and 29 days before the intended export, and the request may be granted for good cause.

§ 1019.4 Procedures for notifying the Commission; content of the notification.

(a) *Where notification must be filed.* The notification of intent to export shall be addressed to the Associate Executive Director for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207.

(b) *Coverage of notification.* An exporter must file a separate notification for each country to which noncomplying goods are to be exported. Each notification may include a variety of noncomplying goods being shipped to one country. The notification may include goods intended to be shipped to one country in any one year, unless the Associate Executive Director for Compliance and Enforcement directs otherwise in writing.

(c) *Form of notification.* The notification of intent to export must be in writing and must be entitled "Notification of Intent to Export Noncomplying Goods to [indicate name of country]." The Commission has no notification forms, but encourages exporters to provide the required information in the order listed in paragraphs (d) and (e) of this section.

(d) *Content of notification; required information.* The notification of intent to export shall contain the information required by this subsection. If the notification covers a variety of noncomplying goods the exporter intends to export to one country, the information required below must be clearly provided for each class of goods, and may include an estimate of the information required in paragraphs (d) (3) and (5) of this subsection.

(1) Name, address and telephone number of the exporter;

(2) Name and address of each consignee;

(3) Quantity and description of the goods to be exported to each consignee, including brand or trade names or model or other identifying numbers;

(4) Identification of the standards, bans, regulations and statutory provisions applicable to the goods being exported, and an accurate description of the manner in which the goods fail to comply with applicable requirements; and

(5) Anticipated date of shipment and port of destination.

(e) *Optional information.* In addition to the information required by § 1019.4(d), above, the notification intent to export may contain, at the exporter's option, the following information:

(1) Copies of any correspondence from the government of the country of destination of the goods indicating whether the noncomplying goods may be imported into that country.

(2) Any other safety-related information that the exporter believes is relevant or useful to the Commission or to the government of the country of intended destination.

(f) *Signature.* The notification of intent to export shall be signed by the owner of the exporting firm if the exporter is a sole proprietorship, by a partner if the exporter is a partnership, or by a corporate officer if the exporter is a corporation.

§ 1019.5 Time notification must be made to Commission; reductions of time.

(a) *Time of notification.* The notification of intent to export must be received by the Commission's Associate Executive Director for Compliance and Enforcement at least 30 days before the noncomplying goods are to leave the customs territory of the United States. If the notification of intent to export includes more than one shipment of noncomplying goods to a foreign country, the Associate Executive Director for Compliance and Enforcement must receive the notification at least 30 days before the first shipment of noncomplying goods is to leave the customs territory of the United States.

(b) *Incomplete notification.* Promptly after receiving notification of intent to export, the Associate Executive Director will inform the exporter if the notification of intent to export is incomplete and will describe which requirements of § 1019.4 are not satisfied. The Associate Executive Director may inform the exporter that the 30-day advance notification period will not begin until the Associate Executive Director receives all the required information.

(c) *Requests for reduction in 30-day notification requirement.* Any exporter may request an exemption from the requirement of 30-day advance notification of intent to export by filing with the Commission's Associate Executive Director for Compliance and Enforcement (Washington, D.C. 20207) a written request that the time be reduced to a time between 10 and 30 days before the intended export. The request for reduction in time must be received by the Associate Executive Director for Compliance and Enforcement at least 3 working days before the exporter wishes the reduced time period to begin.

The request must:

(1) Be in writing;

(2) Be entitled "Request for Reduction of Time to File Notification of Intent to Export Noncomplying Goods to [indicate name of country]";

(3) Contain a specific request for the time reduction requested (the notification must be made at least 10 days before the intended export, so the request must be for a reduction of the notification period to a time between 10 and 30 days before the intended export); and

(4) Provide reasons for the request for reduction of time.

(d) *Response to requests for reduction of time.* The Associate Executive Director for Compliance and Enforcement has the authority to approve or disapprove requests for reduction of time. The Associate Executive Director will promptly inform the exporter who has requested the reduction of time whether there is good cause to grant the request. If the request is granted, the Associate Executive Director shall indicate the amount of time before export that the exporter must provide the notification. If the request is not granted, the Associate Executive Director shall explain the reasons, in writing.

§ 1019.6 Changes to notification.

If the exporter causes any change to any of the information required by § 1019.4, or learns of any change to any of that information, at any time before the noncomplying goods reach the country of destination, the exporter must notify the Associate Executive Director for Compliance and Enforcement within two working days after causing or learning of such change, and must state the reason for any such change. The Associate Executive Director will promptly inform the exporter whether the 30-day advance notification period will be discontinued, and whether the exporter must take any other steps to comply with the advance notification requirement.

§ 1019.7 Commission notification of foreign governments.

After receiving notification from the exporter, or any changes in notification, the Associate Executive Director for Compliance and Enforcement shall inform on a priority basis the appropriate government agency of the country to which the noncomplying goods are to be sent of the exportation and the basis on which the goods are banned or fail to comply with Commission standards, regulations, or statutes, and shall send all information supplied by the exporter in accordance with § 1019.4(d). The Associate Executive Director shall also enclose any information supplied in accordance with § 1019.4(e), but he or she may also state that the Commission disagrees with or takes no position on its content, including its relevance or accuracy. The Associate Executive Director shall take whatever other action is necessary to provide full information to foreign countries and shall also work with and inform the U.S. State Department and foreign embassies and international organizations, as appropriate. The Associate Executive Director shall also seek acknowledgment of the notification from the foreign government. Foreign governments intending to prohibit entry of goods that are the subject of a notification from the Commission should initiate action to prevent such entry and should notify the exporter directly of that intent.

§ 1019.8 Confidentiality.

If the exporter believes any of the information submitted should be considered trade secret or privileged or confidential commercial or financial information, the exporter must request confidential treatment, in writing, at the time the information is submitted or must indicate that a request will be made within 10 working days. The Commission's regulations under the Freedom of Information Act, 16 CFR 1015, govern confidential treatment of information submitted to the Commission.

Effective date: The regulation in the Part 1019 shall become effective on September 8, 1980.

Note.—The reporting requirements contained in § 1019.3, 1019.4, 1019.5 1019.6 and 1019.8 have been approved by the U.S. General Accounting Office under number B-180232 (R0682).

Dated: July 31, 1980.

Sadye Dunn,

Secretary, Consumer Product Safety Commission.

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Friday
August 8, 1980

Part V

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Work Registration and Job Search Requirements

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 165]

Food Stamp Program; Work Registration and Job Search

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking amends the regulations, published October 17, 1978 (43 FR 47846), which implemented the work registration provisions of the Food Stamp Act of 1977. These amendments provide proposed procedures for the implementation of the job search provisions contained in the Act and clarify operational procedures related to existing work registration requirements.

DATES: Comments must be received on or before October 7, 1980, to be assured of consideration.

ADDRESS: Comments should be submitted to: Alberta C. Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. all written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at room 678, 500 12th Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Washington, D.C. 20250; phone (202) 447–6535; or Michele Casey, Chief, Food Stamp Unit, Office of Work Incentive Programs, Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20213; phone (202) 376–7589.

SUPPLEMENTARY INFORMATION

Introduction

On October 17, 1978, the Department of Agriculture published final rules in the **Federal Register** implementing certain work registration provisions contained within the Food Stamp Act of 1977 (Public Law 95–113). Since that time, the Departments of Agriculture and Labor have been working together to develop an improved administrative procedure for implementing the entire work registration system including the requirement that work registrants actively seek employment. These proposed regulations are the result of that joint effort. They reflect the concerns of Congress and both Departments with regard to the need for an effective system to place able-bodied food stamp participants into gainful employment. Increased funding of the work registration process requested in the Department of Agriculture's Fiscal Year 1981 budget likewise indicates the desire of the Administration to ensure that an effective system is developed.

Each year, the Employment and Training Administration (ETA) and the Food and Nutrition Service (FNS) will negotiate funding levels based on agreed upon projections of workload levels, and the types of services to be provided. These funding levels will be included in the Interagency Agreement between the U.S. Department of Agriculture and the U.S. Department of Labor regarding the administration and operation of the work registration provisions of the Food Stamp Act of 1977. Each State Employment Security Agency shall participate in the work registration and job search activities for food stamp registrants to the extent that the funds necessary for proper and efficient administration are made available to ETA, Department of Labor by FNS, Department of Agriculture and are allocated to each State Employment Security Agency.

These proposed regulations somewhat restructure those regulations published October 17, 1978, in response to operational problems which have arisen at the local level. Responsibilities of the State agency and the State Employment Security Agency (SESA) are specifically defined to better delineate the adminstrative roles assigned each agency. Responsibilities assigned work registrants, both under work registration and job search, have been clearly stated.

Persons required to register. Wording from current regulations regarding who is required to register and the necessity of work registration as a condition of initial and continuing eligibility has been retained. The proposed language additionally specifies that subsequent to registration, disqualification would be based on the registrant's failure, without good cause, to comply with the additional work registration and job search requirements.

Exemptions from work registration. Two clarifications are proposed to the current regulatory language regarding persons exempt from the work registration requirements and a new section has been added. The clarifications are made in response to questions regarding procedures to be used by the State agency in those instances where a person's claim to an exemption, based on participation in the Work Incentive (WIN) Program or registration through the unemployment compensation process, is questionable.

The proposed regulations provide a methodology to verify such questionable exemptions by directing the State agency to contact the appropriate office of the SESA. Since the SESA is usually involved in both WIN and unemployment insurance (UI) activities, records will normally be on file in those offices to support such claims.

The new section discusses procedures to be followed when persons lose their exemption from work registration during the certification period. As in current rules, persons becoming non-exempt due to a change in either their age or the age of a dependent would not have to register for work until the next scheduled recertification However, for those persons losing their exemption due to an occurrence such as the loss of a job or deregistration from WIN, immediate registration for work would become a condition of continuing eligibility. This provision has been added to ensure that such persons receive job market exposure as soon as possible to improve the likelihood of their securing employment. persons losing their exemption who report the change in person would be required to complete the work registration form at the time the change is reported. If the change was reported in another manner, such as in writing, over the phone or by another household member, the State agency would provide a work registration form to the participant either through the mail or via the household member reporting the change. For household eligibility to continue, the work registration form would have to be completed and returned to the State agency within 10 calendar days.

State agency responsibilities. This section of the proposed regulations is basically a reiteration of parts of the current regulations. The first responsibility, which is new, directs the State agency to work with the participating SESA in developng a set of operating guidelines which will reflect the actual procedures used to implement the work registration requirements at the State and local level.

The 'Work Registration Plan' would detail such things as the work registration forms to be used and procedures to be followed in setting up the initial assessment interview, which is discussed below. It is expected that, in developing these procedures, the State agency and the SESA will also develop a continuing working relationship for the resolution of any

current or future problems related to system operations.

As a second responsibility, the State agency would continue the current practices of providing work registration forms to persons required to register and of informing those persons of their rights and responsibilities under the work registration system. Persons submitting an identifiable work registration form to the State agency, i.e., one which accurately identifies the individual by name, address and other readily known information, shall be considered registered. The form will be completed in its entirety when the work registrant is interviewed by the SESA. Both to ensure the timely transmittal of work registration forms to the SESA and to avoid unnecessary action with respect to persons not certified, the proposed regulations further provide that such forms be transmitted to the appropriate SESA no later than five working days after the date of household certification.

The third responsibility involves communication between the State agency and the SESA. When work registrants become exempt from the work registration requirement or when persons registered for work are no longer food stamp participants, the State agency would be responsible for informing the SESA of the change within five working days of the date the change becomes known. This action by the State agency would eliminate a number of unnecessary activities undertaken by the SESA in attempting to contact persons no longer subject to the food stamp work registration requirements.

State Employment Security Agency (SESA) responsibilities. This section of the proposed regulations explicitly states the work registration responsibilities assigned to the participating SESA. Current regulations, while alluding to these responsibilities, provide no direct guidance. The first responsibility assigned is similar to that assigned the State agency: the coordinated development with the State agency of operational guidelines. As stated earlier, this requirement is perceived as being the first step in establishing a continuing working relationship between the two agencies.

The second responsibility details the activities the SESA is expected to undertake following receipt of a work registration form from the State agency. The first activity is the entry of the information from the work registration form into the Employment Service Automated Reporting System (ESARS). ESARS basically maintains information on the demographic characteristics of and services provided to persons seeking employment aid through the SESA. It is currently used by the SESA in providing information to the Department of Agriculture (USDA) on the number of food stamp work registrants and the services (such as referrals and job placements) provided to food stamp work registrants. As stated in the Act and noted in current regulations, the registration would remain active for food stamp purposes for a period of six months. However, as discussed above, if the State agency notifies the SESA that the person is no longer a food stamp work registrant, he or she would be deactivated for purposes of complying with the additional work and job search requirements. Following entry into ESARS, the SESA would generally be responsible for contacting all work registrants to schedule an initial interview appointment. (This requirement would however be waived in those instances where the work registrant would be exempt from taking part in an active job search based on certain criteria discussed under 'Job Search' below.) To ensure that the work registrant was exposed to the job market as quickly as possible, the interview appointment would be scheduled to occur no later than two weeks after the date the work registration form reaches the SESA office. If the work registrant is unable to keep the first interview appointment for any reason, the SESA would automatically send the registrant a letter scheduling another interview to occur within the next weeks. The letter would inform the registrant of the date of the rescheduled interview, the penalty for failure to report to the interview without good cause, and provide information on how to contact the SESA to reschedule the interview date if the registrant has good cause reasons for being unable to appear on the date. The third activity would be the interview of work registrants for potential job placement. At the time of the interview the SESA would complete any missing entries on the work registration form, review the work registrant's past experience, skills and abilities, and attempt to match the work registrant to an available job opening. If during the course of the interview it becomes apparent that the work registrant has specific counselling or testing needs, the services would be provided in the same manner in which they are provided to all persons seeking employment assistance through the SESA. If the SESA counselor finds that the work registrant has training needs and knows of services, such as CETA or the Job Corps, which could meet these needs, the work registrant would be directed to those services.

The fourth activity establishes procedures which would be followed in those instances when the SESA is in disagreement with a State agency determination regarding a work registrant's nonexemption. This procedure parallels one established in regulations for the Work Incentive Program and has been added in recognition of the fact that perspectives may differ as to a person's physical or mental fitness for employment. If the State agency determines that a person is required to register for work and the SESA finds that person should be exempt due to a physical or mental disability, the SESA would inform the State agency of its finding and the rationale supporting the finding. The State agency would be expected to review its determination in light of the SESA's reasoning. While the State agency's determination would be accepted as final by the SESA, the State agency would be expected to reply to the SESA within 30 days of the date the SESA first contacted the State agency regarding the work registrant. If the State agency either reversed its decision or failed to recontact the SESA within 30 days, the person would be deactivated for purposes of complying with the additional food stamp work and job search requirements.

The fifth activity assigned to the SESA relates to the administration of the job search requirements which are discussed in the following section. During the initial interview, the SESA would determine the applicability of the job search requirements to each full-time work registrant, explain to the work registrant his or her rights and responsiblities, and give the work registrant direction in how to go about looking for a job. Given the SESA's knowledge of local job market conditions, the last function is viewed as having paramount importance in aiding the work registrant in securing employment. The sixth activity is a follow-on to the SESA's basic responsibility of attempting to match work registrants with available employment. At the time of the initial interview and during all subsequent work registrant visits to the SESA, an attempt would be made to match work registrants to available job openings. This job match process would continue during the period of time that the work registrant remains active in the system.

The seventh and final activity relates to communication between the SESA and the State agency. Within five working days of the date the occurrence

becomes known to the SESA, the SESA would be expected to inform the State agency either of the registrant's failure to comply, without good cause, with the additional work requirements or the job search requirements, or of the registrant's securing employment. The establishment of the five day timeframe would ensure that the State agency promptly recieves information on participants, thus allowing the State agency to take prompt appropriate action.

Job Search. One of the major additions to the work registration procedures made by the 1977 Food Stamp Act was the provision that full-time work registrants fulfill reasonable reporting and inquiry requirements. The House Committee on Agriculture's *Report on H.R. 7940* provides the legislative history regarding the job search provision. Congress' intent in establishing the job search requirement was to encourage full-time work registrants to actively seek employment on their own. Recognition was given to the fact that conditions varied both from place to place and individual to individual. Thus, the Secretary of Agriculture was directed to develop regulations which took into consideration "the nature of the job market in the particular political subdivision * * * the capabilities and characteristics of the individual work registrants, including their age, physical condition and recent employment history" rather than developing one uniform set of requirements that would be nationally applied. (See Report on H.R. 7940.)

In developing the proposed regulation on job search, the results of numerous studies related to job seeking have been reviewed and consideration has been given to the Administration's Welfare Reform Proposal (H.R. 4425 and S. 1312) as it relates to job search. These studies are available for public inspection along with the public comments on this proposal. With these findings and considerations in mind, the following proposals regarding food stamp job search are made.

Job Search Categorization. Under the proposed regulations, persons subject to the full-time work registration requirement would be required to participate in an initial assessment interview at the appropriate SESA office. This requirement would be waived in those instances where it was determined that the work registrant would be exempt form taking part in an active job search based on the criteria discussed below. This assessment interview would be conducted in conjunction with the intial SESA interview previously discussed. During the assessment interview, the SESA would determine the appropriate job search category for each work registrant. In making the decision as to which job search category the work registrant belongs, the SESA would consider the individual's capabilities and existent labor market conditions. Three job search categories have been proposed. Category I would be composed of those persons considered 'Job Ready'. To be placed in this category, the work registrant would have to have no substantial barriers to employment, i.e. specific problems which would prevent him or her from accepting or continuing employment.

Category II work registrants would be of two types. The first would be those persons who face substantial barriers to employment which make the application of the job search requirements impractical. Such barriers could include intermittently recurring medical problems (either their own or those of another household member to whom they give care) or transportation problems, such as living a long distance from public transportation and no private transportation being available or not having sufficient funds to use public transportation if it is available. Such persons, while subject to the normal work registration requirements, would be those who would be generally perceived as not benefiting from the imposition of a job search. The second type of persons assigned to Category II would be those persons, temporarily displaced from their jobs (for reasons such as a layoff), who expect to return to a specific job shortly. Work registrants placed in Category II for this reason would be recategorized, as appropriate, at the end of sixty days if they were still unemployed. It is proposed that job attached work registrants be treated in this fashion to avoid the cost inefficiences resulting from involving such persons in an intensive job search procedure.

Category III work registrants would be exempt from the job search requirements. Individual exemptions would be established for those work registrants residing an unreasonable distance (i.e., more than a two hour round trip) from the SESA office by reasonably available public or private transportation. This exemption, which is in line with the exemption established in the Work Incentive Program regulations, recognizes both the burden which would be placed on work registrants by requiring them to travel long distances to contact the SESA office and, most likely, potential employers and the national mandate to conserve energy wherever possible. It should be noted that such persons would continue to be actively registered with SESA and would be referred to suitable job openings should they become available. General exemptions may also be established jointly by FNS and DOL for residents of certain areas or certain groups, such as migrants, if FNS and DOL determine that job search would provide such persons no practical service. For example, FNS and DOL may determine that work registrants residing in certain areas of rural Alaska or certain Indian reservations would be exempted from job search due to the complete lack of employment opportunities. Requests for such general exemptions may be brought to FNS and DOL attention by SESA's and State agencies or other groups, such as Indian Tribal Organizations, knowledgeable of economic conditions which might lead to such determination.

As proposed, the job search categorization of each full-time work registrant is the direct responsibility of the SESA, since the SESA possesses in-depth knowledge regarding the job market and the work registrant's ability to obtain employment. If the work registrant feels that he or she has been incorrectly categorized, the work registrant obtain review by a designated SESA official. If the determination arrived at through the SESA procedure does not satisfy the work registrant, the determinaiton may be appealed through the State agency fair hearing process. As discussed in greater detail later, the SESA has final responsibility for determining compliance with the job search requirements. The State agency would not have the authority to overrule the SESA and would, upon receipt of the SESA's determination of noncompliance, take action to disqualify the household. The work registrant would, however, also have the right to appeal the State agency's disqualification action through the State agency fair hearing system.

Requirements. The proposed regulations establish an eight-week job search requirement for persons classified as Category I. This period may, however, be shortened, if the SESA determines that it is impractical. For example, the SESA may find an eight-week period impractical if the number of potential employers in an area is small. Alterantively, the period may be suspended by the SESA, if job market or personal conditions warrant. Such flexibility has been specifically provided to enable the SESA to establish the

greatest potentially effective job search requirement. If, for example, a general slow-down existed in the local economy, the work registrant's job search period could be suspended until the job market was better able to absorb new entrants. Thus, both the registrant's energies and the costs associated with job search could be expended at the most opportune time. The general eight-week time frame is equal to that established in the Administration's Welfare Reform Bill and is generally considered an acceptable period of time in which to require persons to actively seek their own source of employment. For Category I registrants, the job search requirements would generally be initiated at the time of initial registration for work and at each six-month reregistration thereafter, although the SESA could postpone the commencement of the job search activity period if conditions warranted. Thus, an effective 16-week job search requirement, over the course of the year, would be established.

Persons becoming exempt from the work registration requirement, who subsequently lose that exemption during the course of the six-month registration period, would be required to complete the remaining amount of the eight-week requirement if they were placed in Category I at the time of subsequent registration.

The specific job search requirements assigned by the SESA would reflect the potential employability of each work registrant. Prescribed visits with the SESA office have been established to ensure both that contact is maintained with a primary source of job listings and that work registrants continue to receive guidance from skilled personnel counselors. Persons placed in Category I would be required to make contact with eight to twenty-four prospective employers during the eight-week period. If the job search period was shortened below eight weeks, the number of job contacts would be reduced on a pro-rate basis. The exact number of job contacts to be made would be dependent upon the SESA's evaluation of the work registrant and the job market's demand for abilities possessed by the work registrant.

Twice during the eight-week period, the Category I work registrant would be required to report to the SESA office and provide written documentation of his or her activity. (The first follow-up interview would have been scheduled at the time of the initial assessment interview.) In addition to reviewing previous job contacts during the first follow-up interview, the SESA would be responsible for reviewing existing job openings, providing the work registrant with guidance in future job search plans and establishing the final follow-up interview to occur at the end of the job search period. During the final job search interview, the SESA would repeat the above activities with the exception that another follow-up interview would not be scheduled. The work registrant may, at his or her option, choose to continue maintaining contact with the SESA for job assistance. Since the work registrant would still be actively registered with the SESA, the additional work requirements, including referral to suitable employment, would continue in effect over the entire six-month period.

The SESA would additionally be responsible for ensuring that such persons were referred to public jobs or training programs, given their availability and suitability to the needs of the persons.

Category II work registrants would not be assigned any specific job search requirements at the time of the initial assessment interview. The SESA may, however, depending on its perception of the duration of the problem barring the participant from participating in an active job search, recontact such persons for another assessment interview during the six-month registration period. At the second assessment interview the job search categorization would be reviewed for potential referrals. Persons reclassified as Category I would be subject to the requirements specified above. Persons placed in Category II due to a job attachment would be contacted for a subsequent interview 60 days from the date of the initial interview if such persons continued to be subject to the work registration requirement. At the time of the subsequent interview, available job openings would be reviewed and the participant's job search categorization would be reconsidered.

Persons exempted from the job search requirements would generally not be required to make any visits with the SESA. If, however, the exemption becomes inapplicable during the 6-month interval, due to an occurrence such as a planned move by the household to a location closer to the SESA, the SESA may interview the household to reclassify the work registrant appropriately.

Follow-up Activities. This section details the responsibilities assigned to the SESA in administering the job search requirement once the initial decision on categorization is made. During the initial assessment interview, the SESA would provide direction to Category I work registrants on how do conduct their job search, i.e., how to locate prospective employers, how to arrange interviews, and how to conduct themselves in interviews. At this time, the SESA would also provide the work registrant with confirmation of the date and time of the next follow-up interview. Category II work registrants would be informed that such recontact, as appropriate, would be made by letter. As discussed above, during the follow-up interviews, the SESA would be responsible for reviewing the previous job contacts, discussing upcoming job search plans, and reviewing available job openings for potential referrals.

Persons failing to appear for the scheduled interview, for whatever reason, would be contracted by the SESA by letter and another interview arranged to take place within two weeks of the missed interview. The letter would contain information on the data of the rescheduled interview, the penalty for failing to report for the rescheduled interview without good cause and procedures to be followed in contacting the SESA should good cause conditions prevent him or her from attending the rescheduled interview. If the work registrant failed to report to the rescheduled interview, without good cause, the SESA would be responsible for informing the State agency of the failure within five working days so that appropriate action could be taken.

Job Contact. This section of the proposed regulations defines a job contact. The goal of requiring a job search is for the work registrant to find suitable, gainful employment. As a first condition, the work registrant would have to present himself or herself to a prospective employer as available to accept employment. The SESA, during the initial assessment interview and at the time of subsequent interviews, would advise the work registrant on how to be successful in this area—discussing such things as interview techniques. The second criteria involves the prospective employers from whom one would seek employment. To qualify as a job contact, prospective employers must have job positions for which the work registrant is reasonably qualified. For example, it would not be reasonable for a person with no clerical skills to apply for a position as a typist. Nor would it be reasonable for someone without a driver's license to apply for a position as a taxi driver. It would be reasonable, on the other hand, for a college graduate with a teaching certificate who has been unable to secure a teaching position to apply for a

sales job. Thus, in conducting a job search, work registrants would have to seek employment in areas where their skills matched, or exceeded, the requirements of the job.

It should be noted that the manner in which a job contact would be made has not been specifically addressed. This decision would depend on the normally accepted method of job application for the type of job being sought. This area of the job search process is one which would be discussed by the SESA with the work registrant in structuring the person's job search.

Generally, it would not be acceptable to contact the same employer more than one time. However, if during the initial employer contact it was indicated that job openings may soon exist and that the registrant could reapply at that time, such recontact would be acceptable and would count as a required job contact.

If the SESA refers a work registrant to a prospective employer as part of the additional work requirements, this would count as a job contact made in satisfaction of the job requirements.

Reporting Job Contacts. During the initial assessment interview, the SESA would discuss with the work registrant the manner in which job contacts would be reported. Generally, the SESA would supply the work registrant with a form to be completed and signed by the work registrant. The work registrant would not be required to obtain the signature of the prospective employers contacted. However, the work registrant's signature on the form would attest to the truthfulness statements made on the form.

This documentation would be provided by the work registrant to the SESA at each of the follow-up visits. If the SESA has questions regarding the job contacts reported by a work registrant, the registrant would be responsible for providing such information. At the initial follow-up visit, the SESA would review contacts already made by the work registrant and discuss future job search plans. No decision on compliance would be made at this time since the work registrant would have the entire eight-week period to fulfill the required number of job contacts. At the final follow-up visit, the SESA would make a determination as to whether the registrant had completed the assigned number of job contacts. If the work registrant had not completed the required number of job contacts, but such failure was due to good cause, the work registrant would be excused from completing the missed contacts. If the registrant had not completed the required job contacts, no good cause conditions existed, and the assigned job search period was less than eight weeks, the registrant would have until the end of the eight-week period to complete the missed contacts. If the assigned job search period was eight weeks no additional time would be provided, with one exception. If the SESA disallows a reported job contact(s), for reasons such as suitability or manner of contact, the registrant would be allowed two weeks to make up the disallowed contact(s). Once a final determinaton of failure to comply has been made by the SESA, the SESA would notify the State agency of its decision within five working days of the date of the determination.

Failure to comply. The first part of the *Failure to comply* section in the current regulations has been rewritten to include action which would be taken by the State agency in those instances where the SESA has informed the State agency that the work registrant has failed to comply with the additional work registration or job search requirements. The proposed regulations establish a somewhat different structure for decision-making than exists in current work registration regulations. Due to the specialized knowledge of the SESA in the area of employment, the SESA has been assigned final responsibility for determining compliance with the additional work registration and job search requirements. Within the job search process, work registrants are given a second chance to make up missed interviews. The SESA, in addition, is required to contact the work registrant to determine if good cause conditions existed for failure to comply with any additional work registration or job search requirements prior to notifying the State agency of the registrant's noncompliance. Once the determination is made by the SESA that the work registrant has failed to comply without good cause and the State agency is notified of such noncompliance, the State agency would have to take action on the SESA determination. If, on receipt of a notice of adverse action, the work registrant disagrees with the action, the participant would have the opportunity to contest the action through the State agency fair hearing system. The fair hearing could decide in the participant's favor. However, prior to a fair hearing, the State agency could not unilaterally decide that the notice of noncompliance received from the SESA would not be acted upon.

The regulations further provide that the notice of adverse action, for all actions based on the work registration requirements, would contain the dates of the proposed disqualification period and a statement that the household may reapply to receive benefits at the end of the period. The letter sent to the household containing the adverse action notice would also be required to contain information on the provisions related to ending disqualification.

Determining good cause. This section of the regulations has been rewritten to clarify the responsibilities of the SESA in determining good cause. Due to the responsibilities assigned to the SESA in administering the additional work registration and job search provisions, the SESA would also have responsibility for determining if good cause conditions existed for a work registrant's failure to comply with these provisions. For the SESA, the circumstances set forth in current regulations would be used in making such determinations.

Ending disqualifications. This section of the regulations has been rewritten to distinguish between job search and other work registration activities and to clarify the responsibility of the work registrant who wishes to cure previous acts which have resulted in his or her household's disqualification. The previous cure provision related to reporting for an interview with the SESA has been deleted, since a second opportunity to make up a missed appointment is provided by the SESA prior to making a determination of noncompliance. Thus, while a disqualification for certain acts relating to work registration, e.g. refusal to report to an employer to whom referred by the SESA, could be cured by the registrant, disqualification for failure to comply with certain job search requirements could not be cured. As with the existing regulations, the proposed regulations would specify those grounds for disqualification which can be cured.

The proposed regulations would also clarify that if the work registrant has refused to accept an offer of suitable employment to which he or she has been referred by the SESA, it is the responsibility of the work registrant to secure comparable suitable employment. It has been brought to the Department of Agriculture's attention that current regulations have been construed to mean that the work registrant would be reinstated simply by offering to accept such comparable employment. This is not a correct interpretation. Once suitable employment has been offered and it is refused by the participant, he or she would have to find and accept comparable employment if reinstatement is to take place within the two-month disqualification period.

These regulations would not mean that the SESA could not assist the person in finding such employment; however, the primary responsibility would rest with the disqualified work registrant. In those instances where a person has refused to continue suitable employment to which referred by the SESA, the principle discussed above would also be applied. While the SESA could continue to assist the person in securing employment, it would be the primary responsibility of the disqualified person to find such comparable employment in order to end the disqualification.

The proposed regulations also add a new part to the section on *Ending disqualification.* This part clarifies that a SESA determination, regarding a person's failure without good cause to comply with the requirements as to the assessment interview, follow-up interviews, or job contacts, or the additional work requirement of an interview with the SESA, is final and must be acted on by the State agency. There are no cure provisions for failing to comply with these requirements since a second opportunity for compliance is built into the requirements themselves. The resulting disqualification can only be ended if it is overturned by a decision made through the State agency fair hearing process, or if the member becomes exempt from the work registration requirement, or if the two-month disqualification period runs its course. However, as noted above, the proposed regulations specify that disqualification based on certain other grounds can be cured by the registrant.

To implement these changes, the Departments propose that Part 273 be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.7 Work registration requirements [Amended]

1. Paragraph (a) would be amended to read as follows:

(a) *Persons required to register.* The State agency shall determine which household members are required to register for employment. Each household member who is not exempted by paragraph (b) of this section shall register for employment as a condition of eligibility at the time of application and once every six months after initial registration. Failure to comply with the work registration requirements thereafter, without good cause, will result in household disqualification as established in § 273.7(g).

* * * * *

2. In paragraph (b), the number "(1)" would be added after the word *"registration"* and before the word "The". Paragraphs (b)(1) through (b)(9) would be redesignated as paragraphs (b)(1)(i) through (b)(1)(ix), respectively. Newly redesignated paragraphs (b)(1)(iii) and (b)(1)(vi) would be amended and a new paragraph (b)(2) would be added. The amended paragraphs and the new paragraph would read as follows:

* * * * *

(b) *Exemptions from work registration.*

(1) * * *

(iii) A household member subject to and participating in the work incentive program (WIN) under Title IV of the Social Security Act. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption with the appropriate office of the State Employment Security Agency (SESA).

* * * * *

(vi) A person is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the SESA as part of the unemployment compensation application process. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption with the appropriate office of the SESA.

* * * * *

(2) Persons losing their work registration exemption, except as specified in paragraphs (b)(1)(i), (iv), and (v), of this section, shall be required to fulfill the work registration requirement as a condition of continuing eligibility. If the change is reported in person by the household member required to register, the State agency shall ensure that the work registration form is completed at the time the change is reported. If the change is reported by phone, through the mail, or by another household member, the State agency shall be responsible for providing the participant with a work registration form. The participant shall be responsible for returning the form to the State agency within 10 calendar days from either the date of the mailing or the date the form was given to the household member reporting the change.

* * * * *

3. The current paragraph (c) would be redesignated as (m) and a new paragraph (c), which reads as follows, would be added:

* * * * *

(c) *State agency responsibilities.* (1) The State agency shall be responsible for jointly developing with the participating SESA a Work Registration Plan. The Plan shall set forth the specific operational procedures to be followed by the SESA, or its designee, and the State agency in meeting the requirements of this section. Such Plan shall be annually reviewed by the State agency and the SESA and updated as appropriate.

(2) Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply. The State agency shall provide work registration forms to the applicant for each household member who is required to register for employment. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency. No later than five working days after the date of household certification, the State agency shall forward the completed work registration form to the SESA having jurisdiction over the area where the registrant resides.

(3) The State agency shall be responsible for notifying the appropriate SESA of those work registrants who either become exempt from the work registration requirement subsequent to registration or are no longer certified for participation in the Program. Such notification shall be provided to the SESA no later than five working days from the date the change becomes known to the State agency.

* * * * *

4. Paragraph (d), which was previously reserved for *Job Search,* is used for a new paragraph, *State Employment Security Agency (SESA) responsibilities,* which would read as follows:

* * * * *

(d) *State Employment Security Agency (SESA) responsibilities.* (1) Each SESA shall participate in the work registration and job search activities for food stanp registrants to the extent that the funds necessary for proper and efficient administration are made available. The SESA shall be responsible for jointly developing with the State agency a Work Registration Plan. The Plan shall set forth the specific operational procedures to be followed by the State agency and the SESA, or its designee, in meeting the requirements of this section. Such Plan shall be annually reviewed by the State agency and the SESA and updated as appropriate.

(2) Following receipt of the work registration form from the State agency, the SESA shall be responsible for taking the following actions: (i) Entering the information from the work registration form into the Employment Service Automated Reporting System (ESARS). Such registration shall remain active for six months unless the participant is subsequently deregistered for food stamp purposes;

(ii) Contacting work registrants to schedule interview appointments, in accordance with § 273.3(f)(1), with the exception that those persons who would be exempt from job search, as discussed in § 273.7(e)(1)(ii), shall not be required to report for such an interview. Such interview shall be scheduled to occur within two weeks of the date the work registration form reaches the SESA. If the work registrant fails to appear for the first interview, the SESA shall send a letter scheduling another interview to occur within the next two weeks. The letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant the consequences of failing to appear for the rescheduled interview appointment without good cause, and provide procedures for contacting the SESA if the rescheduled interview cannot be attended by the work registrant for good cause.

(iii) Interviewing work registrants for potential job placement. The SESA shall provide the work registrant with job market information, referral to available employment, and all other counseling, testing, and training services, as appropriate, wich are normally available to persons seeking employment throught the SESA. Job market information, including a listing of available job opportunities, shall be used to provide this information and facilitate such referrals;

(iv) If the State agency has required an individual to register for work and the SESA disagrees, the SESA shall request the State agency to reconsider its determination. The State agency's response will be accepted by the SESA as final. If the State agency reverses its decision or does not respond to the request within 30 days, the SESA shall remove the registrant from ESARS as exempt;

(v) Establishing and maintaining job search procedures, determining the applicability of the job search requirements established in § 273.7(e) to each full-time work registrant, administering the job search requirement, and assisting the work registrant in conducting his or her job search;

(vi) Attempting to match work registrants with available job openings at the time of the work registrant's initial and subsequent visits to the SESA and on a continuing basis; and

(vii) Reporting to the State agency both on work registants who fail to comply, without good cause, with either the job search requirements established in § 273.7 or the additional work requirements established in § 273.7(f), and on those registrants who obtain employment. The SESA shall notify the State agency within five working days of the date such information becomes known to the SESA.

* * * * *

5. Paragraph (e), *Additional work requirements,* would be redesignated as paragraph (f). A new paragraph (e), *Job Search,* would be added and would be read as follows:

* * * * *

(e) *Job Search.* All persons required to register for full-time work shall be subject to the appropriate job search requirements discussed below. The appropriate requirement shall be established at the time of the initial registration interview with SESA and at each subsequent registration interview. If it is known, or the SESA determines from available information, that the work registrant would be exempt from actively engaging in a job search based on the criteria established in (e)(1)(ii)(c), of this section no assessment interview will be required. Failure to comply with the job search requirements, without good cause, shall result in household disqualification as established in § 273.7(g).

(1) *Job Search Assignment.* (i) During the initial assessment interview, the SESA shall determine the job search category of each full-time work registrant. The SESA shall provide to each full-time work registrant written notification regarding his or her job search requirements, procedures to be followed, and the consequences of failure to comply. If the work registrant believes he or she has been improperly assigned, review of the classification may be obtained from a designated SESA official. The results of the SESA procedure shall be binding and shall not be reversed by the State agency. The work registrant may, however, appeal either the SESA determination or action taken by the State agency (such as disqualification resulting from failure to comply with the SESA determination) through the State agency fair hearing system.

(ii) Based on the capabilities and characteristics of the participant, including his or her age, physical condition, and recent employment history, and the job market situation in the area, the SESA shall categorize each full-time work registrant into one of the following categories.

(A) Category I—*Job ready.* Those work registrants having no apparent substantial barriers to employment.

(B) Category II—*Non-job ready.* Those work registrants with substantial barriers to employment, e.g., medical, transportation, or family problems, which would make them difficult to place. Transportation problems shall include the unavailability on a regular basis of either private or public transportation or of the minimum financial resources necessary to obtain available public transportation. Job attached persons, e.g., those on temporary layoff or those expecting to return to work within 30 days, shall be placed in this category for 60 days from the date of initial registration. At the end of the sixty-day period, job attached persons, if still unemployed, may be recategorized as appropriate.

(C) Category III—*Exempt.* Those individuals residing an unreasonable distance from the appropriate SESA office or determined exempt by FNS and the Department of Labor. A distance shall be considered unreasonable if the round trip exceeds 2 hours by reasonably available public or private transportation. FNS and the Department of Labor may also jointly establish general exemptions for residents of certain areas or certain groups if, due to locational or economic characteristics or similar reasons, application of the job search requirements is determined impracticable. Requests for such general exemptions may originate with the local or State level SESA and State agency, or from other knowledge sources. Whenever practical, the SESA determination of exempt status shall be made at the time the work registration form is recieved from the State agency to preclude the need of such persons travel to the SESA for an assessment interview.

(2) *Requirements.* (i) Persons classified as Category I shall fulfill the job search requirements discussed below for a period of eight weeks or until the work registrant becomes exempt from the job search requirements, whichever occurs sooner. SESA may however shorten or suspend the job search activity period if personal or economic conditions warrant. If the job search period is shortened, the number of required job contacts shall be reduced on a pro-rata basis. Such requirements shall be effective at the time of initial registration for work and at each subsequent six-month

reregistration unless the SESA determines that the job search would be more effective if postponed to a later date. Persons becoming exempt during the six-month work registration period, who subsequently lose their exemption, and are reassigned to Category I, shall complete whatever portion of the eight-week job search activity remains for the six-month period.

(ii) Persons classified as Category I shall, for a period of up to eight weeks, fulfill the following requirements in addition to those outlined in § 273.7(f). Where appropriate, such persons shall also be referred to the CETA or other jobs or training programs.

(A) Contact, as specified by the SESA, eight (8) to twenty-four (24) prospective employers during the eight-week period; and

(B) Twice during the job search period, report at a prescehduled time to the SESA on the result of all job contacts. Job contacts shall be reported in written form as discussed in § 273.7(e)(5) below. At the time of each subsequent interview, as discussed in § 273.7(e)(5), the SESA will be reponsible for reviewing its files to determine if current referral possibilities exist.

(iii) Work registrants classified as Category II will not be assigned any specific job search activity. Job attached persons who have not returned to their jobs or otherwise become exempt from the work registration requirement will be called in for reassessment at the end of sixty days. Other persons may be called in by the SESA during the six-month registration period. During subsequent interviews, job files will be reviewed for potential referrals, and the job search categorization of such individuals will be reassessed.

(iv) Work registrants classified as Category III will not be required to fulfill any job search requirements until such time as the exemption is no longer applicable and the work registrant is reclassified into an active job search category.

(3) *Follow-up activities.* (i) At the time of the initial assessment interview with the work registrant, the SESA will establish a schedule for two follow-up visits over the job search period for Category I registrants. Such schedule shall be documented and provided in written form to the work registrant. Category II registrants will be informed that they may be contacted either within the six-month registration period or within sixty days if they are job attached. If the work registrant fails to report for the follow-up interview for any reason, the SESA shall contact the work registrant by letter to schedule another interview within the next two weeks. The letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant the consequences of failing to appear for the rescheduled interview without good cause, and provide procedures for contacting the SESA if the rescheduled interview cannot be attended by the work registrant for good cause. If the work registrant fails to report to the rescheduled interview, without good cause, the State agency shall be notified of the failure within five working days of the date of the failure.

(ii) At the time of each follow-up interview, the SESA shall review the job contacts made by the work registrant, review job listings for potential referrals, and assist the work registrant in establishing his or her future plans for seeking employment.

(4) *Job contact.* A job contact made in response to a referral by the SESA will be considered a job contact for job search purposes. To qualify as a job contact, two conditions must be met. First, the work registrant must present himself or herself to a prospective employer as available for work. Second, the prospective employer must ordinarily employ persons in areas of work meeting the suitability requirements discussed in § 273.7(j) for which the work registrant is reasonably qualified by means of experience, training, or ability. Depending upon the position being sought, the job contact requirement may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the SESA to be generally accepted practice for that occupation. The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

(5) *Reporting Job Contacts.* (i) Job contacts shall be reported in writing in a manner prescribed by the SESA. At the time of the initial interview with the SESA, the work registrant shall be told about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the work registrant shall be required to sign the written documentation to attest to its validity. The written report shall be submitted to the SESA at the time of the work registrant's follow-up visits to that office.

(ii) The work registrant shall be responsible for providing the SESA, upon reasonable request, any additional information regarding job contacts.

(iii) At the end of the job search period, the SESA shall determine if the work registrant has completed the assigned number of job contacts. If the work registrant was assigned a job search period of less than eight weeks, the registrant shall have the remainder of the eight-week period to complete any missed contacts. If the work registrant was assigned an eight-week job search period, no additional time shall be allowed unless the SESA fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make-up the disallowed contact(s). If the SESA determines that the work registrant has failed to comply with the job search requirements, without good cause, the SESA shall inform the State agency within five working days of the date the determination is made. Persons failing to complete the required number of job contacts with good cause shall be excused from completion of the job search requirements.

* * * * *

6. Paragraph (f), *Failure to comply*, would be redesignated as paragraph (g). Paragraph (g), *Determining good cause*, would be redesignated as paragraph (h). The newly redesignated paragraph (g)(1), would be reworded as follows:

* * * * *

(g) *Failure to comply.* (1) If the State agency is informed by the SESA that a household member, except a student as defined in paragraph (b)(1)(ix) of this section, has refused or failed without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate as provided in this paragraph. Such ineligibility shall continue until either the member complies with the requirements in paragraph (i) of this section, or the member becomes exempt, or for 2 months, whichever occurs earlier. Prior to informing the State agency of the registrant's noncompliance, the SESA shall be responsible for contacting the work registrant to determine if good cause, as discussed in (g) of section, existed. Within 10 days after the SESA provides notification of the work registrant's failure to comply with the requirements of this section, the State agency shall provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Information shall also be included with the notification on the procedures and requirements contained in paragraph (i)

of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each household has a right to a fair hearing to contest a denial, reduction or termination of benefits due to a determination of nonexempt status, job search categorization or failure to comply with the work registration requirements of this section. If a fair hearing is scheduled, the State agency shall provide the SESA sufficient advanced notice to permit the attendance of a SESA representative.

* * * * *

7. The newly redesignated paragraph (h), *Determining good cause* would be reworded as follows:

* * * * *

(h) *Determining good cause.* The SESA shall be responsible for determining good cause in those instances where work registrant has failed to comply with the additional work registration and job search requirements of this section. The SESA shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

* * * * *

8. Paragraph (h), *Ending disqualification,* would be redesignated as paragraph (i). The newly redesignated paragraph (i), *Ending disqualification,* would be amended by numbering the existing paragraph as (1), deleting the existing subparagraph (2) and redesignating subparagraph (1), (3)–(6) as (i)(1)(i) through (i)(1)(v) respectively.

Newly redesignated subparagraphs (i)(1)(iv) and (i)(1)(v) would be amended and a new subparagraph (i)(2) would be added. The amended subparagraphs and the new subparagraph would read as follows:

* * * * *

(i) *Ending disqualification.* (1) * * *

(iv) *Refusal to accept a bona fide offer of suitable employment to which referred by the SESA*—Acceptance of this employment, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week, or securing employment of less than 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(v) *Refusal to continue suitable employment to which referred by the SESA*—Returning to this employment, if still available to the participant, or securing any other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(2) Persons failing to comply initially with the job search requirements, i.e., the assessment interview, follow-up interviews, and job contacts, or the additional work requirement of reporting for an interview with the SESA are provided with a second opportunity to comply by the procedures established in § 273.7(e). If the work registrant fails to comply on the second opportunity, without good cause, and such failure results in disqualification, the disqualification, may be ended only if the person becomes exempt from the work registration requirement or at the end of two months, whichever occurs earlier.

* * * * *

9. Paragraph (i), *Suitable employment,* would be redesignated as paragraph (j); paragraph (j), *Participation of strikers,* would be redesignated as paragraph (k); paragraph (k), *Registration of PA and GA households,* would be redesignated as paragraph (l).

(91 Stat. 958, as amended (7 U.S.C. 2011–2027))

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Draft Impact Analysis is available from Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated August 4, 1980.

Ernest Green,

Assistant Secretary, Department of Labor.

Dated: May 19, 1980.

Carol Tucker Foreman,

Assistant Secretary, USDA Department of Agriculture.

[FR Doc. 80-24015 Filed 8-7-80; 8:45 am]

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Federal Register

Vol. 45, No. 155

Friday, August 8, 1980

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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 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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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 items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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National Park Service—

46071 7–9–80 / Big Thicket National Preserve, Tex.; special regulations

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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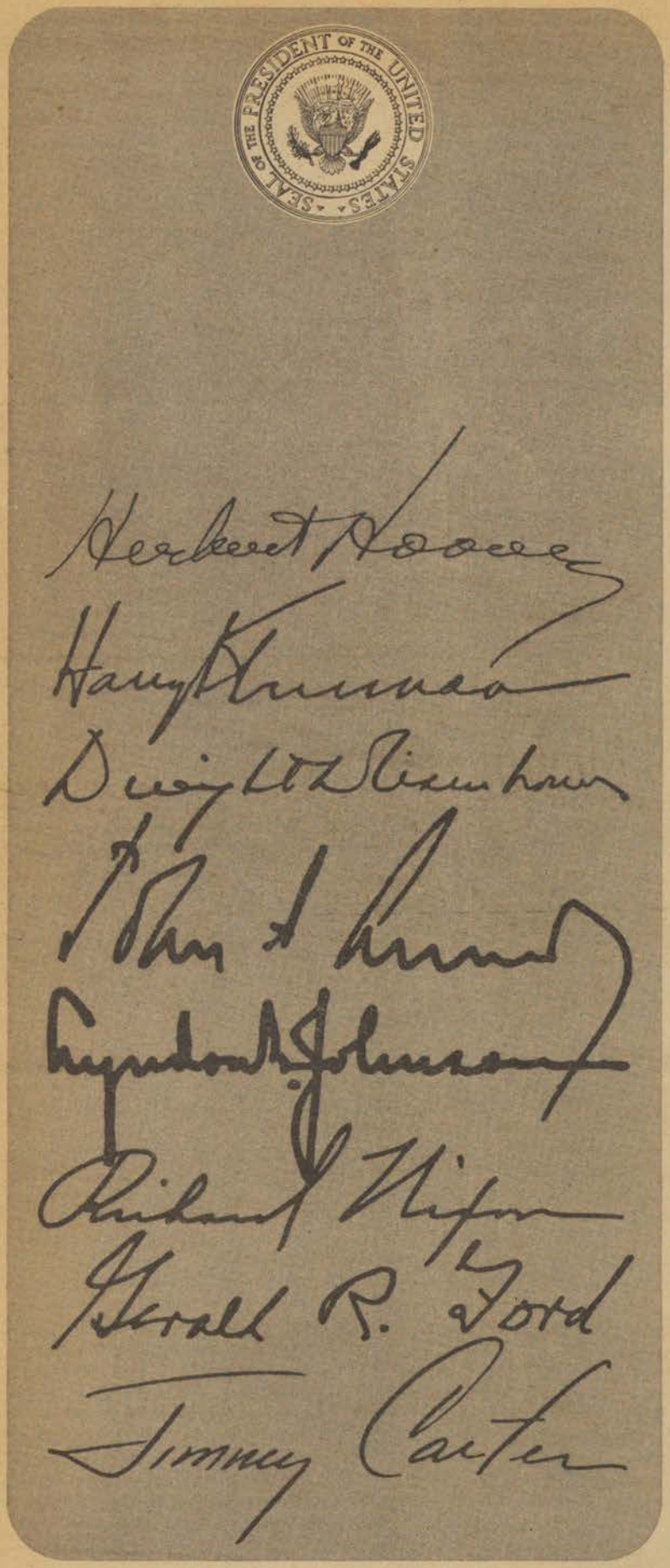

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